

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

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**REGULAR SESSION**  
**1992**

Convened on Wednesday, January 15, 1992  
and  
Adjourned sine die on Thursday, April 30, 1992

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Revisor of Statutes  
Honolulu, Hawaii

## **AUTHORITY**

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

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

## PREFACE

This volume contains all the laws of the Regular Session of 1992. 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 However, the text is edited to omit the bracketed matter for HRS sections repealed in their entirety and to delete the underscoring from new HRS sections.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, 1992

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**Session Laws of Hawaii  
Passed By The  
Sixteenth State Legislature  
Regular Session  
1992**

**ACT 1**

**H.B. NO. 72**

A Bill for an Act Relating to Public Funds.

*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, 1993, including but not limited to the 1992 regular session, Sixteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1992 and 1993 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,264,763, 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, 1993, including but not limited to the 1992 regular session, Sixteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1992 and 1993 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1992 and 1993 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 1992 and 1993 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 20, 1993, 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 20, 1993.

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 \$2,556,006, 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 1992-1993; (b) the sum of \$552,006, or so much thereof as may be necessary, for defraying the expenses of the office of the state ethics commission during the fiscal year 1992-1993; (c) the sum of \$150,000, or so much thereof as may be necessary during the fiscal year 1992-1993, 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 \$2,221,705, or so much thereof as may be necessary, to the legislative reference bureau for defraying the expenses of the bureau during the fiscal year 1992-1993 including equipment relating to computer systems programming and operations.

**SECTION 8.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$711,508, 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 1992-1993.

**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, 1993.

**SECTION 10.** As of the close of business on June 30, 1993, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

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

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

(Approved February 12, 1992.)

## ACT 2

S.B. NO. 2884

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 1991-1992 to be exceeded by \$57,402,712, or 2.03 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 3. Act 296, Session Laws of Hawaii 1991, 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, 1991, and ending June 30, 1992.

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 sixteen per cent over the previous year's level of expenditures. The extent of the increase in costs was not anticipated and reflects an unusually high escalation.

To prevent the reduction or discontinuance of direct services, additional funds are urgently needed.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$64,000,000, or so much thereof as may be necessary for fiscal year 1991-1992, to be used for health care payments to medical assistance providers, provided that:

- (1) All of the funds appropriated in this Act shall be allotted to the department of human services not as a "loan", but as a free and clear addition to the department's existing budget for the medical assistance program;
- (2) The department of human services' overall budget shall not be restricted in order to generate the additional appropriation; and
- (3) The department of budget and finance shall increase the department of human services' federal spending ceiling by \$47,804,390 to reflect the necessary accompanying increase to accommodate the increased general fund appropriation.

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

## ACT 3

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

(Approved February 19, 1992.)

## ACT 3

H.B. NO. 3103

A Bill for an Act Relating to Supplementary Appropriations for the Fiscal Year Ending June 30, 1992.

*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. Act 296, Session Laws of Hawaii 1991, appropriated or authorized specified amounts of non-general funds to various executive state programs for the fiscal biennium 1991-1993. Report No. 91-10 by the Office of the Legislative Auditor, relating to special and revolving funds, concluded that, for a special or revolving fund to be considered appropriate, the fund should: continue to serve its original purpose; have a clear link between benefits and charges; and be financially self-sustaining. While certain special and revolving funds have exhibited consistency with these criteria, there exists no legislated mechanism to allow for the intended and timely implementation of the purposes of these funds once a fiscal year has begun.

To facilitate the appropriate implementation of these programs for fiscal year 1992, non-general fund appropriations and authorizations provided in this Act reflect additional available receipts and an attendant commitment of increased program funding collateral to the receipt of revenues.

SECTION 3. The following sums, or so much thereof as may be necessary, are hereby appropriated for fiscal year 1992, for the following programs from the sources of funding specified below. The specified sums shall be in addition to operating appropriations made for the same programs by Act 296, Session Laws of Hawaii 1991, or by any other act, and shall be expended by the designated department or program.

BED	102	Commerce and Industry	\$ 100,000	B
BED	107	Foreign Trade	100,000	B
BED	142	General Support for Economic Development	75,000	B
LBR	143	Occupational Safety and Health	275,315	N
LBR	901	Data Gathering, Research & Analysis	15,110	N
LBR	903	Office of Community Services	485,055	N
TRN	595	Highways Administration	3,371,000	B
EDN	105	Regular Instruction Program	300,000	B
EDN	307	Physical Plant Operation & Maintenance	600,000	B
UOH	101	Instruction, UOH Manoa	2,251,519	B
UOH	104	Academic Support, UOH Manoa	260,000	W
UOH	105	Student Services, UOH Manoa	1,000,000	W
UOH	106	Institutional Support, UOH Manoa	1,127,431	B
UOH	311	Instruction, Kapiolani Community College	150,000	W

## ACT 5

UOH	312	Public Service, Kapiolani Community College	200,000	B
UOH	604	Student Services, Kauai Community College	7,628	W
UOH	903	Systemwide Institutional Support	762,000	W
CCA	701	Hawaii Public Broadcasting	1,100,000	W
CCA	102	Cable Television	593,000	X
CCA	191	General Support-Protection of the Consumer	725,214	B
AGS	889	Spectator Events and Shows	360,000	B
TRN	395	Harbors Administration	66,000	B
PSD	801	Harbor Patrol Services	66,000	U

The letter symbols following the amounts shall have the same meaning as the letter symbols listed in section 2(c) of Act 296, Session Laws of Hawaii 1991.

SECTION 4. Any unexpended or unencumbered balances of any appropriation made by this Act as of the close of business on June 30, 1992 shall lapse into the appropriate fund.

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

(Approved March 25, 1992.)

## ACT 4

H.B. NO. 2799

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 603-3, Hawaii Revised Statutes, is amended to read as follows:

**“§603-3 First circuit court judges.** The circuit court of the first circuit shall consist of [seventeen] eighteen judges, who shall be styled as first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, [and] seventeenth, and eighteenth judge, respectively.”

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

SECTION 3. This Act shall take effect upon approval.

(Approved March 25, 1992.)

## ACT 5

H.B. NO. 2337

A Bill for an Act Relating to Family.

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

SECTION 1. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

## ACT 6

"(a) It shall be unlawful to change any name adopted or conferred under this chapter, except:

- (1) Upon an order of the lieutenant governor;
- (2) By a final order, decree, or judgment of the family court issued as follows:
  - (A) When in an adoption proceeding a change of name of the person to be adopted is requested and the court includes the change of name in the adoption decree;
  - (B) When in a divorce proceeding either party to the proceeding requests to resume the middle name or names and the last name used by [him or by her] the party prior to the marriage or a middle name or names and last name declared and used during any prior marriage and the court includes the change of names in the divorce decree; or
  - (C) When in a proceeding for a change of name of a legitimate or legitimated minor initiated by one parent, the family court, upon proof that the parent initiating the name change has made all reasonable efforts to locate and notify the other parent of the name change proceeding but has not been able to locate, notify, or elicit a response from the other parent, and after an appropriate hearing, orders a change of name determined to be in the best interests of the minor; provided that the family court may waive the notice requirement to the non-initiating, noncustodial parent where the court finds that the waiver is necessary for the protection of the minor.
- (3) Upon marriage pursuant to section 574-1;
- (4) Upon legitimization pursuant to section 338-21; or
- (5) By an order or decree of any court of competent jurisdiction within any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, changing the name of a person born 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 April 2, 1992.)

## ACT 6

S.B. NO. 2701

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 415B, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**"§415B- Filing requirements; filing duty of director.** (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the director.  
(b) The document must contain the information required by this chapter

but may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or in part;
- (2) Relate to the correctness or incorrectness of information contained in the document; and
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**§415B- Correcting a filed document.** (a) A domestic or foreign corporation may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

- (1) By preparing articles of correction that:
  - (A) Describe the document including its file date or attach a copy of it to the articles;
  - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
  - (C) Correct the incorrect statement or defective execution; and
- (2) By delivering the articles to the director for filing.

(c) Articles of correction are effective on the effective date of the document they correct, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**§415B- Filing of statement of revocation of voluntary dissolution proceedings.** The statement of revocation of voluntary dissolution proceedings shall be delivered to the director for filing.”

SECTION 2. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

**“§415-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation or partnership existing under the laws of this State or any foreign corporation or partnership authorized to transact business in this State, trade name registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
  - (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name; [or]
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; [and] or
  - (C) A copy of a certificate of registration of a trade name by the

## ACT 6

foreign corporation under which trade name that foreign corporation will transact business in this State; and

- (2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 3. Section 415-111, Hawaii Revised Statutes, is amended to read as follows:

**"§415-111 Filing of application for certificate of authority.** The application of the corporation for a certificate of authority shall be delivered to the director, together with a certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated[.], which certificate shall be dated not earlier than thirty days prior to the filing of the application. If the certificate of good standing is in a foreign language, a translation under the oath of the translator shall accompany the certificate."

SECTION 4. Section 415B-96, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at the meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.
- (3) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:
- (A) The name of the corporation;
- (B) The names and residence addresses of its officers;
- (C) The names and residence addresses of its directors;
- (D) A copy of the resolution revoking the voluntary dissolution proceedings;
- (E) If the adoption of the resolution is by the members entitled to vote on the revocation of voluntary dissolution proceedings, the number of members of the corporation and the number of members voting for and against the resolution, respectively; and, if the members of any class are entitled to vote as a class, the designation and number of members of each class and the number of members of each class voting for and against the

- resolution, respectively; and
- (F) If the adoption of the resolution is by the board of directors, the number of directors voting for and against the resolution, respectively.

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

SECTION 5. Section 415B-97, Hawaii Revised Statutes, is amended to read as follows:

**"§415B-97 Involuntary dissolution.** A corporation may be dissolved involuntarily when it is established that:

- (1) The corporation has failed to deliver to the director its annual report within the time required by this chapter for a period of two years;
- (2) The corporation procured its articles of incorporation through fraud;
- (3) The corporation has failed for ninety days to appoint and maintain a registered agent in this State;
- (4) The corporation has failed for ninety days after change of its registered agent to file in the office of the director a statement of such change;] or<sup>1</sup>
- [5)] (3) The corporation has failed to complete voluntary dissolution for a period of two years."

SECTION 6. Section 415B-125, Hawaii Revised Statutes, is amended to read as follows:

**"§415B-125 Filing of application for certificate of authority.** The application of a foreign corporation for a certificate of authority shall be delivered to the director, together with a certificate of good standing duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated[.], which certificate shall be dated not earlier than thirty days prior to the filing of the application. If the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate."

SECTION 7. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

**"§425-12 Fee for recording.** (a) The director of commerce and consumer affairs shall collect the following fees:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$1.50 per partner;
- [2) For each admission, withdrawal, or death statement filed, a fee of \$1.50 per partner involved;
- (3) For each name recorded as aforesaid, a fee of \$1;
- [4)] (2) For each annual statement filed, a fee of \$3; and
- [5)] (3) For each general partnership registered, a fee of \$3 for each partner.

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

- [1) For limited partnerships: certificate of amendment, \$40; certificate of cancellation, \$10; annual statement, \$10; certificate of limited partnership, \$1 a page; certificate of good standing, \$10;

## ACT 6

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

All special handling fees shall be credited to the special fund authorized by section 415-128."

SECTION 8. Section 482-3, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved April 7, 1992.)

### Notes

1. Should not be underscored.
2. Edited pursuant to HRS §23G-16.5.

## ACT 7

S.B. NO. 2431

A Bill for an Act Relating to the Sunset Law.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- [(1) Chapter 446 (Debt Adjusters)]
- (2) (1) Chapter 467D (Social Workers)
- [(3) (2) Sections 321-13 to 321-15 only as they relate to sanitarians]
- [(4) (3) Sections 445-21 to 38 (Auctions)]
- [(5) (4) Sections<sup>1</sup> 445-131 to 136 (Pawnbrokers)]
- [(6) (5) Sections 445-171 to 172 (Secondhand Dealers)]
- [(7) (6) Sections 445-231 to 235 (Scrap Dealers)]"

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 10, 1992.)

**Note**

1. Prior to amendment "section" appeared here.

## ACT 8

S.B. NO. 2680

A Bill for an Act Relating to the Board of Acupuncture.

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

SECTION 1. Section 436E-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§436E-6] Board of acupuncture.** (a) There shall be a board of acupuncture, the members of which shall be appointed by the governor in accordance with section 26-34, except as provided in this section.

The board shall consist of five persons, two of whom shall be private citizens and three shall be acupuncturists licensed in accordance with this chapter. The members of the board shall serve without pay but shall be reimbursed for actual expenses incurred in the discharge of their duties. A majority of the board shall constitute a quorum. [Each person on the board shall have a two-year term and shall serve not more than two terms, consecutive or otherwise.]

**(b) Commencing July 1, 1992, and thereafter, each person appointed to the board shall have a four-year term and shall serve not more than two consecutive terms. Members appointed to the board prior to July 1, 1992, shall be permitted to continue to serve on the board until such time when a maximum of eight consecutive years from the date of initial appointment has been attained."**

## **ACT 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 10, 1992.)

## **ACT 9**

S.B. NO. 2681

A Bill for an Act Relating to the Board of Examiners in Naturopathy.

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

SECTION 1. Section 455-4, Hawaii Revised Statutes, is amended to read as follows:

**"§455-4 State board of examiners in naturopathy.** The governor shall appoint in the manner prescribed by section 26-34 the board of examiners in naturopathy, consisting of [three] five members. Each member shall serve until the member's successor is appointed and qualified. [Two] Three members of the board shall, before appointment, have been licensed as a naturopathic physician in the State and [one] two shall be [a] public [member.] members. The members of the board may elect a chairperson and a vice-chairperson who shall each serve one year or until a successor is elected."

SECTION 2. Section 455-5, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 10, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 10**

S.B. NO. 2682

A Bill for an Act Relating to Time Sharing Plans.

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

SECTION 1. The purpose of this Act is to subject the time share program, established by chapter 514E, Hawaii Revised Statutes, to the Hawaii Regulatory Licensing Reform Act. The legislative auditor will then be required to evaluate the time share program, submit an evaluation report to the legislature prior to the repeal date, and make recommendations for improving policies, procedures, and practices.

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following chapters 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)"

SECTION 3. New statutory material is underscored.

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

(Approved April 10, 1992.)

## ACT 11

S.B. NO. 2688

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 464-7, Hawaii Revised Statutes, is amended to read as follows:

**"§464-7 Powers and duties of board; secretary; records.** The board is entitled to the services of the attorney general in connection with its affairs, and may compel the attendance of witnesses upon subpoena, administer oaths, take testimony, and do all other things necessary and proper to carry out this chapter in all matters within its jurisdiction. It shall adopt and have an official seal and make, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, rules for the performance of its duties and the carrying on of its business and the enforcement of this chapter[.], including, but not limited to, rules which define the branches of engineering in which licensure shall be offered, clarify the qualifications needed for licensure, and set forth practice requirements. [It] The board shall be provided with suitable office quarters by the State and shall hold at least two regular meetings during each year. It shall have a chairman, a vice-chairman, and a secretary, and a quorum shall consist of not less than six members.

All fees and other moneys received by the board shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.

The board shall keep a record of its proceedings and all applicants for licensure as engineers, architects, surveyors, or landscape architects, the date of application, name, age, educational and other qualifications, place of business and residence, whether or not an examination was required, and whether or not the applicant was licensed and a certificate issued to the applicant and the date of the action. The records shall be *prima facie* evidence of all matters therein contained."

SECTION 2. Section 464-8, Hawaii Revised Statutes, is amended to read as follows:

## ACT 11

**"§464-8 Qualifications for licensure.** (a) No person shall be eligible for licensure as a professional engineer unless:

- (1) The person is the holder of an unexpired license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for licensure at the time the person was first licensed [were] are of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards [were] are satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of engineering;
- (2) The person is the holder of a masters degree in engineering from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed an engineering curriculum of four years or more; has had three years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering;
- (3) The person is the holder of a masters degree in engineering from an institution of higher education approved by the board; has had four years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering;
- (4) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering curriculum of four years or more; has had four years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering;
- (5) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering technology or arts and science curriculum of four years or more; has had eight years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering; or
- (6) The person has had twelve years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering.

- (b) No person shall be eligible for licensure as a professional architect unless:
- (1) The person is the holder of an unexpired license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for licensure at the time the person was first licensed [were] are of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards [were] are satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of architecture;
  - (2) The person is the holder of a masters degree in architecture from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of five years or more; has had two years of full-time lawful experience in architecture work of a character satisfactory to the board[;], or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
  - (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an architectural curriculum of five years; has had three years of full-time lawful experience in architecture work of a character satisfactory to the board[;], or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
  - (4) The person is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of four years or a pre-architecture or arts and science curriculum of four years or more; has had five years of full-time lawful experience in architecture work of a character satisfactory to the board[;], or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
  - (5) The person is a graduate of a community college or other technical training school approved by the board as of satisfactory standing, and has completed an architectural technology curriculum of two years or more; has had eight years of full-time lawful experience in architecture work of a character satisfactory to the board[;], or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
  - (6) The person has had eleven years of full-time lawful experience in architecture work of a character satisfactory to the board[;], or part-

## ACT 11

time experience which the board finds to be the equivalent thereof;  
and has successfully passed a professional written examination, pre-  
scribed by the board and designed to test the person's knowledge,  
skill, and competency in the profession of architecture.

(c) No person shall be eligible for licensure as a professional land survey-  
or unless:

- (1) The person is the holder of an unexpired license issued to the person  
by any jurisdiction, domestic or foreign, in which the requirements  
for licensure at the time the person was first licensed [were] are of a  
standard satisfactory to the board; provided that if the board is in  
doubt as to whether the standards [were] are satisfactory, or as to  
whether the holder was required to fully comply with them, it shall  
require that the holder successfully pass a written examination, pre-  
scribed by the board and designed to test the holder's knowledge,  
skill, and competency in the profession of land surveying;
- (2) The person is a graduate of a school or college approved by the  
board as of satisfactory standing, and has completed a geo-science,  
civil engineering, or general engineering curriculum of four years or  
more; has had three years of full-time lawful experience in land sur-  
veying of a character satisfactory to the board[;], or part-time expe-  
rience which the board finds to be the equivalent thereof; and has  
successfully passed a professional written examination, prescribed  
by the board and designed to test the person's knowledge, skill, and  
competency in the profession of land surveying;
- (3) The person is a graduate of a school or college approved by the  
board as of satisfactory standing, and has completed a civil engi-  
neering technology (survey option) curriculum of two years or more  
or arts and sciences curriculum of four years or more; has had seven  
years of full-time lawful experience in land surveying of a character  
satisfactory to the board[;], or part-time experience which the board  
finds to be the equivalent thereof; and has successfully passed a pro-  
fessional written examination, prescribed by the board and designed  
to test the person's knowledge, skill, and competency in the profes-  
sion of land surveying; or
- (4) The person has had eleven years of full-time lawful experience in  
land surveying of a character satisfactory to the board[;], or part-  
time experience which the board finds to be the equivalent thereof;  
and has successfully passed a professional written examination, pre-  
scribed by the board and designed to test the person's knowledge,  
skill, and competency in the profession of land surveying.

(d) No person shall be eligible for licensure as a professional landscape  
architect unless:

- (1) The person is the holder of an unexpired license issued to the person  
by any jurisdiction, domestic or foreign, in which the requirements  
for licensure at the time the person was first licensed [were] are of a  
standard satisfactory to the board; provided that if the board is in  
doubt as to whether the standards [were] are satisfactory, or as to  
whether the holder was required to fully comply with them, it shall  
require that the holder successfully pass a written examination, pre-  
scribed by the board and designed to test the holder's knowledge,  
skill, and competency in the profession of landscape architecture;

- (2) The person is the holder of a masters degree in landscape architecture from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed a landscape architectural curriculum of four years or more; has had two years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture;
- (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a landscape architectural curriculum of four years or more; has had three years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture;
- (4) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a pre-landscape architecture or arts and science curriculum of four years or more; has had five years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture; or
- (5) The person has had twelve years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture.

In addition to the foregoing requirements, the board, in its discretion, may also require additional proof that the applicant is competent to practice professionally, and whenever the board is not fully satisfied from the results of an examination that any applicant is competent to practice professionally, it may give the applicant a further examination or examinations.

No person shall be eligible for licensure as a professional engineer, architect, land surveyor, or landscape architect if the person does not possess a history of honesty, truthfulness, financial integrity, and fair dealing."

**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 10, 1992.)

A Bill for an Act Relating to Collection Agencies.

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

SECTION 1. Section 443B-1, Hawaii Revised Statutes, is amended by amending the definition of "collection agency" to read as follows:

"Collection agency" means any person, whether located within or outside this State, who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission, fixed fee, or a portion of the sums so collected.

"Collection agency" includes:

- (1) Any person using any name other than the person's own in collecting the person's own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;
- (2) Any person who, in the conduct of the person's business for a fee, regularly repossesses any merchandise or chattels for another; and
- (3) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon the assigned claims or money due on accounts or other forms of indebtedness in the person's own name; provided that any suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignee; provided further that any person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation, mortgage loans and agreements of sale, whether or not the collection servicing agent receives any compensation or other consideration for one's services, shall fall within the purview of chapter 454D.

"Collection agency" does not include licensed attorneys at law acting within the scope of their profession, licensed real estate brokers, and [salesmen] salespersons residing in this State when engaged in the regular practice of their profession, nor banks, trust companies, building and loan associations, savings and loan associations, financial services loan companies, credit unions, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit [men] persons or in other similar capacity for a single employer who is not a collection agency, [nor any person doing business subject to public supervision and regulation,] nor any public officer or any person acting under an order of court."

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

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

(Approved April 10, 1992.)

## ACT 13

S.B. NO. 2700

A Bill for an Act Relating to the Hawaii Business Corporation Act.

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

SECTION 1. Section 415-14, Hawaii Revised Statutes, is amended to read as follows:

**“§415-14 Service of process on corporation.** 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 registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, 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.

If 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 in case the corporation, if a foreign corporation, has not filed with the director pursuant to sections 415-113 and 415-114, the name of a person upon whom legal notice and process from the courts of the State may be served, and likewise if the person so named is not found within the State, service may be made upon the corporation by [delivering to the director, 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 chairman, or president of the board, or by the officer issuing the same. The director or deputy director so served shall notify the defendant corporation of the service, as soon as practicable but not more than thirty days after receipt of the notice or process, by certified mail at the corporation's address as last recorded in the business registration division. The filing shall constitute service upon the corporation forty-five days after the filing, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual.

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 the service and the action 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 is 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.

Nothing contained herein 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 permitted by law.”

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 10, 1992.)

ACT 14

S.B. NO. 2702

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 485-14, 485-14.5, 485-15, 485-19, and 485-20, are amended by substituting the terms "salesperson," "salespersons," or "salesperson's" for "salesman," "salesmen," or "salesman's" and "salesmen's," respectively, wherever those terms appear.

SECTION 2. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All securities required by this chapter to be registered before being sold in the State and not entitled to registration by notification[, or by coordination,] shall be registered only by qualification in the manner provided by this section."

SECTION 3. Statutory material to be repealed is bracketed.

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

(Approved April 10, 1992.)

ACT 15

S.B. NO. 2720

A Bill for an Act Relating to Adult Foster Homes.

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

SECTION 1. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

**"§321-11 Subjects of health regulations, generally.** The department of health pursuant to chapter 91 may adopt rules as it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitos breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of such bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead human

- body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
- (9) Laundries, and the laundering, sanitation, and sterilization of articles including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, electrology shops, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of such laundering, sanitation, and sterilization by those conducting any of such businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
- (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, special treatment facilities and programs, home health agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution". For the purpose of this paragraph, "adult foster home" [means a private home providing care on a twenty-four hour basis for not more than two developmentally disabled adults at any point in time who are unrelated to the foster family;] has the same meaning as provided in section 321-11.2;
- (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
- (12) Laboratories;
- (13) Any place or building where noisome or noxious trades or manufactures are carried on, or intended to be carried on;
- (14) Milk;
- (15) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
- (16) Pig and duck ranches;
- (17) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;
- (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;

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- (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;
- (20) Devices as defined in section 328-1;
- (21) Sources of ionizing radiation;
- (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to such medical examination, vaccination, revaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenets of an established church of which he is a member or adherent, but no such objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;
- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation. The process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department<sup>1</sup> may be lethal, poisonous, noxious, or dangerous to human life;
- (25) Ambulances and ambulance equipment; and
- (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519.

The department may require such certificates, permits, or licenses as it may deem necessary to adequately regulate the conditions or businesses referred to in this section."

SECTION 2. Section 321-11.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§321-11.2 Adult foster homes.<sup>2</sup>** (a) The department of health is authorized to certify adult foster homes for developmentally disabled individuals requiring such care beyond the eighteenth birthday. "Adult foster home" means a private home providing care on a twenty-four hour basis for adults with developmental disabilities. To be certified, an adult foster home shall have not more than two adults with developmental disabilities at the same time, who are unrelated to the foster family. To accommodate residents of a foster boarding home for children with developmental disabilities who reach the age of eighteen years, where the home is certified as a foster boarding home for children under section 346-17, the director of health may waive the two adult limit for certification of that home as an adult foster home, provided that: (1) the number of foster children and adults in such dually certified home shall not exceed five, and (2) no new adults may be admitted into the home while there are any foster children residing in the home."

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 10, 1992.)

Notes

1. Prior to amendment "," appeared here.
2. So in original.

ACT 16

S.B. NO. 2784

A Bill for an Act Relating to Perfection of a Purchase Money Security Interest.

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

SECTION 1. Section 490:9-301, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) If the secured party files with respect to a purchase money security interest before or within [ten] twenty days after the debtor receives possession of the collateral, [he] the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing."

SECTION 2. Section 490:9-312, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within [ten] twenty days thereafter."

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 10, 1992.)

ACT 17

S.B. NO. 3272

A Bill for an Act Relating to Emergency Acquisition of Financial Institutions.

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

SECTION 1. Section 411-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Out-of-state financial institution" means (1) a state-chartered bank, state-chartered savings and loan association, national banking association, or federally chartered thrift whose deposits are insured by the FDIC and whose principal place of business is located in a state in the twelfth Federal Reserve District

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as designated in 12 U.S.C. §222, other than Hawaii; or (2) a bank holding company whose operations of its banking subsidiaries is largest in terms of total deposits in a state in the twelfth Federal Reserve District as designated in 12 U.S.C. §222, other than Hawaii.”

SECTION 2. Section 411-2, Hawaii Revised Statutes, is amended by amending the definitions of “state-chartered financial institution” and “state-chartered financial institution in danger of failing” to read as follows:

“State-chartered financial institution” means (1) a state-chartered commercial bank, savings bank, or savings and loan whose deposits are insured by the FDIC; (2) a financial services loan company licensed under chapter 408 whose investment or thrift certificates are insured by the FDIC; or (3) for purposes of participating in any acquisition offered to state-chartered institutions, national [banks,] banking associations, or federally chartered thrifts, whose principal place of business is in this State.

“State-chartered financial institution in danger of failing” means a state-chartered bank or financial services loan company, as those terms are defined in this chapter, that:

- (1) Is not likely to be able to meet the demands of its depositors or its investment or thrift certificate holders or pay its obligations in the normal course of business, and there is no reasonable prospect that it will be able to meet such demands or pay such obligations; or
- (2) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the replenishment of the institution’s capital; or
- (3) Is insolvent as defined in section [403-6] 403-2 as that section now exists or as it may be recodified, amended, or renumbered; or
- (4) Is an institution whose capital is impaired as defined by sections 403-161 and 403-162; or
- (5) Is an institution which the commissioner has determined to be suffering from severe financial conditions and circumstances which threaten the future financial stability of the institution and will require the financial assistance of the FDIC to facilitate an acquisition of its stock, an acquisition of its assets and assumption of its liabilities, or its merger with another corporation; or
- (6) Is an institution which has requested or agreed in a cease and desist order or similar order that the provisions of this chapter can be applied.”

SECTION 3. Section 411-3, Hawaii Revised Statutes, is amended to read as follows:

“§411-3<sup>1</sup> Acquisition of a [failing] state-chartered financial institution[.] in danger of failing. (a) Upon determining that a state-chartered financial institution is failing or in danger of failing, the commissioner shall set forth his decision in writing and deliver a copy of the decision to the institution in question. Upon delivery of his decision, the commissioner shall be entitled to apply any of the provisions set forth in this chapter or in any administrative rules which have been adopted to implement this chapter in order to facilitate the acquisition of the state-chartered financial institution in danger of failing. The commissioner, therefore, may:

- (1) Accept applications from other state-chartered financial institutions or their bank holding companies, [as well as] national [banks] banking associations, or federally chartered thrifts whose principal place of business is in this State, or out-of-state financial institutions, to:
    - (A) Acquire all or portions of the assets of the state-chartered financial institution in danger of failing and to assume that institution's liabilities; or
    - (B) Acquire all or portions of the capital stock of the state-chartered financial institution in danger of failing; or all or portions of the capital stock of any bank holding company of the state-chartered financial institution; or
    - (C) Acquire all or portions of the capital stock of an institution organized under section 411-7 of this chapter which institution (i) has merged or will merge with the state-chartered financial institution in danger of failing, or of the bank holding company of the state-chartered financial institution; or (ii) has acquired or will acquire all or portions of the capital stock of the state-chartered financial institution in danger of failing or of any bank holding company [of] that owns the state-chartered financial institution[; in danger of failing]; or (iii) has or will acquire the assets and assume the liabilities of the state-chartered financial institution [or of] that owns any bank holding company [affiliated with] controlling the state-chartered financial institution[; in danger of failing]; or
    - (D) Merge with the state-chartered financial institution in danger of failing or with any bank holding company [affiliated with] controlling the state-chartered financial institution.
  - (2) Accept applications from natural persons [who are residents of the State] to:
    - (A) Acquire all or portions of the capital stock of the state-chartered financial institution in danger of failing; or all or portions of the capital stock of any bank holding company [of] that owns the state-chartered financial institution; or
    - (B) Acquire all or portions of the capital stock of an institution organized under section 411-7 of this chapter which institution has (i) merged or will merge with the state-chartered financial institution in danger of failing, or of the bank holding company [of] that owns the state-chartered financial institution; or (ii) has acquired or will acquire all or portions of the capital stock of the state-chartered financial institution in danger of [closing,] failing or of any bank holding company [of] that owns the state-chartered financial institution; or (iii) has or will acquire the assets and assume the liabilities of the state-chartered financial institution in danger of failing or of any bank holding company [of] that owns the financial institution.
- (b) A state-chartered financial institution in danger of failing which seeks to contest the determination of the commissioner may petition the circuit court of the first circuit to hear and review the commissioner's determination. Such a petition must be filed within five days of the issuance of the commissioner's determination. A hearing on the petition shall be held not more than fifteen days after the petition is filed. A hearing under this subsection may be held privately in chambers and it shall be so held if the state-chartered financial institution or the commissioner so requests. An order made pursuant to this subsection by the court

may be appealed to the supreme court. In all proceedings and hearings under this subsection, all records, documents and files of the state-chartered financial institution, the division, 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 held in a confidential file."

SECTION 4. Section 411-5, Hawaii Revised Statutes, is amended to read as follows:

**"§411-5<sup>1</sup> Evaluation of applicants.** In evaluating applications filed under [Part] part II of this chapter, the commissioner shall consider the following factors:

- (1) Whether immediate action is necessary in order to prevent the probable failure of the state-chartered financial institution and to protect the institution's depositors and creditors;
- (2) The financial and managerial resources of the applicants, together with the financial and managerial resources of any parent companies, holding companies or other companies that control, either directly or indirectly, the applicant<sup>2</sup>;
- (3) The future prospects for the viability of the state-chartered financial institution in danger of failing after the acquisition or merger has been completed;
- (4) Whether the FDIC is prepared to offer financial assistance to facilitate the acquisition or merger and the amount of such assistance;
- (5) Whether the proposed acquisition or merger would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize business in the relevant financial market served by the state-chartered financial institution in danger of failing;
- (6) Whether the proposed acquisition or merger would substantially lessen competition or tend to create a monopoly or in any other manner would be a restraint of trade in the relevant financial market served by the state-chartered financial institution in danger of failing, unless the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable benefits of the transaction in meeting the convenience and needs of the relevant financial market to be served;
- (7) The convenience and needs of the people of the State; [and]
- (8) The principal place of business of an acquiring out-of-state financial institution and the current business relationships of the out-of-state financial institution with Hawaii based businesses; and
- [8] (9) Any other factors which the commissioner may deem relevant."

SECTION 5. Section 411-6, Hawaii Revised Statutes, is amended to read as follows:

**"§411-6<sup>1</sup> Granting of application.** (a) The commissioner is expressly authorized to grant any application which may be filed under [Part] part II of this chapter. In considering applications submitted under [Part] part II of this chapter, the commissioner shall [only consider applications from state-chartered financial

institutions, their bank holding companies, national banks whose principal place of business is in this State and natural persons who are residents of this State.] give priority: first to State of Hawaii chartered commercial banks, savings banks, or savings and loans or their bank holding companies, as well as national banking associations or federally chartered thrifts whose principal place of business is in this State, or a bank holding company whose operations, in terms of total deposits, are principally conducted in this State, or a State of Hawaii licensed financial services loan company whose deposits are insured by the Federal Deposit Insurance Corporation, or residents of this State; and second to out-of-state financial institutions.

(b) No acquisition which is being made pursuant to this chapter shall be effective without the express written approval of the commissioner. Any financial institution or natural person that makes an acquisition pursuant to this chapter shall comply with the instructions, limitations, restrictions and other directives issued by the commissioner in connection with any approval of the application for acquisition.

(c) It is the express intent of the legislature to specifically authorize the acquisition of a failing financial institution or a financial institution in danger of failing only, notwithstanding the restrictions set forth in the Bank Holding Company Act of 1956, as amended (12 U.S.C. §§1841 et seq.)."

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

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

(Approved April 10, 1992.)

Notes

1. So in original.
2. Prior to amendment "applicants" appeared here.

**ACT 18**

H.B. NO. 2309

A Bill for an Act Relating to School Vehicles.

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

SECTION 1. Section 286-181, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department of transportation may grant exemptions for the use of vehicles other than school vehicles when the department finds that compliance with this section is impossible or impractical due to factors, such as the unavailability of school vehicles, which are beyond the control of the school. The exemptions shall be granted:

- (1) To the department of education, to administer to public schools based on criteria developed by the departments of transportation and education, provided that the department of education shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;
- (2) To a board of independent schools, which is registered with the

## **ACT 19**

department of commerce and consumer affairs, to administer to private schools utilizing criteria developed by the departments of transportation and education, provided that the board shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;

- [(2)] (3) Only for the transport of pupils to and from school functions or school-related activities but not for transportation to and from a school;
- [(3)] (4) Only when each pupil being transported has obtained a written statement from the pupil's parent or legal guardian waiving the State's liability; and
- [(4)] (5) In accordance with the procedures and criteria established by rules of the department of transportation."

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, 1992.)

## **ACT 19**

**H.B. NO. 2468**

A Bill for an Act Relating to Prepaid Legal Services.

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

SECTION 1. Section 488-1, Hawaii Revised Statutes, is amended by amending the definition of "prepaid legal service plan" to read:

- "(3) "Prepaid legal service plan" ("Plan") means a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member's behalf. A group legal service plan is a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest. [A plan shall provide:
  - (A) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under such plan.
  - (B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection.]"

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 22, 1992.)

## ACT 20

H.B. NO. 2994

A Bill for an Act Relating to Burials.

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

SECTION 1. Section 346-15, Hawaii Revised Statutes, is amended to read as follows:

**“§346-15 Burial of deceased public assistance recipients or unclaimed corpses.** (a) The department of human services may bear the cost of the burial of deceased public assistance recipients or unclaimed corpses. Burial services include the customary mortuary, crematory, cemetery, and other services essential in providing a dignified burial.

(b) The department may pay for mortuary and crematory services, to be furnished by any licensed provider of [mortuarial] mortuary and crematory services. Mortuary and crematory payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.

(c) The department may pay for cemetery services, to be furnished by any licensed provider of cemetery services. Cemetery payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.

(d) In cases where the decedent is survived by relatives, [such] the relatives shall be permitted to make their own arrangements for the burial or cremation of their deceased relative.

(e) The person making an application for funeral payments under the department's funeral payment program, on behalf of a deceased medical or financial assistance recipient or for an unclaimed corpse, shall have sixty days from the date of death of the deceased to submit the application for funeral payments to the department.

[(e)] (f) The department shall adopt rules pursuant to chapter 91 for purposes of administering and implementing this section.”

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

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

(Approved April 22, 1992.)

## ACT 21

H.B. NO. 3018

A Bill for an Act Relating to Examination Requirements for Optometry License.

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

SECTION 1. Section 459-6, Hawaii Revised Statutes, is amended to read as follows:

**“§459-6 Examinations, time of.** Examinations shall be [held] administered by the [board of examiners in optometry] National Board of Examiners in Optometry (NBEO) at least once a year with additional examinations as the [board desires to hold.] NBEO deems necessary. The time and place of [any

## ACT 21

examination] the examinations shall be [fixed] determined by the [board at least forty-five days prior to the date that it is to be held.] NBEO. If any of the examinations administered by the NBEO are no longer considered appropriate by the board or any of the examinations are no longer administered by the NBEO, the examination shall be administered by the board or a testing agency designated by the board.”

SECTION 2. Section 459-7, Hawaii Revised Statutes, is amended to read as follows:

“**§459-7 Application; examination; reexamination; appeal; renewal; continuing education; license.** (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence, verified by oath, that the applicant is a graduate of an optometric college, school, or university approved by the board of examiners in optometry and accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Department of Education, shall [take an examination before] pass all examinations required by the board [upon complying] and comply with the following requirements:

- (1) [Applications] Complete an application for licensure and the Hawaii optometry laws and rules examination [shall be made out and filed in writing with the executive secretary of the board; and] and submit the applications to the department of commerce and consumer affairs;
- (2) [Each application shall be accompanied by an application fee, which shall be retained by the board, and an examination fee.] Submit a nonrefundable application fee together with the application;

[b] (b) Each applicant shall file, in writing, with the executive secretary not less than forty-five days, but not more than one hundred eighty days, prior to the date selected by the board for the examination, the following credentials:

- (1) A] (3) Submit a copy of the applicant's diploma or certificate of graduation from an optometric college, school, or university approved in accordance with subsection (a); and
- [2) An] (4) Submit an unretouched, unmounted, passport sized, recent photograph of the applicant.

[c] (b) Except for the Hawaii optometry laws and rules examination, the applicants for examination shall be given due notice of the date and place of each examination[.] by the NBEO. If an NBEO examination is no longer recognized by the board, applicants shall be notified by the board or testing agency designated by the board of the date and place of examination.

[Any person aggrieved by the denial or refusal of the board to issue a license may submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the date of the refusal or denial. An appeal to the circuit court of the circuit within which the applicant resides may be taken from the board's final order.]

Every candidate who passes [an examination shall be licensed as possessing the qualifications required by this chapter, and] all examinations required by the board and who has met all requirements for licensure shall receive from the board a [proper] license [upon payment of a license fee.] to practice optometry.

[d] (c) Each licensee shall pay a biennial license fee to the board on or before December 31 of each odd-numbered year for a renewal of the license for the biennium. The failure of any licensee to pay the biennial license fee and

submit proof of satisfying the continuing education program requirements on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license. Any license which is so forfeited may be restored upon payment of a penalty fee and all delinquent fees as provided in rules adopted by the director pursuant to chapter 91, and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the period of time the license has been forfeited.

[(e)] (d) Each licensee, on or before the date designated in each odd-numbered year, shall submit [proof] to the board [of examiners] proof that the licensee [did, on or before December 31 of each odd-numbered year, meet] has met the continuing education requirement [of continuing education in] through programs [as set] recognized and approved by the board. The board shall have the authority to extend the time for compliance of continuing education requirement if good cause is shown. The board shall adopt rules [for the certification of the administration of the continuing education program.] relating to the requirements and standards that continuing education programs shall meet to obtain recognition or approval from the board.

[(f) Certificates of registration shall be endorsed authorizing licensed optometrists to use pharmaceutical agents for examination purposes. A certificate shall certify that an optometrist has complied with the following requirements:

- (1) Successful completion of instruction in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on ocular pharmacology. The systemic effects and reactions to topical pharmaceutical agents used for examinations shall be studied, as well as the emergency management and referral of any adverse reactions that may occur. Instruction shall also include review of systemic and ocular diseases and clinical techniques and instruments used with these pharmaceutical agents for examination purposes. The course of study shall be approved by the board, and shall be offered by an institution which is accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States Department of Education; and
- (2) Successful completion of an examination approved by the board which tests for those subjects outlined in the course of instruction in paragraph (1).]

SECTION 3. Section 459-8, Hawaii Revised Statutes, is amended to read as follows:

**“§459-8 Conduct of examinations.** Each [applicant] person whose application is received by the board before January 1, 1987, shall pass [either] the written examination given by the [National Board of Examiners in Optometry or a written examination given by the board.] NBEO.

Each applicant whose application is received by the board on or after January 1, 1987, shall pass the written examination given by the [National Board of Examiners in Optometry.] NBEO. Beginning January 1, 1991, each applicant shall pass the clinical skills examination administered by the NBEO. If a written or practical examination is no longer given by the [National Board of Examiners in Optometry,] NBEO, the applicant shall pass either another national examination selected by the board, or if no other examination is selected by the board, a written examination prepared by the board[.] or a testing agency recognized by the board.

In addition to satisfying the applicable requirement above, the applicant shall also pass [any practical and any written examinations] an examination given by the board.

The board shall [provide] state in its rules [which parts of the National Board of Examiners examination and] the [passing scores that the board will accept.] pass/fail cutoff scores for all required examinations. The board shall not accept the scores of any [National Board of Examiners examination] NBEO examinations if the examination was [taken] passed in its entirety by the applicant more than five years before the date the application is received by the board. [The] If an NBEO examination is no longer recognized by the board, the board shall [also] provide in its rules the [passing] pass/fail cutoff scores for [any] the examination [(practical or written)] given by the board[.] or the testing agency designated by the board."

SECTION 4. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

**"§459-9 Refusal to permit examination or issue license; revocation and suspension of license; grounds for.** The board of examiners in optometry may refuse to admit persons to its examinations or to issue a license or may revoke or suspend, for the period of time as may be determined by the board, a license previously issued, or may impose a penalty as shall be established by the board, for any of the following causes:

- (1) Presentation to the board of any certificate or testimony or information which was untrue in any material respect or illegally or fraudulently obtained, or when fraud or deceit has been practiced in obtaining any license under this chapter or in passing an examination;
- (2) Conduct of a character likely to deceive or defraud the public, or habits of intemperance or drug addiction calculated to destroy the accuracy of the work of an optometrist, or professional misconduct, or gross carelessness or negligence, or manifest incapacity in the practice of optometry;
- (3) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (4) Directly or indirectly accepting or offering employment to practice optometry from, or to any person not having a valid, unrevoked and unsuspended license or from any company or corporation;
- (5) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any intended or prospective wearer or user;
- (6) Using any name in connection with the licensee's practice other than the name under which the licensee is licensed to practice, or using any advertising which fails to clearly identify the individual licensee or which is ambiguous or misleading as to the licensee's identity;
- (7) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training

- without directly and personally supervising the individuals in the performances of the services;
- (8) Violating this chapter or the rules adopted by the board;
- (9) Utilizing pharmaceutical agents [without first being certified as provided in section 459-7 or utilizing pharmaceutical agents] for purposes other than those specified in section 459-1; or
- (10) Failure to refer a patient to an appropriate licensed physician upon discovery, by history or examination, that the patient evidences an ocular abnormality or symptoms of systemic disease requiring further diagnosis and possible treatment by a licensed physician."

**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, 1992.)

**ACT 22**

H.B. NO. 3025

A Bill for an Act Relating to the Board of Medical Examiners.

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

**SECTION 1.** Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§453- Educational teaching license.** (a) The board may issue an educational teaching license to a physician who is not licensed in this State and who is invited by the chief of service of a clinical department of a hospital to provide and promote professional education for students, interns, residents, fellows, and doctors of medicine in this State. In no case shall an educational teaching license issued hereunder be valid for more than a period of twelve months from the date of issuance of the license.

(b) To receive an educational teaching license, the applicant shall:

- (1) Complete an application as prescribed by the board which shall include a summary of the applicant's medical, educational, and professional background;
- (2) Provide proof that the applicant is licensed as a physician in another state or country and the license is current and in good standing;
- (3) Submit a letter with the application signed by the chief of service of a clinical department of a hospital attesting that the chief of service is a licensed physician of this State and is requesting to sponsor and monitor the applicant while the person is engaged in educational or teaching activities for the hospital under an educational teaching license; and
- (4) Pay all applicable fees.

(c) The holder of an educational teaching license shall not open or appoint a place to meet patients, or receive calls from patients relating to the practice of medicine, beyond the parameters of the hospital that is sponsoring and monitoring the licensee's activities.

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(d) The holder of an educational teaching license shall obey all laws and rules of this State."

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

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

(Approved April 22, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 23

H.B. NO. 3031

A Bill for an Act Relating to the Regulation of Motor Vehicle Repairs.

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

**SECTION 1.** Section 437B-12, Hawaii Revised Statutes, is amended by amending subsection (b) and (c) to read as follows:

"(b) Any fine that is imposed shall be [based on the following schedule:

First offense.....\$75

Second offense .....\$150

Subsequent offenses .....\$300 to \$1,000 ]

not less than \$100 nor more than \$2,500 for each violation.

(c) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle repair dealer or mechanic to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the maximum fine [schedule] set forth in subsection (b)."

**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, 1992.)

## ACT 24

H.B. NO. 3044

A Bill for an Act Relating to Credit Cards.

*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- Use of credit cards to pay for airport charges.** Notwithstanding any other law to the contrary, any payments due and owing to the State for any products or services received from the State at any airport operated by the

State may be made by credit card, if prior arrangements have been made by the department for payments through the use of the credit card and the arrangements have been approved by the comptroller. However, credit cards may not be used to make payments under protest pursuant to section 40-35. The maximum charge that may be paid to the department by use of a credit card on any transaction is \$500."

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

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

(Approved April 22, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 25

H.B. NO. 3049

A Bill for an Act Relating to Pilotage Waters.

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

SECTION 1. Findings and purpose. The legislature finds that the definition of pilotage waters in the vicinity of Barbers Point Harbor is too confining, in that, it provides inadequate space for ships to anchor should they have to wait for entry into the harbor or should they call to obtain bunkers at anchor.

SECTION 2. Section 462A-17, Hawaii Revised Statutes is amended to read as follows:

**"§462A-17 Description of pilotage waters.** Pilotage waters as established under this chapter shall be the waters of the State described as follows:

- (1) Port Allen: All waters inside a line drawn from Puolu Point to Weli Point.
- (2) Nawiliwili: All waters inside a line drawn from Ninini Point to Kawaii Point.
- (3) Honolulu: All waters inside a line drawn from Diamond Head Light, 278° true, to the intersection of a line drawn from [Ahua Point] the seaward edge of the reef runway at Latitude 21°-18.2' North and Longitude 157°-55.6' West, 180° true.
- (4) Kahului: All waters inside a line drawn from Waiehu Point to Waihee Reef Lighted Buoy 2 in Latitude 20°55.9' North and Longitude 156°28.5' West and thence to Papaula Point.
- (5) Hilo: All waters inside a line drawn from the outer extremity of the Hilo Bay breakwater to Paukaa Point Light.
- (6) Kawaihae: All waters inside a line drawn from the outer extremity of the Kawaihae Harbor breakwater due West to Longitude 155°51' West, thence due North to Latitude 20°03' North and thence due East to where it intersects with the shoreline.
- (7) Barbers Point: All waters inside a line drawn from the northernmost

## ACT 26

refinery tower, 250° true, to the intersection of a line drawn [from the the stack of the Kahe Point power station, 200° true.] tangentially to Maile Point, 165° true."

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 22, 1992.)

### Note

1. Prior to amendment "20°3" appeared here.

## ACT 26

H.B. NO. 3279

A Bill for an Act Relating to Uniform Commercial Code Article 2A.

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

SECTION 1. Section 490:2A-524, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [A lessor aggrieved under section 490:2A-523(a)] After default by the lessee under the lease contract of the type described in section 490:2A-523(a) or 490:2A-523(c)(1) or, if agreed, after other default by the lessee, the lessor may:

- (1) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
- (2) Dispose of goods (section 490:2A-527(a)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished."

SECTION 2. Section 490:2A-529, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) After [a] default by the lessee [has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (section 490:2A-402,)] under the lease contract of the type described in section 490:2A-523(a) or section 490:2A-523(c)(1) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under [sections] section 490:2A-527 [and] or section 490:2A-528."

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 22, 1992.)

## ACT 27

S.B. NO. 2566

A Bill for an Act Relating to the Hawaii State Planning Act.

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

SECTION 1. The legislature finds that the inventory of affordable rental units for very low, low, and middle income individuals and families must be increased to appropriately meet the housing needs of the people of Hawaii. The legislature further finds that to meet Hawaii's affordable housing objectives as provided in the Hawaii State Planning Act, it is necessary for the public and private sectors to collaborate and cooperate with each other, and for the State to actively develop affordable rental housing.

The purpose of this Act is to amend the Hawaii State Planning Act to emphasize the roles of the State and the private sector in developing affordable housing, including affordable rental housing.

SECTION 2. Section 226-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Planning for the State's socio-cultural advancement with regard to housing shall be directed [towards] toward the achievement of the following objectives:

- (1) Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals[.], through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawaii's population.
- (2) The orderly development of residential areas sensitive to community needs and other land uses.
- (3) The development and provision of affordable rental housing by the State to meet the housing needs of Hawaii's people."

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 22, 1992.)

## ACT 28

S.B. NO. 2712

A Bill for an Act Relating to Tuberculosis.

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

SECTION 1. Section 325-78, Hawaii Revised Statutes, is amended to read as follows:

**"§325-78 Test and treatment for tuberculosis [free, when, where]. (a)**

## ACT 29

[No means test, payment, or charge of any kind shall be required by the department of health, or, during any fiscal period during which the Leahi Hospital receives any public money, by the Leahi Hospital, or by the Hilo Hospital, or by the Samuel Mahelona Memorial Hospital, or by the Kula Hospital or from any person for any test, diagnosis, examination, medicine, care, treatment, hospitalization, or rehabilitation for tuberculosis or for any rehabilitation after tuberculosis.] The department of health may establish charges and collect fees for any diagnostic, medical, or treatment services relating to tuberculosis treatment or control; provided that the department shall not refuse to provide diagnostic, medical, or treatment services relating to tuberculosis treatment or control to any patient due to the patient's inability to pay for the service relating to tuberculosis treatment or control. Voluntary payments, contributions, or gifts for such purposes may be received, but shall not be requested or solicited from any patient or any of the patient's relatives, by the department[, the Leahi Hospital, the Hilo Hospital, the Samuel Mahelona Memorial Hospital, or the Kula Hospital. All expenses for any such test, diagnosis, examination, medicine, care, treatment, hospitalization, or rehabilitation shall be paid out of funds appropriated for tuberculosis control, or out of any available funds of the Leahi Hospital, the Hilo Hospital, the Samuel Mahelona Memorial Hospital, or the Kula Hospital].

(b) This section shall not prohibit the department[, the Leahi Hospital, the Hilo Hospital, the Samuel Mahelona Memorial Hospital, or the Kula Hospital] from contracting with one or more other public or private agencies or persons for [the testing, diagnosis, examination, care, treatment, hospitalization, or rehabilitation of veterans or other] tests, diagnostic procedures, medical care, chemotherapy, or hospitalization of persons in reference to tuberculosis for specified fees or charges, or from accepting, holding, expending, or using voluntary payments, assignment of medical insurance payments, contributions, or gifts for purposes [not inconsistent] consistent with the terms or conditions of the [voluntary] payments, contributions, or gifts.

(c) Anything to the contrary in this section notwithstanding, the department by rule may establish, impose, and enforce special conditions for any test, diagnosis, examination, medicine, care, treatment, hospitalization, or rehabilitation for or after tuberculosis for any person who has not resided in the State for at least one year.]”

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, 1992.)

## ACT 29

S.B. NO. 2718

A Bill for an Act Relating to Oil.

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

SECTION 1. Act 200, 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

the department shall adopt rules for field screening tests and its reporting requirements by January 1, [1993;] 1994 and provided further that [the amendments made to] section 342N-30(c), Hawaii Revised Statutes, shall be repealed on January 1, [1993 and section 342N-30(c) shall be reenacted in the form in which it read on the day before the approval of the<sup>1</sup> Act.] 1994."

**SECTION 2.** Session law material to be repealed is bracketed. New session law material is underscored.

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

(Approved April 22, 1992.)

**Note**

1. Prior to amendment "this" appeared here.

**ACT 30**

S.B. NO. 2722

A Bill for an Act Relating to the Registered Nurse Student Loan Fund.

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

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

"(a) There is established a special fund to be known as the Hawaii registered nurse student loan fund, from which moneys shall be loaned by the department for the purposes of this section and into which shall be deposited all moneys received as repayment for loans as provided for in this section. All interest and fees collected by the department shall be deposited in a loan reserve fund to the extent necessary to carry on the operations of this program. All payments received on account of principal shall be credited to the Hawaii registered nurse student loan fund, which shall maintain a proper reserve to guarantee sufficient loans for purposes of this section. [All funds of the department shall be paid out on warrants signed by the director of health.]"

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

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

(Approved April 22, 1992.)

**ACT 31**

S.B. NO. 2732

A Bill for an Act Relating to Temporary Disability Insurance.

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

**SECTION 1.** Section 392-22, Hawaii Revised Statutes, is amended to read as follows:

**“§392-22 Weekly benefit amount.** Benefits shall be computed as weekly amounts in the manner provided in this section:

## **ACT 32**

- (1) If the average weekly wage of the employee is less than \$26, the weekly benefit amount shall be equal to the average weekly wage but not more than \$14[.].
- (2) If the average weekly wage of the employee is \$26 or more the weekly benefit amount shall be [fifty-five] fifty-eight per cent of the average weekly wage rounded off, if not a multiple of \$1, to the next higher multiple of \$1[.].
- [2] (3) If the average weekly earnings of the employee exceed an amount equal to one fifty-second of the product obtained by multiplying the amount of the average annual wage in Hawaii, as determined pursuant to section 383-22(b), by the factor of<sup>1</sup> 1.21, such excess shall not be included in the computation of the weekly benefit amount[.]; and
- [3] (4) [Notwithstanding any provision in paragraphs (1) and (2) to the contrary,] In no case shall the weekly benefit amount [shall not] exceed the maximum weekly benefit specified in section 386-31."

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

**SECTION 3.** This Act, upon its approval, shall apply to disabilities occurring after June 30, 1992.

(Approved April 22, 1992.)

### **Note**

1. Should be underscored.

## **ACT 32**

**S.B. NO. 2742**

A Bill for an Act Relating to Public Employment.

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

**SECTION 1.** The Legislature finds that present civil service laws do not provide public employers with recruitment flexibility needed to compete successfully in today's highly competitive labor market. This problem impacts particularly on the State because of the size of its public workforce and its many responsibilities relating to the health, safety, and welfare of its citizens which often require immediate action. The civil service reform conference, comprised of representatives from the department of personnel services, line departments, unions, other jurisdictions, and the legislature, has identified hiring flexibility as a critical need of the State even if it requires a change in public policy.

The purpose of this Act is to provide the director of personnel services with recruitment flexibility to enhance the State's ability to compete for persons with requisite skills and qualifications within a highly competitive labor market. The director will not be restricted by the mandates in section 76-23, Hawaii Revised Statutes, and is instead empowered to determine, establish, and maintain the manner in which state civil service positions shall be filled, until June 30, 1994. In providing this recruitment flexibility, the legislature believes that the inclusion of language regarding compliance with section 78-1 and merit princi-

ples, in addition to the continuing requirements of section 76-17 relating to administrative rules and procedures, will provide adequate safeguards for ensuring appropriate personnel practices.

The legislature further finds that this civil service reform measure should be confined initially to the State, where the need is most critical. After review of the State's experience, each local jurisdiction will be in a better position to assess whether reform is efficient and efficacious and should be adopted, or whether it is more appropriate to continue operating under the mandates of section 76-23. The same choice will be afforded by the State under the June 30, 1994 drop dead provision.

**SECTION 2.** Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§76- Recruitment flexibility.** Notwithstanding section 76-23, the director of personnel services shall determine, establish, and maintain the manner in which positions shall be filled in accordance with section 78-1 and the following standards:

- (1) Equal opportunity for all regardless of race, sex, age, religion, color, ancestry, physical handicap, or politics;
- (2) First consideration for competent employees already within public service; and
- (3) Impartial selection of the ablest person through competitive means which are fair, objective, and practical.”

**SECTION 3.** Section 76-78, Hawaii Revised Statutes, is amended to read as follows:

**“§76-78 Provisions of part II applicable.** Except as otherwise specifically provided in this part, all of the provisions of part II shall apply to each of the counties of Hawaii, Maui, and Kauai and shall be deemed a part of this part, for which purpose wherever reference is made in part II to the State or governor or the legislature, it means each of the counties, the mayor of each county, and the council of each county, respectively, and references therein to the state director of personnel services and the civil service commission mean the director and the commission provided for in section 76-71; provided that the reference to the director in sections 76-12, 76-17, 76-42, and 76-43 means the commission provided for in section 76-71; and provided further that [section] sections 76-16 and 76- shall not be deemed a part of this part.”

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 5.** This Act shall take effect upon its approval and shall be repealed on June 30, 1994; provided that section 76-78 is reenacted in the form in which it read on the day before the approval of this Act.

(Approved April 22, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 33

S.B. NO. 2853

A Bill for an Act Relating to Persons with Disabilities.

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

SECTION 1. Section 76-18, Hawaii Revised Statutes, is amended to read as follows:

**“§76-18 Examinations, general character.** There shall be competitive examinations for testing of the relative fitness of applicants for positions in civil service. The examinations shall be practical in their character and shall provide for ascertaining the physical and educational qualifications, experience, knowledge, and skill of applicants and their relative capacity and fitness for the proper performance of the characteristic duties of the class of positions in which they seek to be employed; except that in the case of a promotional examination, the examination shall be limited, at the request of the department head, to the characteristic duties of the class and nothing else. All examinations shall be public and, except as otherwise provided by law, free and open to all citizens of the State but with such limitations as to health, physical condition, age, sex, education, training, experience, habits, and character as the director of personnel services may deem necessary and proper for the class for which the examination is to be given. Disabled veterans or [physically handicapped persons] persons with a disability shall not be disqualified for reason of [such physical handicap or] the disability if they possess the physical capacities to perform the duties of the class. Examinations may be oral or written or partly oral and partly written, or tests of manual skill and physical strength, or evaluations of training and experience backgrounds. Except when clearly required by the nature of the service to be performed, written examinations shall not be required of applicants for unskilled labor classes. All examinations shall be under the control of the director or [such] any suitable person or persons as the director may designate to conduct them. All persons who have passed the examination shall be required to take [such] physical examinations as may be required by the director or, in case of the counties, by the civil service commission. The reports of the physical examinations shall be filed with the director.

The director [may], for purposes of expediting the examination process, may require [the] applicants to take [the] a written [examinations] examination prior to [the] filing [of their] a formal [applications.] application. Upon [the] successful completion of the written [examinations,] examination, the [applicants] applicant shall then file [their] a formal [applications.] application.”

SECTION 2. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

**“§76-77 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

- (1) Positions in the office of the mayor[, but]; provided that the positions shall be included in the position classification plan;
- (2) Positions of officers elected by public vote[;], positions of heads of departments, and positions of one first deputy or first assistant of heads of departments;

- (3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
- (4) Positions of members of any board, commission, or agency;
- (5) Positions filled by students; positions filled through federal<sup>12</sup> funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
- (6) Positions of district judges, jurors, and witnesses;
- (7) Positions filled by persons employed by contract where the personnel director has certified and where [such] the certification has received the approval of the commission that the service is special or unique, is essential to the public interest, and that[,] because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be [obtained] recruited through normal civil service [recruitment] procedures[. Any such]; provided that no contract [may] pursuant to this paragraph shall be for any period [not] exceeding one year;
- (8) Positions of a temporary nature needed in the public interest where the need [for the same] does not exceed ninety days; [but] provided that before any person may be employed to render [such] temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person [for service of a temporary nature] pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director[, approved by] and approval of the commission;
- (9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
- (10) Positions specifically exempted from this part by any other state statutes;
- (11) Positions of one private secretary [of heads of departments, but such] for each department head; provided that the positions shall be included in the position classification plan;
- (12) Positions filled by persons employed on a fee, contract, or piece-work basis who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified [to] by the director;
- (13) Positions filled by [the severely handicapped persons] persons with a severe disability who are certified by the state vocational rehabilitation office [that they are] as able to safely perform the duties of the positions;
- (14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions; and
- (15) [Positions] The following positions in the [offices] office of the prosecuting attorney [of the]; private secretary to the [prosecutor,]

prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney[, but]; provided that the positions shall be included in the position classification plan.

The director shall determine the applicability of this section to specific positions and [the director] shall determine whether or not positions excluded by paragraphs (7) and (8) shall be included in the position classification plan.

Nothing in this section shall be deemed to affect the civil service status of any incumbent[,] private secretary of [heads of departments as it existed] a department head who held that position on<sup>3</sup> May 7, 1977."

SECTION 3. Section 378-3, Hawaii Revised Statutes, is amended to read as follows:

**“§378-3 Exceptions.** Nothing in this part shall be deemed to:

- (1) Repeal or affect any law [or], ordinance, or government rule having the force and effect of law;
- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and which have a substantial relationship to the functions and responsibilities of [the] prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or [a] labor organization from refusing to hire [or], refer, or [from discharging] discharge any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan[,] which is not intended to evade the purpose of this chapter; provided that[:
  - (A) This] this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age; [and]
  - (B) Any existing bona fide retirement, pension, employee benefit, or insurance plan or existing bargaining agreement shall be exempt from this paragraph for two years after April 30, 1984, or until the termination of the plan or agreement, whichever occurs first;]
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, [which] that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making [such] a selection [as is] calculated [by the organization] to promote the religious principles for which [it] the organization is established or maintained;
- (6) Conflict with or affect the application of security regulations or rules in employment established by the United States or the State;
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a [handicapped person;] person with a disability;
- (8) Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to

- children; or
- (9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person."

SECTION 4. 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, parental status, ancestry, [handicapped status,] disability, or HIV (human immunodeficiency virus) infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property;
- (6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (8) To refuse to engage in a real estate transaction with a person due to [handicapped status] 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 the real estate transaction; provided that as used in this [chapter,] paragraph, the "reasonableness" of the restriction shall be examined by

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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 [dog], guide [dog], or signal dog;
- (B) Observe applicable laws including leash laws and pick-up laws;
- (C) Assume responsibility for damage caused by the dog; 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; or

- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), the causative agent of acquired immunodeficiency syndrome (AIDS)."

SECTION 5. Sections 76-1, 368-1, 368-1.5, 378-1, 378-2, 489-2, 489-3, 515-2, 515-5, 515-6, and 515-7, Hawaii Revised Statutes, are amended by substituting the word "disability" wherever the words "physical handicap", "physically handicapped", "handicapped", or "handicapped status" appear, as the context requires.

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

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

(Approved April 22, 1992.)

### Notes

1. "Disability" should not be underscored.
2. Prior to amendment "federally" appeared here.
3. "On" should not be underscored.

## ACT 34

S.B. NO. 2879

A Bill for an Act Relating to the Chairperson of the Aloha Tower Development Corporation.

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

SECTION 1. Section 206J-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The development corporation shall consist of a board of directors having seven voting members. The director of business, economic development, and tourism, the director of transportation, the chairperson of the board of land and natural resources, and the mayor of the city and county of Honolulu, or their respective designated representatives, shall serve as ex officio voting members. Three members from the public at large shall be appointed by the governor for staggered terms pursuant to section 26-34 and shall also serve as voting members; provided that no public member shall be an officer or employee of the State or its political subdivisions. All members shall continue in office until their respective successors have been appointed. [The director of business, economic development, and tourism shall serve as chairperson of the board.] The board, by a majority vote, shall elect a chairperson from within its membership."

**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, 1992.)

## ACT 35

S.B. NO. 2890

A Bill for an Act Relating to the Rent Supplement Program.

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

**SECTION 1.** Section 359-125, Hawaii Revised Statutes, is amended to read as follows:

**"§359-125 Determination of eligibility of occupants and rental charges.**

(a) For purposes of carrying out this part, the Hawaii housing authority shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The authority shall issue, upon the request of a housing owner, certificates as to the following facts concerning the single persons and families applying for admission to, or residing in, dwellings of [such] that owner:

- (1) The income of the single person or family; and
- (2) Whether the single person or family was displaced from public housing administered under chapter 356 for exceeding the maximum allowable income for continued occupancy.

(b) Procedures adopted by the authority hereunder shall provide for recertification of the incomes of occupants, except elders, at intervals of two years, or at shorter intervals, for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this part for any dwelling exceed the fair market rental of the dwelling.

(c) [The authority may enter into agreements, or authorize housing owners to enter into agreements, with public or private agencies for services required in the selection of qualified tenants, including those who may be approved, on the basis of the probability of future increases in their incomes, as lessees under an option to purchase (which will give such approved qualified tenants an exclusive

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right to purchase at a price established or determined as provided in the option) dwellings, and in the establishment of rentals. The authority is authorized, without limiting its authority under any other law, to delegate to any such public or private agency its authority to issue certificates pursuant to this part or to contract for the administration of this part.

(d) No payments under this part may be made with respect to any property for which the costs of operation, including wages and salaries, are determined by the authority to be greater than similar costs of operation of similar housing in the community where the property is situated.

[e] (d) No payments shall be made under this part except to the extent that tenants selected under this part have been selected according to the following priorities:

- (1) First priority shall be given to those (A) who have an income above the maximum amount allowed for continued occupancy in housing provided for in chapter 356, (B) who have been tenants of public housing under chapter 356,<sup>1</sup> (C) who have recently vacated or are vacating [such] housing in subparagraph (A) or (B) because of exceeding the maximum income allowable for continued occupancy, and (D) who have an urgent housing need;
- (2) Second priority shall be given to all other eligible persons under this part who have an urgent housing need."

SECTION 2. Section 359-126, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

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

(Approved April 22, 1992.)

### Notes

1. Prior to amendment "and" appeared here.

2. Edited pursuant to HRS §23G-16.5.

## ACT 36

S.B. NO. 2905

A Bill for an Act Relating to Correctional Industries.

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

SECTION 1. Section 354D-2, Hawaii Revised Statutes, is amended by amending the definition of "able-bodied inmate" to read as follows:

"Able-bodied inmate" means [a sentenced felon offender] any person in the custody of the department of public safety who, as determined by the department, is physically and mentally able to participate in a work program or other training program authorized by this chapter."

SECTION 2. Section 354D-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department, working through the correctional industries program,

may enter into venture agreements with private persons for the utilization of qualified, able-bodied inmate labor in the manufacture, processing, or assembly of components, finished goods, services, or product lines within facilities owned or leased by the department[ ], or at other sites approved by the director. The department may enter into agreements allowing for shared financing by the administrator and the private contractor for the facility, equipment, raw materials, and operation of industries developed pursuant to this section. The agreements shall be subject to review as to form by the attorney general and by the advisory committee."

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

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved April 22, 1992.)

## ACT 37

S.B. NO. 2906

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, [1990,] 1991, 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, [1990,] 1991, 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. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1991.

(Approved April 22, 1992.)

ACT 38

S.B. NO. 2909

A Bill for an Act Relating to Tax Payments.

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

SECTION 1. Section 235-62, Hawaii Revised Statutes, is amended to read as follows:

**“§235-62 Return and payment of withheld taxes.** Every employer required by this chapter to withhold taxes on wages paid in any month shall make a return of such wages to the department of taxation on or before the fifteenth day of the calendar month following the month for which the taxes have been withheld[.]; provided that each employer required to make a return under this section whose liability for taxes withheld exceeds \$100,000 a year, shall make a return of wages and taxes withheld to the department on or before the tenth day of the calendar month following the month for which the taxes have been withheld. The return shall be in such form, including computer printouts and the like, and contain such information as may be prescribed by the director of taxation. The return shall be filed with the collector of the taxation district in which the employer has the employer's principal place of business or with the director at Honolulu if the employer has no place of business in the State. Every return required under this section shall be accompanied by a remission of the complete amount of tax withheld, as reported in the return[; provided that the director may, if]. If the director believes [such action necessary where] collection of the tax may be in jeopardy, the director may require any person required to make a return under this section to make such return and pay such tax at any time[; provided further that the]. The director may grant permission to employers, whose liability to pay over the taxes withheld as [heretofore] provided in this section shall not exceed \$1,000 a year, to make returns and payments [thereon] of the taxes due on a quarterly basis during the calendar year, [such] the returns and payments to be made on or before the fifteenth day of the calendar month after the close of each quarter, to wit, on or before April 15, July 15, October 15, and January 15[; and provided further that the]. The director may grant permission to employers to make monthly payments based on an estimated quarterly liability[.]; provided that the employer [file] files a reconciliation return on or before the fifteenth day of the calendar month after the close of each quarter during the calendar year as [heretofore provided.] provided by this section. The director, for good cause, may extend the time for making returns and payments, but not beyond the fifteenth day of the second month [next succeeding the regular due date thereof as provided herein.] following the regular due date of the return. With respect to wages paid out of public moneys, the director, in the director's discretion, may prescribe special forms for, and different procedures and times for the filing of, [such] the returns by employers paying [such] the wages, or may[,] waive the filing of any returns upon [such] the conditions and subject to [such] rules [as] the director may prescribe [from time to time, waive the filing of any such returns].”

SECTION 2. Section 239-7, Hawaii Revised Statutes, is amended to read as follows:

**“§239-7 Assessments; payments; chapter 235 applicable.** (a) The tax

imposed by this chapter shall be assessed against each public service company in the manner provided by this chapter, and shall be paid to the department of taxation at the times, and in the manner (in installments or otherwise) [hereinafter prescribed.] provided by this section.

(b) The total amount of the tax imposed by this chapter shall be paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the department, at its election, may cause the [whole] balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department.

(c) The department shall prescribe the forms in which returns shall be made so as to reflect clearly the liability of each public service company subject to this tax, and may provide in the forms for such additional information as it may deem necessary. All provisions of the laws, not inapplicable and not inconsistent with this chapter, relating to returns for income tax purposes, the assessment (including additional assessments), collection, and payment (in installments or otherwise) of income taxes and the powers and duties of the department and the director of finance in connection therewith, and relating to appeals from or other adjustments of such assessments, limitation periods for assessments, enforcement of attendance of witnesses, and the production of evidence, examination of witnesses and records, the effect of assessments, tax books, and lists and other official tax records as evidence, delinquent dates and penalties, and the rights and liabilities (civil and criminal) of taxpayers and other persons in connection with any matters dealt with by chapter 235, are made applicable (1) to the taxes and the assessment, payment, and collection thereof, provided by this chapter, and (2) to the department and director of finance in connection with the taxes and the assessment, payment, or enforcement of payment and collection thereof, and (3) to taxpayers and other persons affected by this chapter, as the case may be. The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the [final] return for the taxable year, or the due date prescribed for the filing of the return, whichever is later[, and not from the due date of any payment].”

SECTION 3. Section 241-5, Hawaii Revised Statutes, is amended to read as follows:

“**§241-5 Returns; payment of tax.** Returns made on the basis of the calendar year shall be made and filed, and the tax imposed by this chapter shall be

## ACT 39

paid, on or before April 20 following the close of the calendar year. Returns made on the basis of a fiscal year shall be made and filed, and in such case the tax imposed by this chapter shall be paid, on or before the twentieth day of the fourth month following the close of the fiscal year.

A taxpayer may elect to pay the tax in four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on the twentieth day of the second month, the third installment on the twentieth day of the fifth month, and the fourth installment on the twentieth day of the eighth month after such date. Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the department, at its election, may cause the balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department. The department shall prescribe the forms in which returns shall be made.

The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the return for the taxable year, or the due date prescribed for the filing of the return, whichever is later.”

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

SECTION 5. This Act shall take effect on January 1, 1993.

(Approved April 22, 1992.)

## ACT 39

S.B. NO. 3372

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 88-29, Hawaii Revised Statutes, is amended to read as follows:

“§88-29 Officers, [employers,] employees, legal adviser. The board of trustees shall elect from its membership a [chairman] chairperson, and [shall] by a majority vote of all its members, shall appoint [a secretary, who may, but need not, be one of its members.] an administrator who shall be exempt from chapters 76 and 77 and serve under and at the pleasure of the board. Effective July 1, 1992, the salary of the administrator shall be set by the board within the range established for deputy directors. [It] The board shall engage actuarial and other services as shall be required to transact the business of the system. The compensation for all services engaged by the board, and all other expenses of the board necessary for the operation of the system, shall be paid at rates and in amounts

the board shall approve.

The attorney general or an appointed representative may serve as legal adviser to the board of trustees or the board of trustees may select its own legal counsel."

SECTION 2. The incumbent secretary of the employees' retirement system shall serve at the pleasure of the board of trustees and may be appointed as administrator under this Act.

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

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved April 24, 1992.)

**ACT 40**

S.B. NO. 1151

A Bill for an Act Relating to Intragovernmental Transfers.

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

SECTION 1. Section 76-35, Hawaii Revised Statutes, is amended to read as follows:

"**§76-35 Intragovernmental transfers.** A transfer [is the movement] of an employee in the civil service from one position to another position[,<sup>1</sup> which is: (1) in the same class; (2) in a different class assigned to the same salary range in the same salary schedule or pay schedule; (3) in a different salary schedule or pay schedule and in a class assigned to a salary range whose highest rate is the same as the highest rate of the salary range of the class which the employee is transferring from; or<sup>1</sup> (4) in a different salary schedule or pay schedule and in a class assigned to a salary range whose highest rate is less than or exceeds the highest rate of the class which the employee is transferring from by no more than the dollar difference between the first and second step of the salary range of the class the employee is transferring from. A transfer both] within a department [and] or between two departments may be made without a reduction in pay and with the approval of the department head or heads and the director of personnel services as provided by rule. [The term "salary range" as used herein shall refer to the salary ranges of salary structures applicable to employees covered by chapter 77.]"

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, 1992.)

**Note**

1. So in original.

A Bill for an Act Relating to Health.

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

**SECTION 1.** The purpose of this Act is to establish a primary health care incentive program within the department of health to study and assess the primary health care needs of medically underserved populations in Hawaii, develop strategies and incentives to address those needs, and acknowledge the important role of family practitioners in serving the medically underserved. The program shall operate utilizing existing resources.

A volunteer advisory group known as the primary health care roundtable shall be an integral component of the program. One of the primary functions of the roundtable shall be to maintain an ongoing forum for the discussion of data collection regarding primary health care gaps, incentives to promote primary health care, and the development of interdisciplinary efforts among health care professionals.

**SECTION 2. Primary health care incentive program; establishment.** There is established within the department of health a primary health care incentive program. The program shall:

- (1) Utilize existing personnel and resources to focus on primary health care;
- (2) Study the adequacy, accessibility, and availability of primary health care with regard to medically underserved persons in the State of Hawaii;
- (3) Convene and provide staff support for a volunteer primary health care roundtable composed of knowledgeable health care professionals, consumers, and other interested persons whose advisory purpose shall be to:
  - (A) Investigate and analyze the extent, location, and characteristics of medically underserved areas, and the numbers, location, and characteristics of medically underserved persons in Hawaii, with particular attention given to shortages of health care professionals available to provide care to these areas and persons;
  - (B) Assess the feasibility of family practice clerkships, preceptor programs, residency programs, and placement programs for medical school students and graduates as a means of increasing the number of family practitioners available to serve medically underserved areas and populations;
  - (C) Investigate and make recommendations regarding incentives, such as tuition exemptions, to increase the pool of primary health care practitioners, including family practitioners, other physicians in related specialties, nurse practitioners, nurse midwives, and physician assistants, that are available to serve medically underserved areas and populations;
  - (D) Develop a strategy for meeting the health needs of medically underserved areas and populations based upon the findings that result from its investigations; and
  - (E) Maintain an ongoing forum for the discussion of data collection regarding primary health care gaps, incentives to promote

- primary health care, and the development of cooperative interdisciplinary efforts among primary health care professionals;
- (4) Develop a strategy to provide appropriate and adequate access to primary health care in underserved areas;
- (5) Promote and develop community and consumer involvement in maintaining, rebuilding, and diversifying primary health care services in medically underserved areas;
- (6) Produce and distribute minutes of volunteer primary health care roundtable's discussions, and submit annual reports to the legislature on recommended incentives and strategies, as well as a plan for implementation, with the first report to be submitted to the legislature no later than twenty days prior to the convening of the 1993 regular session; and
- (7) Facilitate communication and coordination among providers, health care educators, communities, cultural groups, and consumers of primary health care.

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

(Approved April 27, 1992.)

**ACT 42**

H.B. NO. 2302

A Bill for an Act Relating to Roadwork.

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

SECTION 1. Section 103-15, Hawaii Revised Statutes, is amended to read as follows:

**"[§103-15]** Contract provisions to consider traffic. (a) Unless otherwise prohibited by law, all public contracts awarded under this chapter shall consider the extent to which the work undertaken pursuant to the contract will increase traffic congestion [during peak traffic hours]. The contract shall contain provisions to reasonably minimize any adverse impact.

(b) The feasibility of off-hour construction shall be considered for all public contracts that result in significant traffic congestion or delay during the term of the contract.

(c) As used in this section, "off-hour construction" means construction performed between the hours of six o'clock p.m. and six o'clock a.m."

SECTION 2. Section 264-31, Hawaii Revised Statutes, is amended to read as follows:

**"§264-31 Maintenance of federal-aid highways.** (a) The maintenance work on all roads upon which federal-aid funds have been expended shall be performed under the direction and supervision of the director of transportation either by public employment or by contract, or the director may have the work performed by the county road department, by public employment or by contract, upon authorization of the council of the county concerned. Expenditures for the maintenance work shall be made from the state highway fund created by section 248-8.

## ACT 43

(b) All maintenance work shall consider the extent to which work undertaken will increase traffic congestion and the director shall ensure that action is taken to reasonably minimize any adverse impact. The feasibility of off-hour maintenance work shall be considered for all maintenance work that results in significant traffic congestion or delay.

(c) As used in this section, "off-hour maintenance work" means maintenance work performed between the hours of six o'clock p.m. and six o'clock a.m."

SECTION 3. Section 264-44, Hawaii Revised Statutes, is amended to read as follows:

**"§264-44 Maintenance of state highway system.** (a) The maintenance of the state highway system may be performed either by public employment or by contract, or the director of transportation may have the maintenance performed by the county in which the highways are situated, by public employment or by contract, upon authorization of the legislative body of the county concerned.

(b) All maintenance work shall consider the extent to which work undertaken will increase traffic congestion and the director shall ensure that action is taken to reasonably minimize any adverse impact. The feasibility of off-hour maintenance work shall be considered for all maintenance work that results in significant traffic congestion or delay.

(c) As used in this section, "off-hour maintenance work" means maintenance work performed between the hours of six o'clock p.m. and six o'clock a.m."

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, 1992.)

## ACT 43

H.B. NO. 2820

A Bill for an Act Relating to Traffic Offenses.

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

SECTION 1. Section 291-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person guilty of omitting any of the required acts, or committing any of the prohibited acts of this chapter, or the rules adopted shall be guilty of a violation of this chapter and may be fined not less than \$25 nor more than \$1,800; provided that any person guilty of omitting any of the required acts, or committing any of the prohibited acts of sections 291-34, 291-35, or 291-36 may be fined not more than \$600 and not less than the fine which is set forth in the following tables:

If the excess weight is:	The minimum fine for a first violation shall be:
100 to 1,500 pounds	\$125
1,501 to 2,000 pounds	130
2,001 to 2,500 pounds	140

2,501 to	3,000 pounds	160
3,001 to	3,500 pounds	180
3,501 to	4,000 pounds	200
4,001 to	4,500 pounds	225
4,501 to	5,000 pounds	250
5,001 to	5,500 pounds	275
5,501 to	6,000 pounds	300
6,001 to	6,500 pounds	330
6,501 to	7,000 pounds	360
7,001 to	7,500 pounds	390
7,501 to	8,000 pounds	420
8,001 to	8,500 pounds	455
8,501 to	9,000 pounds	490
9,001 to	9,500 pounds	525
9,501 to	10,000 pounds	560
10,001 pounds and over		580

If the excess dimension is:	The minimum fine shall be:
Up to 5 feet	\$ 25
Over 5 feet and up to 10 feet	50
Over 10 feet and up to 15 feet	75
Over 15 feet	100

For the purpose of the imposition of a fine or penalty herein, evidence of prior offenses shall be admissible.

For a second violation within one year of the first, the fine for excess weight shall be not less than twice the fine listed in the excess weight table above and not more than \$1,200. For a third or subsequent violation for excess weight previously cited under this section within one year, the fine shall not be less than triple the fine listed in the excess weight table above and not more than \$1,800.

For the purposes of this section "person" means the driver of the vehicle unless the driver is an employee in the scope and course of employment, in which case "person" means the employer of the driver. In the case of the transportation of a sealed container, "person" means:

(1) The individual or company the container is consigned to; or

(2) The individual or company located in the State shipping the container.

The consignee or the shipper shall not be cited if the power units' drive axle group is overweight and the weight is not more than that allowed for a tandem axle with any applicable tolerances.

All penalties imposed and collected for violations of sections 291-33 to 291-36 shall be paid into the state highway fund.

The department of transportation is authorized to institute a system where the minimum fine, based on the tables in this subsection, may be mailed in when the citation or penalty is not to be contested. This system shall include an ability for the owner of the vehicle or combination of vehicles to request the operator be held harmless and the citation be transferred to that owner of the vehicle or combination of vehicles."

## SECTION 2. New statutory material is underscored.

## SECTION 3. This Act shall take effect on October 1, 1992.

(Approved April 27, 1992.)

A Bill for an Act Relating to Extradition.

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

SECTION 1. Section 832-25, Hawaii Revised Statutes, is amended to read as follows:

**“§832-25 Written waiver of extradition proceedings.** (a) Any person arrested in this State charged with having committed any crime in any state or alleged to have escaped from confinement, or broken the terms of the person's bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 832-7 and 832-8, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that the person consents to return to the demanding state; provided that before the waiver is executed or subscribed by the person the judge shall inform the person of the person's rights to the issuance and service of warrant of extradition and to obtain a writ of habeas corpus as provided for in section 832-10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this State and filed therein. The judge shall direct the officer having the person in custody to deliver forthwith the person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this State.

**(b) Notwithstanding subsection (a), a law enforcement agency holding a person who is alleged to have broken the terms of his probation, parole, bail, or any other release shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a governor's warrant if all of the following apply:**

- (1) **The person has signed a prior waiver of extradition as a term of the person's current probation, parole, bail, or other release in the demanding state; and**
- (2) **The law enforcement agency holding the person has received both of the following:**
  - (A) **An authenticated copy of the prior waiver of extradition signed by the person; and**
  - (B) **A photograph and fingerprints properly identifying the person as the person who signed the waiver.”**

SECTION 2. New statutory material is underscored.

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

(Approved April 27, 1992.)

## ACT 45

H.B. NO. 3021

A Bill for an Act Relating to Motor Vehicle Industry Licensing.

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

SECTION 1. Section 437-2, Hawaii Revised Statutes, is amended to read as follows:

**“§437-2 Licenses.** (a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesman, motor vehicle auction, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this State or otherwise engage in business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided that each of such branch locations is approved by the board.

(c) A dealer's license or auction's license issued to a sole proprietorship or partnership shall authorize the sole proprietor or general partner to engage in the business of salesman or auctioneer, respectively, without a license therefor, only for and in the business of the holder of the dealer's license or auction's license, as the case may be, and only for the county in which the license is issued.

(d) In the event of the dissolution of a partnership, holding a current license issued under this chapter, due to the death of one or more partners, the surviving partners may operate the business under the license for the remaining effective term of the license but not to exceed sixty days. In the event of the death or bankruptcy of the holder of a current license issued under this chapter, the duly appointed personal representative or receiver or trustee in bankruptcy, whichever the case may be, may operate the business under the license for the remaining effective term of the license.

(e) Notwithstanding any provisions of chapter 437, the authority of any state or county agency to purchase motor vehicles for state or county use from any dealer licensed under this chapter shall not be limited or conditioned. Any dealer licensed under this chapter may sell vehicles to any state or county agency notwithstanding section 437-2(b).”

SECTION 2. New statutory material is underscored.

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

(Approved April 27, 1992.)

A Bill for an Act Relating to Parking for Persons with Disabilities.

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

**SECTION 1. Findings and purpose.** The legislature finds that Congress passed Public Law 100-641, which directs the Secretary of Transportation to establish a uniform system for parking for persons with disabilities. The U.S. Department of Transportation issued final rules for Public Law 100-641 on March 11, 1991.

The purpose of this bill is to amend chapter 291, part III, Hawaii Revised Statutes, to conform with the guidelines established in the federal rules.

**SECTION 2. Chapter 291, Part III, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated to read as follows:**

**“§291- Special license plates.** Upon application by a person with a disability, each county shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair their ability to walk. The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

**§291- Temporary removable parking placards.** The county shall require that the application for a temporary removable windshield placard be accompanied by the certification of a licensed physician which designates that the applicant meets the definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months. The temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

**§291- Reciprocity.** The State of Hawaii shall recognize removable windshield placards, temporary removable windshield placards, and special license plates which have been issued by authorities of other states and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities.”

**SECTION 3. Chapter<sup>1</sup> 291-51, Hawaii Revised Statutes, is amended to read as follows:**

**“§291-51 Definitions.** As used in this part, the following terms have the following meanings:

“Certificate of disability” means a medical statement issued by a licensed practicing physician, [either in private practice or with a governmental agency,] which verifies that a person is [a] disabled [person.], limited, or impaired in the ability to walk.

“Disabled person” means [any] a person:

- [1] Who has lost the use of one or both lower extremities;
- (2) Who is so severely disabled as to require the use of a mechanical

- device, including a wheelchair, a walker, crutches, or a brace to aid mobility;
- (3) Who is restricted by a lung disease to such an extent that the person's forced (respiratory) expiratory volume of one second, when measured by spirometry, is less than one liter, or the person's arterial oxygen tension (PaO<sub>2</sub>) is less than 60 mm/hg on room air at rest;
  - (4) Who has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
  - (5) Who has a diagnosed disease or disorder, including a severe arthritic, neurological, or orthopedic impairment, which creates a severe mobility limitation.]
- (1) Who cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, or orthopedic condition;
  - (2) Who cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
  - (3) Who are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
  - (4) Who uses portable oxygen; or
  - (5) Who has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American heart association.

"International symbol of access" means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

"Removable windshield placard" means a two-sided, hanger-style placard which includes on each side:

- (1) The international symbol of access which is white on a blue shield;
- (2) An identification number;
- (3) A date of expiration; and
- (4) The seal of the State of Hawaii.

"Special license plate" means a license plate that displays the international symbol of access:

- (1) In a color that contrasts to the background; and
- (2) In the same size as the letters or numbers on the plate.

"Temporary removable windshield placard" means a two-sided, hanger-style placard, which includes on each side:

- (1) The international symbol of access and is white on a red shield;
- (2) An identification number;
- (3) A date of expiration;
- (4) The seal of the State of Hawaii; and
- (5) The word "temporary".

SECTION 4. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

**"[§]291-52[] Issuance of removable windshield placard.** Each county may issue one distinguishing placard to each [disabled person] person with a disability who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold at cost to the counties

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by the department of transportation. The county may charge a fee to cover its costs.”

SECTION 5. Section 291-53, Hawaii Revised Statutes, is amended to read as follows:

“[[§291-53]] Nontransferability; penalty. The removable windshield placard shall not be used by anyone other than the disabled person to whom it is issued unless it is being used in connection with the transportation of a [disabled person.] person with a disability. An unauthorized person using the removable windshield placard shall be guilty of a parking violation and subject to the penalties provided by law. A removable windshield placard may be revoked for any unauthorized use.”

SECTION 6. Section 291-54, Hawaii Revised Statutes, is amended to read as follows:

“[[§291-54]] Display of removable windshield placard. The placard shall be [prominently] displayed [in the disabled person’s vehicle so as to be visible through the front windshield.] in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.”

SECTION 7. Section 291-55, Hawaii Revised Statutes, is amended to read as follows:

“§291-55 Parking privileges. Any vehicle displaying the [placard] special license plates, removable windshield placards, or temporary removable windshield placards displaying the international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees, in any metered [or unmetered] parking space designated for the use of disabled persons in accordance with law. Any vehicle displaying [a disabled driver placard] special license plates, removable windshield placards, or temporary removable windshield placards displaying the international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees in any metered or unmetered parking space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.”

SECTION 8. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

“[[§291-56]] Rules. The department of transportation may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance and renewal of removable windshield placards, or temporary removable windshield placards, reciprocity and special license plates, the replacement of lost or stolen placards, and the design of the placard.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 10.** This Act shall take effect on October 1, 1992.

(Approved April 27, 1992.)

**Notes**

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

**ACT 47**

H.B. NO. 3266

A Bill for an Act Relating to Attorneys' Fees.

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

**SECTION 1.** Section 607-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In any civil action in this State where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous[; provided the amount shall not exceed twenty-five per cent of any amount originally prayed for by the party assessed]."

**SECTION 2.** Section 663-1.7, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) In any civil action arising under this section where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous[; provided the amount shall not exceed twenty-five per cent of any amount originally prayed for by the party assessed]."

**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.<sup>1</sup>

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

(Approved April 27, 1992.)

**Note**

1. No underscored material.

## ACT 48

### ACT 48

H.B. NO. 3306

A Bill for an Act Relating to the Executive Director of 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. [Effective January 1, 1989, and January 1, 1990, the salary of the executive director shall be \$62,854 and \$65,683 a year, respectively.] 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.”

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, 1992.)

### ACT 49

H.B. NO. 3314

A Bill for an Act Relating to Testamentary Additions to Trusts.

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

SECTION 1. Section 560:2-511, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-511 Testamentary additions to trusts.** [A devise or bequest, the validity of which is determinable by the law of this State, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator’s will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator’s will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator’s will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator’s will), and, if the testator’s will

so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.] (a) A will may validly devise or bequeath property to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse."

**SECTION 2. Effect on existing wills.** This Act applies to a will of a testator who dies after the effective date of this Act.

**SECTION 3. Uniformity of application and construction.** This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

**SECTION 4. Short title.** This Act may be cited as the Uniform Testamentary Additions to Trusts Act (1992).

**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 27, 1992.)

**ACT 50**

H.B. NO. 664

A Bill for an Act Relating to Sales to Owner-Occupants.

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

**SECTION 1.** Chapter 514A, Part VI, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**"§514A- Affidavit.** (a) The affidavit of intent to become an owner-

## ACT 50

occupant required by section 514A-104 shall be approved and issued by the commission.

(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.

(c) The affidavit shall include statements by the affiant affirming that:

- (1) If the affiant intends to secure financing from a financial institution, the financing shall be an owner-occupant mortgage loan;
- (2) At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of the affidavit, the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant;
- (3) At closing of escrow the affiant shall file a claim for an owner-occupant property tax exemption with the appropriate county office; and
- (4) The affiant shall comply with any other provision that the commission deems appropriate and expressly includes in the affidavit.

(d) The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact.

(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.

**§514A- Prohibitions.** (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the unit until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase. Any contract or instrument entered into in violation of this part shall be subject to the remedies provided in section 514A-69.

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this part. It is the affirmative duty of any developer, employee or agent of a developer, and real estate licensee to immediately report to the commission any person who violates or attempts to violate this part.

**§514A- Penalties.** (a) Any person who executes an affidavit required by this part and violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to \$10,000 or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential unit to which the violation relates, whichever is the greater.

(b) Any developer, employee or agent of a developer, or real estate licensee who violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to \$10,000. Each violation shall constitute a separate offense.

**§514A- False statement.** It shall be unlawful for any person to make a false statement in the affidavit required by this part or for any person to file with the commission any notice, statement, or other document required under this part or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed \$2,000, or by imprisonment for a term not to exceed one year, or both."

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by amending Part VI to read as follows:

## “PART VI. SALES TO OWNER-OCCUPANTS

### **§514A-101 Definitions.** As used in this part:

“Chronological system” means a system in which the final reservation list is determined by the chronological order in which the developer or the designated real estate broker receives both completed owner-occupant affidavits and earnest money deposits from prospective owner-occupants.

“Lottery system” means a system in which no prospective owner-occupant has an unfair advantage in the determination of that owner-occupant’s place on the final reservation list since the place on the list is determined by a lottery.

“Owner-occupant” means any individual in whose name sole or joint legal title is held in a residential unit which, simultaneous to such ownership, serves as the individual’s [dwelling place] principal residence, as defined by the state department of taxation, for a period of not less than three hundred and sixty-five consecutive days; provided that the individual [shall retain] retains complete possessory control of the premises of the residential unit during [the] this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held.

“Residential unit” means “apartment” as defined in section 514A-3, but excludes:

- (1) Any apartment intended for commercial use; and
- (2) Any apartment designed and constructed for hotel or resort use which is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to:
  - (A) Section 46-4; or
  - (B) Any other authority granted by law to a county.

**§514A-102 Announcement, publication.** (a) [Beginning fifteen] No earlier than sixty calendar days prior to the date any developer notifies the commission pursuant to sections 514A-31 and 514A-32 of the developer’s intention to sell a project which is subject to this chapter, the developer shall cause to be published in the classified section of at least one newspaper published daily in the State [and having] with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper which is published at least twice weekly in the county in which the project is to be located, not less than once in each of two successive weeks, an announcement containing a summary of at least the following information:

- (1) The location of the project;
- (2) [A fair and reasonable estimate of:] A statement of:
  - (A) The total number of apartments to be included in the project;
  - (B) The number of apartments designated as residential units;
  - (C) The price range of the units;
  - (D) The approximate size of the units; and
  - (E) A designation whether the units are fee simple or leasehold;
- (3) A statement that the apartments shall be offered for sale upon the issuance of [the first public report] an effective date by the commission[,] for the first public report, and the [approximate] estimated effective date [of the issuance];

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- (4) A statement of the intended use, such as, but not limited to, commercial, timesharing, or vacation rental, of any apartment in the project other than a residential unit designated for use by an owner-occupant;
  - (5) A statement [that fifty per cent] of the residential units by apartment numbers that has been designated by the developer pursuant to section 514A-103, and that such apartments shall initially be offered for a ten-day period after the issuance of an effective date for the first public report to only prospective owner-occupants[,] on the final reservation list, who will use the residential units as their principal residences for a period of not less than three hundred and sixty-five consecutive days [and a designation of such residential units];
  - (6) A statement of the availability and number of residential units in the project that are "accessible" and "adaptable," as those terms are defined and interpreted in 24 C.F.R. §100 et. seq., for persons with disabilities;
  - (7) A statement that the final reservation list for the subject residential units shall be determined by either a chronological system or a public lottery, and that any person interested in participating in either system shall submit a completed owner-occupant affidavit and earnest money deposit to the developer or designated real estate broker by a date designated by the developer.
  - [(7)][(8)] The name, telephone number, and address of [a] the developer or the real estate broker, [which] who shall be designated by the developer, [who] whom any interested individual may contact to secure an owner-occupant affidavit and to be placed on a reservation list or in the public lottery, and to obtain further information on the project; and
  - [(8)][(9)] A statement that a public report has not been issued for the project[, and that the commission has not yet determined whether the developer has adequately disclosed all material facts as required by law].
- (b) [Proof of publication of the announcement summarizing the information required under subsection (a) and a copy of the announcement, shall be filed with the commission as a condition of issuance of any public report.] The commission shall not issue an effective date for any public report for a project unless the developer files with the commission:
- (1) A copy of the announcement at least thirty days prior to its initial publication; and
  - (2) Proof of publication of the announcement required under subsection (a) and a copy of the actual announcement when the developer files the notice of intention pursuant to section 514A-31 and 514A-32.
- (c) The developer or the developer's broker shall also provide a copy of the announcement and the following information:
- (1) The number of floors in the project;
  - (2) The number of bedrooms, bathrooms, and square feet of each residential unit;
  - (3) The price and amount of monthly maintenance fees for each residential unit;
  - (4) The amount of lease rent for each residential unit and the applicable time periods;
- to each prospective purchaser and by certified mail, delivered to the addressee only, return receipt requested, to any individual occupying such unit immediately prior to any conversion. The developer or the developer's real estate broker may

provide prospective purchasers with a true copy of the [commission's] project's public report in lieu of the disclosures required by this subsection if the public report contains all the information required under this section.

**§514A-103 Designation of residential units.** The developer of any project containing residential units shall designate at least fifty per cent of such units for sale to prospective owner-occupants pursuant to section 514A-105. Such units shall constitute a proportionate representation of all the residential units in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not such unit has a lanai.

**§514A-104 Reservation list, requirements.** [From the date of the first publication of an announcement of the intended sale of a project made pursuant to section 514A-102, until ten calendar days have elapsed following the date of issuance of the first public report on such project, the developer's designated broker shall compile a reservation list consisting of the names of all individuals stating a desire to purchase a residential unit contained in the announced project in the order in which they have submitted to the agent the following:

- (1) A duly executed affidavit of intent to become an owner-occupant of the residential unit upon the completion of the project. Any individual who makes any false statement in the affidavit is subject to chapter 710, part V; provided that no individual shall be deemed to have made a false statement of intent if circumstances, such as serious illness of the individual or of a member of the individual's family, job or military transfer, unforeseeable change in marital status, or the birth of a child, subsequent to execution of the affidavit, cause the individual to be unable to occupy the residential unit; and
- (2) An earnest money deposit in a reasonable amount designated by the developer; provided that if no sales contract is offered to the individual, the entire deposit shall be returned and the developer shall not be required to pay any interest on such deposit.]

(a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall determine the final reservation list as follows:

- (1) From the date of the first published announcement required under section 514A-102 until the date of issuance of the first public report on the project, the developer or developer's real estate broker shall compile a reservation list of prospective owner-occupants in the order in which they have submitted both a completed owner-occupant affidavit, the form of which shall have been previously approved by the commission, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all times a sufficient number of affidavits for prospective owner-occupants to execute.
- (2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be placed on the reservation list.
- (3) No developer, employee or agent of the developer, or any real estate licensee shall, either directly or through any other person, release any information or inform any prospective owner-occupant about the publication announcement referred to in section 514A-102, including the date it is to appear and when the chronological system will be initiated, until after the announcement is published.

- (4) The reservation list referred to in subsection (a)(1) shall be the final reservation list. Prospective owner-occupants shall be given the opportunity to select one of the owner-occupant residential units in the order in which their names appear on the list. Prospective owner-occupants who do not select, or do not have the opportunity to select, an owner-occupant apartment shall be part of the final reservation list as back-up prospective owner-occupants in the order in which they submitted both a completed owner-occupant affidavit and an earnest money deposit.
- (5) If no sales contract is offered to a prospective owner-occupant within six months of the issuance of the first public report, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit shall be returned to the prospective owner-occupant and the developer shall not be required to pay any interest thereon.
- (6) The developer or developer's real estate broker shall submit to the commission a certified copy of the final reservation list within fifteen calendar days after the date of issuance of the first public report on the project.
- (b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall determine the final reservation list as follows:
- (1) From the date of the first published announcement required under section 514A-102, until five calendar days after the last published announcement, the developer or developer's real estate broker shall compile a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit, the form of which affidavit shall have been previously approved by the commission. All prospective owner-occupants on this list shall be included in the public lottery described below. The developers and the developer's real estate broker shall maintain at all times sufficient copies of such affidavits for prospective owner-occupants to execute. A certified copy of the lottery list of those prospective owner-occupants shall be submitted to the commission within ten calendar days after the last publication of the announcement.
- (2) The developer or developer's real estate broker shall conduct a public lottery no later than fifteen calendar days after the last published announcement. The public lottery shall be held on the date, time, and location as set forth in the published announcement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery.
- (3) The public lottery shall be conducted in such a manner that no prospective owner-occupant shall have an unfair advantage, and shall, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period referred to in the first sentence of subsection (b)(1) above, be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the public lottery.
- (4) Each of the prospective owner-occupants on the list referred to in

- subsection (b)(1) shall be placed on the preliminary reservation list in the order in which they are selected at the lottery.
- (5) Within thirty calendar days after the date of the lottery, each prospective owner-occupant on the preliminary reservation list shall, in the order in which their names appear on the preliminary reservation list, be given the opportunity to select one of the owner-occupant residential units and submit an earnest money deposit, if not already submitted, in a reasonable amount designated by the developer. Those prospective owner-occupants selecting residential units shall be placed on a final reservation list, together with the units selected. Those prospective owner-occupants who did not select, or did not have the opportunity to select, an owner-occupant apartment shall be part of the final reservation list as back-up prospective owner-occupants, in the order in which they were as selected in the public lottery.
- (6) If no sales contract is offered to the prospective owner-occupant within six months of the public lottery, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit shall be returned to such prospective owner-occupant and the developer shall not be required to pay any interest thereon.
- (7) The developer or developer's real estate broker shall submit to the commission, a certified copy of:
- (a) The preliminary reservation list within two business days after the date of the public lottery. Should the due date be a holiday or weekend, the required document shall be due the next working day after the holiday or weekend;
  - (b) The final reservation list within thirty calendar days after the date of the public lottery.

**§514A-105 Sale of residential units.** (a) From the issuance of an effective date of the first public report until [ten calendar days thereafter,] 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 [individuals] prospective owner-occupants whose names are on the final reservation list in the order in which their names appear on such 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 [such] the unit immediately prior to the conversion and who [otherwise complies with section 514A-104.] 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 [shall] may be conditioned upon the [buyer] purchaser obtaining adequate financing, or a commitment for adequate financing, [within forty-five] by a date which is no earlier than fifty calendar days [following the end of the ten calendar day period during which the developer is limited to selling to owner-occupants,] after the developer's execution and acceptance of the sales contract, and if [such] the financing or commitment is not obtained, the contract [shall] 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) [If during the ten calendar day period following the issuance of the first public report, any individual with whom a] Any prospective owner-occupant who executes a sales contract for the sale of one of the designated residential units [was entered desires to cancel the contract on account of hardship circumstances such as those set forth in section 514A-104(1), or indicates an intent not to become an owner-occupant of such unit, the developer shall cancel the sales contract and shall offer the unit to persons whose names are on the reservation list, beginning with the first name listed; provided that if there are no additional names on the list, at the end of the ten calendar day period the developer may honor the original sales contract, or cancel the contract and sell to any other person without any further restriction imposed by this part.] shall be required to reaffirm at closing of escrow such person's intent to be an owner-occupant as set forth in section 514A- . Any person who is unable to make such a reaffirmation shall be required to rescind the sales contract. The developer shall accept such rescission and 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.

[Upon the cancellation of any contract, the developer shall return all moneys paid pursuant to the contract but may deduct from the moneys returned any reasonable amount representing expenses incurred by the developer to process the sales contract; provided that the cancellation shall be approved by any lender financing the project; and provided further that the deposit of each individual on the reservation list who has not been offered a residential unit shall be refunded in full.]

(e) Any [individual] prospective owner-occupant on the final reservation list may at any time be offered any residential unit in the project not subject to the designation required by section 514A-103.

**§514A-106 Financial institutions[,] and escrow companies, obligations.**

(a) Any person subject to chapter 403, 407, 408, 410, 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.

**§514A-107 Enforcement[, real estate commission].** (a) Whenever the commission believes from satisfactory evidence that any person is violating or has violated any provision of this part[,] or rules of the commission adopted pursuant thereto, it [shall] may conduct an investigation on [such] the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin [such] the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this part, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

- (1) Serious illness of any of the owner-occupants who executed the affidavit or any other person who was to or has occupied the residential unit;
- (2) Unforeseeable job or military transfer;
- (3) Unforeseeable change in marital status, or change in parental status; or
- (4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

Thereafter, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this part and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential unit which the person obtained pursuant to this part, shall have the burden of proving his or her compliance with the requirements of this part.

(d) Upon request, the commission may require a verification of owner-occupancy from the presumed owner-occupant. In the event that the presumed owner-occupant fails to submit verification of continuing owner-occupancy, as defined in this section, because of sale, lease, assignment, or transfer, the presumed owner-occupant may also be subject to a fine in the amount equal to the profit made from the sale, assignment or transfer.

(e) The commission shall adopt rules, pursuant to chapter 91, [within six months from May 30, 1980,] to carry out the purposes of, and its responsibilities under, this part.

**§514A-108 Inapplicability of part or sections.** (a) This part shall not apply to any project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201E, 206, 356, or 359[, or 359G.], provided that the developer of such a project may elect to be subject to this part through a written notification to the commission with the notification requirements of paragraph 514A-102(b)(1). Disclosure of the election shall be made through an additional statement in the announcement pursuant to subsection 514A-102(a).

(b) This part shall not apply to [small] condominium projects where the developer [sells or] intends to [sell] convey, and does in fact convey, all of the residential apartment units in the project to a spouse or family members related

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by blood, descent or adoption.

(c) This part shall not apply to condominium projects [where the developer builds or converts two houses on a single lot.] consisting of two or fewer apartments.

(d) A developer of a project enumerated in subsection (a) electing to be subject to this part or a project developed pursuant to an affordable housing condition or provision by a state or county governmental agency may elect to waive certain specific provisions of this part that conflict with the eligibility or preference requirements imposed by such governmental agency. The developer who exercises such an election shall provide detailed written notification to the commission of which specified provisions will be waived, an explanation for each waived provision, and a statement from the affected government agency that the project is either an inapplicable project pursuant to subsection (a) or a project whereby a governmental agency has imposed eligibility or preference requirements. This notification shall be filed with the notification requirements of 514A-102(b)(1) and a copy simultaneously filed with the affected governmental agency. Disclosure of the election to waive certain specific provisions of this part shall be made through an additional statement in the announcement pursuant to subsection 514A-102(a).

(e) Such filing to meet the notification requirements of subsections (a) or (d) shall not be construed to be an approval or disapproval of the project by the commission."

SECTION 3. Section 514A-49, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-49 Penalties.** (a) Any person who in any respect violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134 shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto also shall be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the commission."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved April 29, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 51

H.B. NO. 3096

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-2, Hawaii Revised Statutes, is amended by amending the definition of "qualified resident" to read as follows:

- "Qualified resident" means a person who:
- (1) Is a citizen of the United States or a resident alien;
  - (2) Is at least eighteen years of age;
  - (3) Is domiciled in the State and shall physically reside in the dwelling unit purchased or rented under this chapter;
  - (4) In the case of purchase of [a dwelling unit] real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; [and] or in the case of a rental, demonstrates an ability to pay rent as determined by the corporation and meets any additional criteria established by the corporation for the respective rental housing development for which the applicant is applying; and
  - (5) [Either oneself or together with spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, and whose spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71;] Meets the following qualifications:
    - (A) Is a person who either oneself or together with spouse, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land; and
    - (B) Is a person whose spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71;

provided that for purchasers of market-priced units in an economically integrated housing project, the term "qualified resident" means a person who is a citizen of the United States or a resident alien; is domiciled in the State and shall physically reside in the dwelling unit purchased; is at least eighteen years of age; and meets other qualifications as determined by the developer."

SECTION 2. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-221 [Dwelling units;] Real property; restrictions on transfer[,]; waiver of restrictions.** (a) The following restrictions shall apply to the transfer of [dwelling units] real property developed and sold under this chapter, whether [on] in fee simple or leasehold [property]:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the [dwelling unit and<sup>1</sup>] real property [or the lease], the corporation shall have the first option to purchase the [unit and] real property [or lease] at a price which 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 [unit] 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<sup>2</sup> 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 [unit] 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.

- (2) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the [unit] real property and sell or assign the property [to any qualified resident] 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 [unit,] real property, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the [dwelling unit] 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 [unit,] 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 [dwelling unit] 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 [dwelling unit] real property as determined under rules adopted pursuant to chapter 91[.] when applicable.<sup>3</sup>
- (3) 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.
- (b) The corporation may waive the restrictions prescribed in subsection (a) if:
- (1) The purchaser wishes to transfer title to the [dwelling unit and<sup>1</sup>] real property [or lease] by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
  - (2) The [corporation determines, in accordance with rules adopted by the corporation, that the] sale or transfer of [a dwelling unit] the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the [unit;] real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201E-2; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91[.] when applicable.<sup>3</sup>
- (c) The corporation may release the restrictions prescribed in subsection (a) if the [dwelling unit] real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.
- (d) The restrictions prescribed in [subsection (a)] sections 201E-221 to 201E-224 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the [dwelling unit and the land or leasehold interest] real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced[.]; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering [a dwelling unit and land] real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667[.]; provided that the mortgagee's failure to provide such written notice to the corporation shall not affect such holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).
- (e) The provisions of this section shall be incorporated in any deed, lease,

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[mortgage,] agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of [a dwelling unit] real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(2)(B), a description of the cost items which constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

(f) Any subsequent sale or transfer of dwelling units and sale, lease, or assignment of the property by the corporation or purchaser pursuant to this chapter shall be made to qualified residents.

(g) (f) Subsections (a), (b), (c), (d), (e), and (f) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(g) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants."

SECTION 3.<sup>4</sup> Section 201E-222, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-222 [Dwelling units;] Real property; restrictions on use.** (a) [A dwelling unit] Real property purchased under this chapter shall be occupied by the purchaser at all times[.] during the ten year restriction period set forth in section 201E-221.

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in section 201E-221(a)(1) or (2), as applicable.

(c) Any deed, lease, agreement of sale, [mortgage,] or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall [be automatically extinguished] terminate and shall not attach in subsequent transfers of title [as prescribed in section 201E-221(c).] if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a), (b), and (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants."

SECTION 4.<sup>4</sup> Section 201E-223, Hawaii Revised Statutes, is amended to read as follows:

**"[§201E-223] Restrictions on use, sale, and transfer of [dwelling units;] real property; effect of amendment or repeal.** (a) Restrictions on the use, sale, and transfer of [dwelling units] real property shall be made as uniform as possible in application to purchasers of all [units,] real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. [Dwelling unit purchasers] Purchasers shall be permitted at their election to sell or transfer [units] real property subject to restrictions in effect at the time of their sale or transfer.

(b) The corporation, any [other] department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions, and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of [dwelling units] real property constructed and sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the State for state agencies and at least three times in a county newspaper for county agencies.

(c) [Where] For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

(d) No [dwelling unit] purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the [dwelling unit,] real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all [dwelling units] real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the [dwelling unit] real property purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program."

SECTION 5.<sup>4</sup> Section 201E-224, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-224 Corporation's right to repurchase or rent [unit;] real property; authority to seek recovery.** (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in [sections] section 201E-221 [and 201E-222] are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect[:], or when vacant lands developed, financed, purchased,

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or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

- (1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land which has a [construction] defect, regardless [of] whether or not the owner wishes to sell[,]; provided that such repurchases shall be in accordance with the following provisions:
  - (A) The corporation may repurchase a dwelling unit or land if:
    - (i) The dwelling unit or land is deemed unsafe by the county building department; or
    - (ii) The defects are irreparable; or
    - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair.
  - (B) The corporation's purchase price shall be based on the formula set forth in section 201E-221(a)(1);
  - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the [unit;] real property;
  - (D) The corporation shall give preference in all other projects of the corporation to all owners whose [units are] real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
  - (E) If the corporation exercises its right to purchase [a] defective [unit] real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
- (2) If the corporation does not opt to purchase [a dwelling unit which has a construction defect,] defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect[.] or land which has a soil defect. During the period that the [unit] real property is being repaired, the corporation shall rent that [unit] real property from the owner for an amount not to exceed the owner's present mortgage payments; and
- (3) If the corporation does not execute either a contract to repurchase the [dwelling unit] real property or an agreement to repair and rent the [unit] real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this subsection, "substantial construction defect" includes but is not necessarily limited to: structural defects such as shifting foundations and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants[.]; and "substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to [paragraphs] subsections (a)(1) and [(a)(2),] (2), the corporation shall have the authority to take necessary legal action against the developer, codeveloper, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.

(c) If [dwelling units] real property developed, constructed, financed,

purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by, the owner or lessee of the [dwelling unit] real property for the recovery of damages or for injunctive relief against the developer, codeveloper, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of [dwelling units] real property which have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) The provisions of this section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

[(f)] (g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid."

SECTION 6.<sup>4</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7.<sup>4</sup> This Act shall take effect upon its approval.

(Approved April 29, 1992.)

Notes

1. Prior to amendment "the" appeared here.
2. Prior to amendment "to" appeared here.
3. Period should be underscored.
4. Section designations renumbered.

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S.B. NO. 805

A Bill for an Act Relating to the Salary of the Executive Director of the State Ethics Commission.

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

SECTION 1. Section 84-35, Hawaii Revised Statutes, is amended to read as follows:

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**"§84-35 Staff.** The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. [Effective January 1, 1990, and January 1, 1991, the salary of the executive director shall be \$52,802 and \$59,048 a year, respectively.] The salary of the executive director shall not exceed that of a deputy under section 26-53. The commission shall fix the compensations of [other] its employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapters 76 and 77."

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 29, 1992.)

## ACT 53

S.B. NO. 806

A Bill for an Act Relating to Lobbyists Law Exemptions.

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

SECTION 1. Section 97-2, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) This chapter shall not apply to:

- (1) Any individual who represents oneself and not any other person before the legislature or administrative agency; provided that such individual must nonetheless file a statement of expenditures if the individual meets any of the provisions of section 97-3(a);
- (2) Any federal, state, or county official or employee acting in the official's or employee's official capacity[;], unless the federal, state or county official, or employee contracts for the services of a lobbyist;
- (3) Any elected public official acting in the public official's official capacity[;], unless the public official contracts for the services of a lobbyist;
- (4) Any newspaper or other regularly published periodical or radio or television station (including any individual who owns, publishes, or is employed by a newspaper or periodical or radio or television station) while publishing in the regular course of business news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislative or administrative action;
- (5) Any attorney who advises the attorney's clients on the construction or effect of proposed legislative or administrative action; provided that such attorney must nonetheless register if the attorney meets any of the provisions of section 97-1(6); and
- (6) Any person who possesses special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge may be helpful to the legislative and executive branches of state government, and who makes an occasional appearance at the request of the legislature or an administrative agency, or the lobbyist even though

receiving reimbursement or other payment from the legislature or administrative agency or the lobbyist for the appearance."

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 29, 1992.)

## ACT 54

S.B. NO. 1283

A Bill for an Act Relating to the Penal Code.

*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:

"Aquaculture product" means any fish, shellfish, mollusk, crustacean, algae, or other aquatic plant or animal raised, grown, or maintained by an aquaculture enterprise or research agency while owned by the enterprise or agency."

SECTION 2. 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) [By obtaining] Of property from the person of another;
- (b) Of property or services the value of which exceeds \$300;
- (c) Of a firearm; [or]
- (d) Of dynamite or other explosive[.]; or
- (e) 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 §708-831, theft in the second degree. Violators will be prosecuted."

(2) Theft in the second degree is a class C felony."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved April 29, 1992.)

A Bill for an Act Relating to Medical Torts.

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

SECTION 1. Section 671-1, Hawaii Revised Statutes, is amended to read as follows:

**"§671-1 Definitions.** As used in this chapter:

- (1) "Health care provider" means a physician or surgeon licensed under chapter 453, a physician and surgeon licensed under chapter 460, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.
- (2) "Medical tort" means professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient."

SECTION 2. Section 671-4, Hawaii Revised Statutes, is amended to read as follows:

**"§671-4 ["Ad damnum" clause prohibited.]** (a) No complaint, counterclaim, or cross-claim in an action for medical tort shall specify the amount of damages prayed for but shall contain a prayer for general relief, including a statement that the amount of damages is within the minimum jurisdictional limits of the court in which the action is brought.

(b) [Notice of damages.] (a) In any [such] medical tort action, the party against whom the complaint, counterclaim, or cross-claim is made [may] at any time may request a statement setting forth the nature and amount of the damages sought. The request shall be served upon the complainant, counterclaimant, or cross-claimant who shall serve a responsive statement as to the damages within fifteen days thereafter. In the event a response is not served, the requesting party may petition the court with notice to the other parties, to order the appropriate party to serve a responsive statement.

[c] (b) If no request is made for a statement setting forth the nature and amount of damages sought, the complainant, counterclaimant, or cross-claimant, as the case may be, shall give notice to the other of the amount of special and general damages sought to be recovered, either before a default may be taken, or in the event an answer is filed, at least sixty days prior to the date set for trial."

SECTION 3. Section 671-5, Hawaii Revised Statutes, is amended to read as follows:

**"§671-5 Reporting and reviewing medical tort claims.** (a) Every self-insured health care provider, and every insurer providing professional liability insurance for a health care provider, shall report to the insurance commissioner the following information about any medical tort claim, known to the self-insured health care provider or insurer, that has been settled, arbitrated, or adjudicated to

final judgment within ten working days following such disposition:

- (1) The name and last known business and residential addresses of each plaintiff and<sup>1</sup> claimant, whether or not each recovered anything;
  - (2) The name and last known business and residential addresses of each health care provider who was claimed or alleged to have committed a medical tort, whether or not each was a named defendant and whether or not any recovery was had against each;
  - (3) The name of the court in which any medical tort action, or any part thereof, was filed and the docket number;
  - (4) A brief description or summary of the facts upon which each claim was based, including the date of occurrence;
  - (5) The name and last known business and residential addresses of each attorney for any party to the settlement, arbitration, or adjudication, and identification of the party represented by each attorney;
  - (6) Funds expended for defense and plaintiff costs;
  - (7) The date and amount of settlement, arbitration award, or judgment in any matter subject to this subsection; and
  - (8) Actual dollar amount of award received by the injured party.
- (b) The insurance commissioner shall forward the name of every health care provider, except a hospital and<sup>1</sup> physician licensed under chapter 453 or an osteopathic physician or<sup>2</sup> surgeon licensed under chapter 460[.] or a podiatrist licensed under chapter 463E, against whom a settlement is made, an arbitration award is made, or judgment is rendered to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice the health care provider's profession. The insurance commissioner shall forward the entire report under subsection (a) to the department of commerce and consumer affairs if the person against whom settlement or arbitration award is made or judgment rendered is a physician licensed under chapter 453 or an osteopathic physician and surgeon licensed under chapter 460[.] or a podiatrist licensed under chapter 463E.

(c) A failure on the part of any self-insured health care provider to report as requested by this section shall be grounds for disciplinary action by the board of medical examiners, board of osteopathic examiners, or the state health planning agency, as applicable. A violation by an insurer shall be grounds for suspension of its certificate of authority."

SECTION 4. Section 671-11, Hawaii Revised Statutes, is amended to read as follows:

**"§671-11 Medical claim conciliation panels; composition, selection, compensation.** (a) There are established medical claim conciliation panels which shall review and render findings and advisory opinions on the issues of liability and damages in medical tort claims against health care providers.

(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician or surgeon licensed to practice under chapter 453 or chapter 460. The chairperson shall be appointed by the director of the department 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

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the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician or surgeon shall be appointed by the chairperson and shall be currently licensed and in good standing under chapter 453 or under chapter 460.

The chairperson shall preside at the meetings of the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel 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, the chairperson, panel members, and any consultant called by the panel to appear before the panel, may be compensated at one-half the amount of compensation specified in this section, if the claim is disposed of by any means prior to the hearing by the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel also shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on or for the panel. These costs shall be paid by the department of commerce and consumer affairs.

The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department. The chairperson may designate any alternative meeting place or site for the hearing.

The board of medical examiners and board of osteopathic examiners shall each prepare a list of physicians, surgeons, podiatrists, or physicians [and], surgeons[,] and podiatrists, as the case may be, along with their respective specialties. These physicians and surgeons shall be eligible to serve as consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists."

SECTION 5. Section 671-15, Hawaii Revised Statutes, is amended to read as follows:

**"§671-15 Same, decisions.** (a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for such carrier, and the board of osteopathic examiners, as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician or surgeon licensed under chapter 453 or an osteopathic physician and surgeon licensed under chapter 460[.] or a podiatrist licensed under chapter 463E. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: "We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant"; or "We find the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider".

(b) After a finding of liability, the medical claim conciliation 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 the panel may not recommend punitive damages.

(c) The decisions shall be signed by all members of the medical claim conciliation panel; provided that any member of the panel may file a written

concurring or dissenting opinion.

(d) The advisory decision required by this section need not be filed if the claim is settled or otherwise disposed of before the decision is written or filed."

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

SECTION 7. This Act shall take effect on July 1, 1992.

(Approved April 29, 1992.)

Notes

1. Prior to amendment "or" appeared here.
2. Prior to amendment "and" appeared here.

ACT 56

S.B. NO. 2596

A Bill for an Act Relating to Noncompetition Agreement.

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

SECTION 1. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§607- Actions to enforce covenants not to compete.** In a civil action which involves the interpretation or enforcement of an agreement or alleged agreement which purportedly restricts an employee from competing with an employer, or former employer, or working for a competitor of an employer or former employer, any employee or former employee who prevails shall be awarded reasonable attorneys' fees and costs."

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

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

(Approved April 29, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 57

S.B. NO. 2670

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Section 706-660.1, Hawaii Revised Statutes, is amended to read as follows:

**"§706-660.1 Sentence of imprisonment for use of a firearm, semiautomatic firearm, or automatic firearm in a felony.** [(a)] (1) A person convicted of a felony, where the person had a firearm in his possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the

firearm was loaded or not, and whether operable or not, may in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

- [1] (a) For murder in the second degree and attempted murder in the second degree—up to fifteen years;
- [2] (b) For a class A felony—up to ten years;
- [3] (c) For a class B felony—up to five years; and
- [4] (d) For a class C felony—up to three years.

The sentence of imprisonment for a felony involving the use of a firearm as provided in [this] subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section [706-669],; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon<sup>1</sup> expiration of the term of mandatory imprisonment fixed under [(a)(1), (2), (3), or (4), herein.] paragraph (a), (b), (c), or (d).

[b] (2) A person convicted of a second firearm felony offense as provided in subsection [(a), herein,] (1) where the person had a firearm in his possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the firearm was loaded or not, and whether operable or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

- [1] (a) For murder in the second degree and attempted murder in the second degree—twenty years;
- [2] (b) For a class A felony—thirteen years, four months;
- [3] (c) For a class B felony—six years, eight months; and
- [4] (d) For a class C felony—three years, four months.

The sentence of imprisonment for a second felony offense involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669[.]; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon the expiration of the term of mandatory imprisonment fixed under [(a)(1), (2), (3), or (4), herein.] paragraph (a), (b), (c), or (d).

[c] (3) A person convicted of a felony, where the person had a semiautomatic firearm or automatic firearm in his possession or used or threatened its use while engaged in the commission of the felony, whether the semiautomatic firearm or automatic firearm was loaded or not, and whether operable or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

- [1] (a) For murder in the second degree and attempted murder in the second degree—twenty years;
- [2] (b) For a class A felony—fifteen years;
- [3] (c) For a class B felony—ten years; and
- [4] (d) For a class C felony—five years.

The sentence of imprisonment for a felony involving the use of a semiautomatic firearm or automatic firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669[.]; provided further that a person who is imprisoned in a correctional institution as provided [in] this subsection shall become subject to the

parole procedure as prescribed in section 706-670 only upon<sup>1</sup> expiration of the term of mandatory imprisonment fixed under [(a)(1)<sup>2</sup> , (2), (3), or (4), herein.] paragraph (a), (b), (c), or (d).

[(d)] (4) In this section:

- [(1)] (a) "Firearm" has the same meaning defined in section 134-1 except that it does not include "semiautomatic firearm" or "automatic firearm."
- [(2)] (b) "Automatic firearm" has the same meaning defined in section 134-1.
- [(3)] (c) "Semiautomatic firearm" means any firearm that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of [a] the trigger."

SECTION 2. Section 712-1222.5, Hawaii Revised Statutes, is amended to read as follows:

"[[§712-1222.5]] Promoting gambling aboard ships. [(a)] (1) A person commits the offense of promoting gambling aboard ships if he knowingly advances or profits from gambling activity by:

- [(1)] (a) Managing, supervising, controlling, operating, or owning, either alone or in association with others, a gambling ship;
  - [(2)] (b) Managing, supervising, controlling, operating, or owning, either alone or in association with others, any craft which embarks from any point within the State, and disembarks at the same or another point within the State, during which the person intentionally causes or knowingly permits gambling activity to be conducted, whether within or without the waters of the State; or
  - [(3)] (c) Transporting, conveying, or carrying any person to [any] a gambling ship or a craft described in [subsection (1)(b).] paragraph (b).
- [(b)] (2) In this section:
- [(1)] (a) "Craft" includes every boat, ship, vessel, barge, hulk, or other thing capable of floating; and
  - [(2)] (b) "Gambling ship" means any craft kept, operated, or maintained for the purpose of gambling, whether within or without the waters of the State<sup>3</sup> and whether it is anchored, moored, lying to, or navigating.

[(c)] (3) This section shall not apply to gambling activity conducted during travel from foreign nations or [the continental] another state or territory of the United States to the point of first entry into State waters or during travel to foreign nations or [the continental] another state or territory of the United States from the point of final exit from State waters; provided that nothing herein shall preclude prosecution for any<sup>4</sup> offense under this part.

[(d)] (4) Promoting gambling aboard ships is a class C felony."

SECTION 3. Section 712-1230, Hawaii Revised Statutes, is amended to read as follows:

**"\$712-1230 Forfeiture of property used in illegal gambling.** Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of [a section in] this part, or any money or personal property used as a bet or stake in gambling activity in violation of [a section in] this part, may be ordered forfeited to the State, subject to the requirements of chapter

## **ACT 58**

712A[, where the evidence satisfies the court by its preponderance that the owner allowed the illegal use of the owner's property].”

**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 29, 1992.)

### **Notes**

1. Prior to amendment “the” appeared here.
2. Prior to amendment “(c)(1)” appeared here.
3. Prior to amendment “,” appeared here.
4. Prior to amendment “other” appeared here.

## **ACT 58**

S.B. NO. 2734

A Bill for an Act Relating to Kahana Valley.

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

**SECTION 1.** Act 5, Session Laws of Hawaii 1987, is amended by amending section 6, as amended by Act 106, Session Laws of Hawaii 1991, 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 1, [1992,] 1993, whichever occurs first.”

**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 29, 1992.)

## **ACT 59**

S.B. NO. 2735

A Bill for an Act Relating to the Conservation District.

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

**SECTION 1.** Section 183-41, Hawaii Revised Statutes, is amended to read as follows:

“**§183-41 [Forest and water reserve zones.] Conservation districts.** (a) [There are hereby established forest and water reserve zones in each of the coun-

ties. These zones shall initially encompass all of those areas in the various counties, either government or privately owned, contained within the forest reserve boundaries as established on January 21, 1957.] There are established conservation districts which shall consist of lands which were in the forest and water reserve zones on January 21, 1957, and those lands added to the conservation district by the land use commission pursuant to chapter 205 or by law. Zoning of lands in the conservation district shall be under the jurisdiction of the department and the provisions of this section unless the land is reclassified out of the conservation district by the land use commission or by law. No use, except a nonconforming use as defined in subsection (b), shall be made of [such] these areas unless [such] the use is in accord with a zoning [regulation] rule adopted pursuant to subsection (c)(3), or unless [such] the use is allowed under a temporary variance granted by the department [of land and natural resources]; provided that any owner of land within the [forest reserve boundaries] conservation district who shall desire to establish a use or uses for the owner's land, or a greater or different use or uses, if the owner's land is classed as nonconforming shall make application in accordance with subsection (d), and if within one hundred eighty days after receipt of the application the department shall fail to give notice, hold a hearing, and render a decision consistent with the standards set forth in subsection (c)(1), the owner may automatically put the owner's land to the use or uses requested in the owner's application. When an environmental impact statement is required pursuant to chapter 343, or when a contested case hearing is requested pursuant to chapter 91, the one hundred eighty days may be extended to an additional ninety days at the request of the applicant. Any request for additional extensions [in either case] shall be subject to the approval of the board.

(b) Neither this part nor any [regulation enacted] rule adopted under this part shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land [is] was used on July 1, 1957, or at the time any [regulation] rule adopted under authority of this part takes effect. All such existing uses shall be nonconforming uses. [Any parcel of land of not more than ten acres in area contained within the boundaries of the forest reserve which, as of January 31, 1957, was subject to real property taxes and upon which the taxes were being paid, and which was held and intended for residential or farming use, whether actually put to such use or not, shall also be considered as nonconforming and capable of such use.] Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on that particular lot including, if applicable, the construction of a single family residence. Any structures may be subject to conditions to ensure that they are consistent with the surrounding environment.

(c) To effectuate [the provisions of] this section, the department [of land and natural resources] shall have the following powers and duties, in addition to all other powers and duties:

(1) [General powers.] The department [shall], after notice and hearing as [herein] provided[,] in this section, shall review and redefine the boundaries [of forest and water reserve zones] within the conservation district as established by or under the authority of this part. The department may allow temporary variances from zoned use where good cause is shown and where the proposed variance is for a use determined by the department to be in accordance with good conservation practices. The department [may] shall establish subzones within the [forest and water reserve zones,] conservation district, which [subzones] shall be restricted to certain uses. In establishing

permitted uses in the subzones, the department shall give full consideration to all available data [as] relating to soil classification and physical use capabilities of the land so as to allow [and encourage] the [highest] economic use thereof consonant with requirements for the conservation and maintenance of the purity of the water supplies arising in or running or percolating through the land. The department shall also give full consideration to the preservation of open spaces or areas[, as defined in section 201-21(7),] so as to maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas for public use and enjoyment[. Provided,] provided that the board shall hold a public hearing in every case involving the proposed use of land [in a conservation zone] for commercial purposes, at which hearing interested persons shall be afforded a reasonable opportunity to be heard. Notice of the time and place of the hearing shall be published in accordance with the public notice requirements of subsection (d). As used [herein,] in this paragraph, the term "commercial purposes" shall not include the use of land for utility purposes.

- (2) Review of zones established by this part. The department, as soon as feasible after July 1, 1957, shall undertake to review the boundaries of all forest and water reserve zones within each county with the view of making necessary corrections and establishing subzones within the zones, and fixing permissible uses therein. The department shall, after review, prepare a proposed set of regulations, complete with necessary maps, establishing zone and subzone boundaries, and designating permitted uses therein. These proposed regulations and necessary maps shall be made available for inspection by interested members of the public. After notice and hearings as provided in subsection (d), the department may adopt such regulation as proposed or as amended. When adopted and after promulgated as required by law, the regulations shall have the force and effect of law.
- (3) Scope of zoning regulations.] (2) The department [shall], after notice and hearing as provided [herein,] in this section, shall adopt [such regulations] rules governing the use of land within the boundaries of the [forest and water reserve zones] conservation district as will not be detrimental to the conservation of necessary forest growth [and], the conservation and development of water resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment.

The department, by means of the [regulations] rules, may establish subzones within any [forest and water reserve zone] conservation district and specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use. The [regulations may also] rules may control the extent, manner, and times of the permitted uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

[The term "land", whenever used herein, shall mean and include] As used in this section, "land" includes any estate or interest therein[, and the]. The term "owner of land" or "landowner",

including any reference thereto, [shall mean] means an owner of land, or of any estate or interest therein.

(d) Notice, hearings. Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or permitted uses of any subzone, or to establish a subzone with certain permitted uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed [regulation] rule by the applicant and the department shall then give notice by publication at least once in a newspaper of general circulation in the State and in the county in which the property is located and by mail to all landowners whose property is directly affected by any proposed change.

The notice shall be given not less than twenty days prior to the date set for hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed [regulation] rule and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purpose of its public hearing or hearings, the department shall have power to summon witnesses, administer oaths, and require the giving of testimony.

(e) Enforcement. The department shall prescribe [such] administrative procedures and provide [such] personnel [as] it [may deem] deems necessary for the enforcement of this section, and any zoning [regulation enacted] rule adopted in accordance therewith. [Such regulations] 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 [regulation.] rules. Any person violating this section or any [regulation] rule adopted in accordance with this section shall be fined no more than \$500 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 per day for each day in which [such] 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 April 29, 1992.)

**ACT 60**

S.B. NO. 2738

A Bill for an Act Relating to Kalawahine Lands.

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

**SECTION 1.** Act 150, Session Laws of Hawaii 1990, is amended by amending section 3 to read as follows:

"**SECTION 3.** Any other law to the contrary notwithstanding, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is hereby authorized to negotiate and enter into lease agreements in accordance with the provisions and limitations of this Act; provided that the

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authority granted by this Act shall expire:

- (1) When leases have been negotiated and recorded in the bureau of conveyances with, or the requests authorized by SECTION 5 have been filed and approved for, all persons meeting the criteria in SECTION 2; or
- (2) On [January 1, 1992,] December 31, 1993, whichever is first."

SECTION 2. Session law material to be repealed is bracketed. New session law material is underscored.

SECTION 3. This Act, upon its approval, shall take effect retroactive to January 1, 1992.

(Approved April 29, 1992.)

## ACT 61

S.B. NO. 2752

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

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

SECTION 1. Section 304-8.6, Hawaii Revised Statutes, is amended to read as follows:

**"§304-8.6 University of Hawaii student activities revolving fund.** There is established the "University of Hawaii student activities revolving fund" into which shall be deposited all funds assessed as compulsory student activity fees and collected by the University of Hawaii on behalf of chartered student organizations and student activity programs of the several campuses of the University of Hawaii system. All revenues received by chartered student organizations and student activity programs from student activities and programs, except those revenues to which other special funds have prior claim, shall also be deposited into the revolving fund.

Separate accounts shall be maintained for each chartered student organization and student activity program. Funds from the accounts may be withdrawn and expended by each respective chartered student organization or student activity program for any purpose which it deems necessary and proper to carry out and achieve its educational responsibilities, programs, and related activities; provided that approval for such expenditure is first obtained from the board of regents or its designated representative, except that approval is not required for expenditures for the purchase of flowers, leis, food, refreshments, and prizes if the purchases do not exceed [the equivalent of ten per cent of] an amount determined by policies adopted by the board of regents, provided that the amount shall not exceed the funds available to any chartered student organization or student activity program annually. All moneys received for the University of Hawaii student activities revolving fund shall be deposited in a depository maintained by the university in accordance with policies which shall be adopted by the board of regents."

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

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

(Approved April 29, 1992.)

## ACT 62

S.B. NO. 2805

A Bill for an Act Relating to Dependent Adult Protective Services.

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

SECTION 1. Section 346-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court shall maintain records of all adult protective proceedings under this chapter. All court documents and records pertaining to the action or proceeding shall be subject to inspection only by the dependent adult, and his or her guardian of the person, guardian of the property, their respective attorneys, [and] the guardian ad litem of the dependent adult, [with the consent of the court.] and the other parties and their respective attorneys or guardians ad litem.”

SECTION 2. Section 346-230, Hawaii Revised Statutes, is amended to read as follows:

“[§346-230]] **Termination of services.** The department shall act only with the consent of the victim, unless the department obtains court authorization to provide necessary services, as provided in section 346-231. Investigation and services provided under this part shall be immediately terminated if:

- (1) [A] The dependent adult has the capacity to consent and either does not consent or withdraws consent to the receipt of protective services; or
- [2] The dependent adult withdraws the consent;
- [3] (2) The department determines that protection is no longer needed under this part; or
- [4] (3) The court so orders.

Upon the department's determination that protective services are no longer needed, the dependent adult shall be referred to the agency responsible for follow-up services. For the mentally ill [and], mentally retarded or developmentally disabled adult, the state agency designated to provide services shall be the department of health.”

SECTION 3. Section 346-241, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Unless waived by the parties who have entered an appearance, the] The department shall prepare a proposed protective order and a written protective services plan[,] and submit copies to the court and each of the parties or their counsel at least seven days prior to the disposition hearing.”

SECTION 4. Section 346-241, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The court shall conduct a disposition hearing concerning the terms and conditions set forth in the proposed protective order and proposed protective services plan unless each of the appropriate parties [has signed and fully understands and] accepts the order and plan, in which event, the court may approve the order and plan without a hearing. [If a party cannot or does not accept the terms and conditions set forth in the proposed order or proposed plan, and, after such

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hearing as the court deems to be appropriate, the court shall order such terms and conditions, as are deemed to be in the best interests of the dependent adult.]”

SECTION 5. Section 346-242, Hawaii Revised Statutes, is amended to read as follows:

“[[§346-242]] **Review hearings.** Except for good cause shown, the court shall set each case for a review hearing not later than six months after the date that a protective order and protective services plan are ordered by the court [and, thereafter,]. Thereafter, the court shall [set subsequent] review [hearings] the matter at intervals of not longer than six months until the court’s jurisdiction has been terminated. The department and the guardian ad litem, if any, shall submit a written report, with copies to the parties or their counsel, at least fifteen days prior to the date set for each review [hearing]. The report shall evaluate whether the parties have complied with the terms and conditions of the protective order and protective services plan; shall recommend any modification to the order or plan; and shall recommend whether the court shall retain jurisdiction or terminate the case. At each review, [hearing,] the court shall determine whether the parties have complied with the terms and conditions of the order and plan; enforce such sanctions for noncompliance as may be appropriate; and order such revisions to the existing order or plan as are in the best interests of the dependent adult. At each review, [hearing,] the court shall make an express finding as to whether it shall retain jurisdiction or terminate the case, and, in each instance, shall state the basis for its action.”

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

SECTION 7. This Act shall take effect on July 1, 1992.

(Approved April 29, 1992.)

## ACT 63

S.B. NO. 2877

A Bill for an Act Relating to the High Technology Development Corporation.

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

SECTION 1. Section 206M-15, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(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 [grant] award or contract from any participating federal agency [during calendar year 1989 or subsequent years] subject to the availability of funds.

(c) The development corporation shall adopt rules pursuant to chapter 91 that:

- (1) Specify the qualifications for eligibility of grant applicants;
- (2) Establish priorities in determining eligibility in the event that insufficient funds are available to fund otherwise qualified applicants; and

- (3) Give preference to all qualified businesses [that received a single award] receiving their first award in one [calendar] 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."

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 29, 1992.)

**ACT 64**

S.B. NO. 2892

A Bill for an Act Relating to Conditional Release Centers.

*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 [committed] person committed for an offense against the person as described in chapter 707, or any convicted felon, is admitted to [participate in] a work furlough [program], conditional release [program], or [other] similar [programs]. Such notification] program. Notification shall be [made] transmitted in writing [to the county prosecutors and police chiefs listing the conditions of such work furlough programs, conditional releases, or such similar programs] no later than thirty days prior to the commencement of the [work furlough] program[, conditional release, or other such program.] and shall list the conditions pertaining thereto."

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 29, 1992.)

**ACT 65**

S.B. NO. 2893

A Bill for an Act Relating to Public Safety.

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

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

**"§353C- Criminal history record checks.** The department shall develop standards to assure the reputable and responsible characters of staff

## **ACT 65**

members of its correctional facilities which shall include but not be limited to criminal history record checks. For the purposes of this section, "staff member" means any employee of the department of public safety who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers including the power of arrest, and "prospective staff member" means any applicant for a job in the department of public safety that is directly involved with the treatment and care of persons committed to a facility or that requires the exercise of police powers including the power to arrest in the performance of its duties.

Every staff member and prospective staff member shall submit a statement under penalty of perjury indicating whether the staff member or prospective staff member was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The staff member shall be fingerprinted for the purpose of complying with the criminal history record check. The prospective staff member shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff and prospective staff members of the department of public safety. The Hawaii criminal justice data center may assess prospective staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny employment to a prospective staff member who was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds from the prospective staff member's criminal history record that the prospective staff member poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large.

Staff members shall not be subject to termination based on findings in their criminal records except for those whose conviction of a crime occurred after May 8, 1989, or under circumstances in which a staff member is a fugitive from justice. The convictions of staff members subject to termination must be for crimes other than a minor traffic violation involving a fine of fifty dollars or less, and the staff member must pose a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large."

**SECTION 2.** Section 353-2.5, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 29, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 66**

S.B. NO. 2963

A Bill for an Act Relating to Family Courts.

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

SECTION 1. The purpose of this Act is to allow the family court to use school attendance records as *prima facie* evidence of a child's nonattendance at school or nonreceipt of educational services.

SECTION 2. Section 571-21, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) In children's cases, under section 571-11(1) and (2), the petition and all subsequent court documents shall be suitably entitled so as to indicate that the proceeding is in the interest of rather than against the child or minor involved. The petition shall be verified and statements may be made upon information and belief. It shall set forth plainly: (1) the facts which bring the child within the purview of this chapter; (2) the name, age, and residence of the child; (3) the names and residences of the child's parents; and (4) the name and residence of the child's legal guardian if there be one, of the person or persons having custody or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of the facts [herein] required are not known by the petitioner the petition shall so state. In cases brought pursuant to section 571-11(2)(C), a certified copy of the child's school attendance records shall constitute prima facie evidence of the child's nonattendance at school or nonreceipt of educational services. A certified copy is defined as a copy signed by the principal and educator of the child from whose class the child did not attend."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun prior to its effective date.

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

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

(Approved April 29, 1992.)

**ACT 67**

S.B. NO. 3080

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Permanent partial disability. Where a work injury causes permanent partial disability, the employer shall pay the injured worker [a weekly benefit at the rate of sixty-six and two-thirds per cent of the worker's average weekly

## ACT 67

wages, subject to the limitations on weekly benefit rates prescribed in section 386-31, for the period named in the schedule as follows:] compensation in an amount determined by multiplying the effective maximum weekly benefit rate prescribed in section 386-31 by the number of weeks specified for the disability as follows:

Thumb. For the loss of thumb, seventy-five weeks;

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks;

Second finger. For the loss of a second finger, commonly called the middle finger, thirty weeks;

Third finger. For the loss of a third finger, commonly called the ring finger, twenty-five weeks;

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks;

Phalanx of thumb or finger. Loss of the first phalanx of the thumb shall be equal to the loss of three-fourths of the thumb, and compensation shall be three-fourths of the amount above specified for the loss of the thumb. The loss of the first phalanx of any finger shall be equal to the loss of one-half of the finger, and compensation shall be one-half of the amount above specified for loss of the finger. The loss of more than one phalanx of the thumb or any finger shall be considered as loss of the entire thumb or finger;

Great toe. For the loss of a great toe, thirty-eight weeks;

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks;

Phalanx of toe. Loss of the first phalanx of any toe shall be equal to the loss of one-half of the toe[;], and the compensation shall be one-half of the amount specified for the loss of the toe. The loss of more than one phalanx of any toe shall be considered as the loss of the entire toe;

Hand. For the loss of a hand, two hundred [and] forty-four weeks;

Arm. For the loss of an arm, three hundred [and] twelve weeks;

Foot. For the loss of a foot, two hundred [and] five weeks;

Leg. For the loss of a leg, two hundred [and] eighty-eight weeks;

Eye. For the loss of an eye by enucleation, one hundred [and] sixty weeks. For the loss of vision in an eye, one hundred [and] forty weeks. Loss of binocular vision or of eighty per cent of the vision of an eye shall be considered loss of vision of the eye;

Ear. For the permanent and complete loss of hearing in both ears, two hundred weeks. For the permanent and complete loss of hearing in one ear, fifty-two weeks. For the loss of both ears, eighty weeks. For the loss of one ear, forty weeks;

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, thumb, finger, toe, or phalanx shall be equal to and compensated as the loss of a hand, arm, foot, leg, thumb, finger, toe, or phalanx;

Partial loss or loss of use of member named in schedule. Where a work injury causes permanent partial disability resulting from partial loss of use of a member named in this schedule, and where [such] the disability is not otherwise compensated in this schedule, compensation shall be paid for a period [which] that stands in the same proportion to the period specified for the total loss or loss of use of [such] the member as the partial loss or loss of use of that member stands to the total loss or loss of use thereof;

More than one finger or toe of same hand or foot. In cases of permanent partial disability resulting from simultaneous injury to the thumb and one or more fingers of one hand, or to two or more fingers of one hand, or to the great toe and one or more toes other than the great toe of one foot, or to two or more toes other than the great toe of one foot, the disability may be rated as a partial loss or loss of use of the hand or the foot and the period of benefit payments shall be measured accordingly. In no case shall the compensation for loss or loss of use of more than one finger or toe of the same hand or foot exceed the amount provided in this schedule for the loss of a hand or foot;

**Amputation.** Amputation between the elbow and the wrist shall be rated as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be rated as the equivalent of the loss of a foot. Amputation at or above the elbow shall be rated as the loss of an arm. Amputation at or above the knee shall be rated as the loss of a leg;

**Disfigurement.** In cases of personal injury resulting in disfigurement the director [of labor and industrial relations] may[, in the director's discretion,] award [such] compensation not to exceed \$15,000 as the director deems proper and equitable in view of the disfigurement [but not to exceed \$15,000]. Disfigurement [is] shall be separate from other permanent partial [disability] disabilities and [includes] shall include scarring and other disfiguring consequences caused by medical, surgical, and hospital treatment of the employee;

**Other cases.** In all other cases of permanent partial disability resulting from the loss or loss of use of a part of the body or from the impairment of any physical function, weekly benefits shall be paid at the rate and subject to the limitations specified in this subsection for a period [which] that bears the same relation to a period named in the schedule as the disability sustained bears to a comparable disability named in the schedule. In cases in which the permanent partial disability must be rated as a percentage of the total loss or impairment of a physical or mental function of the whole [man] person, the maximum compensation shall be computed on the basis of the corresponding percentage of the product of [312] three hundred twelve times the effective maximum weekly benefit rate prescribed in section 386-31.

Payment of compensation for permanent partial disability. Compensation for permanent partial disability shall be paid in weekly installments at the rate of sixty-six and two-thirds per cent of the worker's average weekly wage, subject to the limitations on weekly benefit rates prescribed in section 386-31.

Unconditional nature and time of commencement of payment. Compensation for permanent partial disability shall be paid regardless of the earnings of the disabled employee subsequent to the injury. Payments shall not commence until after termination of any temporary total disability that may be caused by the injury."

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

**SECTION 3.** This Act shall take effect upon its approval and shall apply to injuries occurring after December 31, 1992.

(Approved April 29, 1992.)

## ACT 68

H.B. NO. 3811

A Bill for an Act Relating to Medicine and Surgery.

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

SECTION 1. Section 453-3, Hawaii Revised Statutes, is amended to read as follows:

**"§453-3 Limited and temporary licenses.** The board of medical examiners shall issue a limited and temporary license to an applicant who has not been examined as required by section 453-4, and against whom no disciplinary proceedings are pending in any state or territory, if the applicant is otherwise qualified to be examined, and upon determination that:

- (1) There is an absence or a shortage of licensed physicians in a particular locality, and that the applicant has been duly licensed as a physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall permit the practice of medicine and surgery by the applicant only in the particular locality, and no other, as shall be set forth in the license issued to the applicant. The license shall be valid only for a period of eighteen months from the date of issuance. The board shall establish guidelines to determine a locality with an absence or shortage of physicians. For this purpose, the board may consider a locality to have an absence or shortage of physicians if the absence or shortage results from the temporary loss of a physician. In designating a locality with an absence or shortage of physicians, the board shall not delegate its authority to a private organization;
- (2) The applicant is to be employed by an agency or department of the state or county government, and that the applicant has been duly licensed as a physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the practice of medicine and surgery while the applicant is in the employ of such governmental agency or department and in no case shall be used to provide private patient care for a fee. A license issued under this paragraph may be renewed from year to year;
- (3) The applicant would practice medicine and surgery only while under the direction of a physician regularly licensed in the State other than as permitted by this section, and that the applicant intends to take the regular licensing examination conducted by the board within the next eighteen months. [In no case shall a] A limited and temporary license issued [hereunder] under this paragraph shall be valid for no more than [a period of] eighteen months from the date of issuance[;], unless otherwise extended at the discretion of the board of medical examiners; provided that this discretionary extension shall not exceed a period of six months beyond the original expiration date of the limited and temporary license;
- (4) The applicant has been appointed as a resident or accepted for specialty training in a hospital approved by the board, and that the applicant shall be limited in the practice of medicine and surgery to

- the extent required by the duties of the applicant's position or by the program of training while at the hospital. The license shall be valid during the period in which the applicant remains as a resident in training, and may be renewed from year to year during the period; or
- (5) A public emergency exists, and that the applicant has been duly licensed as a physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the period of such public emergency.

Nothing herein requires the registration or licensing hereunder of nurses, or other similar persons, acting under the direction and control of a licensed physician."

**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 11, 1992.)

## ACT 69

H.B. NO. 3072

A Bill for an Act Relating to Agriculture.

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

**SECTION 1.** Section 153-3, Hawaii Revised Statutes, is amended to read as follows:

"**§153-3 Hawaii agricultural products revolving fund.** There is [hereby] established the Hawaii agricultural products revolving fund into which shall be deposited all moneys received as repayment of allowances and proceeds payments as provided for in this chapter. [The] Moneys in the revolving fund may be expended by the board of agriculture for the purposes of this chapter. The department, by its board of agriculture, may transfer moneys from the agricultural products revolving fund to the agriculture loan revolving fund or the aquaculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapters 155 and 219, respectively, and may transfer moneys from those revolving funds to the agricultural products revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year;
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made among the agricultural products revolving fund, the agriculture loan revolving fund, and the aquaculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire [three years after June 16, 1989.] on June 16, 1995."

## ACT 69

SECTION 2. Section 155-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a special fund to be known as the agriculture loan revolving fund, from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the agriculture loan revolving fund to the agricultural products revolving fund or the aquaculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapters 153 and 219, respectively, and may transfer moneys from those revolving funds to the agriculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year;
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made among the agriculture loan revolving fund, the agricultural products revolving fund, and the aquaculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire [three years after June 16, 1989.] on June 16, 1995.”

SECTION 3. Section 219-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a special fund to be known as the aquaculture loan revolving fund from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the aquaculture loan revolving fund to the agricultural products revolving fund or the agriculture loan revolving fund, from which monies shall be disbursed by the department pursuant to chapters 153 and 155, respectively, and may transfer moneys from those revolving funds to the aquaculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year;
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made among the aquaculture loan revolving fund, the agricultural products revolving fund, and the agriculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire [three years after June 16, 1989.] on June 16, 1995.”

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

SECTION 5. This Act shall take effect on June 15, 1992.

(Approved May 11, 1992.)

## ACT 70

H.B. NO. 3799

A Bill for an Act Relating to Health Care.

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

SECTION 1. The legislature finds that a complete health care system includes universal access to health insurance, adequate and affordable medical care, and access to primary care and a broad range of health care services.

Hawaii enjoys the nation's only mandatory pre-paid health insurance law, a "gap-group" state health insurance program (SHIP), and the beginnings of a system of community-based primary health care clinics. Primary health care clinics, with their outreach programs, are in the forefront of health promotion and disease prevention. To ensure the best health care system for the people of Hawaii, it is important to facilitate the development of health care centers in medically underserved areas.

SECTION 2. The department of health shall establish a system of community-based primary health care centers throughout the State. The primary health care centers shall be located in areas designated by the State as medically underserved, following community-based needs assessments. Existing private, non-profit health care centers which meet the criteria of this Act shall be recognized as components of this system. In areas where no centers exist, the department shall work with existing state and private institutions, including the Hawaii State Primary Care Association, to facilitate the development of community-based health care centers.

The department of health shall begin by examining the following areas of the State for health care access and needs:

- (1) Urban Honolulu;
- (2) Waianae coast, Oahu;
- (3) North shore, Oahu;
- (4) Windward Oahu;
- (5) East Hawaii;
- (6) West Hawaii;
- (7) Maui;
- (8) Molokai;
- (9) Lanai; and
- (10) Kauai.

SECTION 3. Notwithstanding any other law to the contrary and to the extent possible, each community-based primary health care center within the system shall provide:

- (1) Outpatient medical and health services;
- (2) Community outreach programs;
- (3) Assessment, identification, coordination, and evaluation of health care services in the region;
- (4) A vehicle for the "bundling" of purchase of service contracts and grants-in-aid which serve the same region and which may benefit from shared administrative services, the ability to utilize matching federal funds, and other opportunities;
- (5) Adequate access to health care for hard-to-reach groups, such as immigrants, the homeless, the mentally ill, students, native Hawaiians, teenagers, and others;

## ACT 71

- (6) An educational and clinical experience for health care trainees, students, and professionals;
- (7) Data on morbidity, mortality, health promotion, disease prevention, and the utilization and financing of health care in Hawaii; and
- (8) An arena in which to initiate various health care system reforms.

Standards for participation in the community-based primary health care system shall be the same as those for federally funded 329/330 community health care centers.

SECTION 4. It is not the intent of this Act that the department of health compete with existing primary care providers, but rather to meet the needs of the medically underserved gap group. The department shall first attempt to utilize existing private health care providers as part of the community-based primary health care system.

SECTION 5. Section 321-62, Hawaii Revised Statutes, is amended to read as follows:

**“§321-62 General duties of department.** The department of health shall study and appraise the State’s dental health needs and resources, and shall foster the development and expansion of dental health services to the people of the State. The department may:

- (1) Conduct research, investigations, experiments, demonstrations, and studies relating to the incidence, causes, diagnosis, treatment, and prevention of dental diseases;
- (2) Supervise, provide, and direct clinical dental health services for adults and children [under institutional care] in the State;
- (3) Develop and conduct a program of dental health education of the public;
- (4) Provide information and education relating to dental health to public health nurses, teachers, social workers, and others who deal in a professional capacity with the public, through publications, seminars, institutes, and other appropriate means; and
- (5) Provide training for professional personnel to staff state and local dental health programs.”

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 sections 1, 2, 3, and 4 shall be repealed on July 1, 1995.

(Approved May 15, 1992.)

## ACT 71

H.B. NO. 3067

A Bill for an Act Relating to Public Employment Probationary Service.

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

SECTION 1. Section 76-27, Hawaii Revised Statutes, is amended to read as follows:

**"§76-27 Probationary service and other requirements for membership.** All employees shall successfully serve an initial probation period before becoming members of the civil service. In addition, membership in the civil service shall require that the employee shall have been appointed in accordance with law and shall have satisfied all the requirements for employment prescribed by this chapter or by the rules [and regulations promulgated] adopted thereunder, including those qualifications prescribed by section 78-1. A member who is promoted or transferred to another position in the civil service may be required to serve a new probation period in the [member's] new position[,] but [the member] shall be entitled to all the rights and privileges of a member of the civil service, except the right to appeal [in case of] a dismissal from the new position (as distinguished from dismissal from the service) for inefficiency [in the new position,] during the [member's] probationary period, in which case the member shall be returned to the [member's] former position.

[If an] An employee who is serving a temporary appointment may subsequently [becomes a probationary employee] be given a probationary appointment in the same position or a related position in the same class within the department [in accordance with the rules and regulations of the department of personnel services, the period of service performed as a temporary appointee shall be subtracted from the period of probationary service required by this section, and the employee shall serve only the remaining period as a probationary employee;] whenever a permanent position is established or is vacated; provided that the employee has been hired initially from the appropriate eligible list[,] and [that] the temporary period of service has immediately preceded the change to probationary status. Upon certification by the appointing authority that the employee has been performing satisfactorily and that the duties the employee has been performing are essentially similar to those required of the probationary appointment, the period of service performed as a temporary appointee shall be subtracted from the probationary period required by this section, and the employee shall serve only the remaining period, if any, as a probationary employee."

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

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

(Approved May 19, 1992.)

## ACT 72

H.B. NO. 788

A Bill for an Act Relating to Control or Eradication of Pests.

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

SECTION 1. Section 141-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding subsection (a), if the department finds the incipient infestation of a pest [which] that is injurious or deleterious or [which] that is likely to become injurious or deleterious to the agricultural, horticultural, aquacultural, or livestock industries of the State without immediate action, it may proceed without prior notice or upon a minimum of forty-eight hours notice and hearing to adopt an emergency rule for the eradication of the pest to be effective for a period of

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not longer than one hundred eighty days without renewal."

SECTION 2. Section 141-3.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) After notice as required by subsection (a), any member of the department or any agent authorized by the department may enter at reasonable times any private property other than dwelling places to maintain a pest control or eradication program, being liable only for damage caused by acts beyond the scope of [their] the person's authority, or [acts due to] the person's negligence[.] gross negligence, or intentional misconduct. [If the entry is refused, the department may bring an action in the appropriate district court to enjoin the landowner from refusing entry and to enforce compliance with this chapter. Upon proper showing, the court shall grant a restraining order or other appropriate relief.] If entry is refused, the department member or agent may apply to the district court in the circuit in which the property is located for a warrant to enter on the premises to effectuate the purposes of this chapter. The district court may issue a warrant directing a police officer of the circuit to assist the department member or agent in gaining entry onto the premises during regular working hours or at other reasonable times."

SECTION 3. Section 141-7, Hawaii Revised Statutes, is amended to read as follows:

**"§141-7 General penalty.** (a) Any person violating any of the provisions of chapters 141, 142, [and] or 144 to 149A, for which violation a penalty is not otherwise provided, or violating any rule [or regulation] of the department of agriculture, [and] or any master of any vessel which brings into the State any article which the department at any time shall prohibit from being imported into the State[; and],or the master of any vessel from which is landed any article required in chapters 141, 142, [and] or 144 to 149A to be inspected, before the master has received a permit to land the articles from the department or its officer or inspector, as provided by chapters 141, 142, and 144 to 149A, shall be fined not more than \$500.

(b) When any landowner or land occupier fails to cooperate with the department in its pest control or eradication programs, the department may proceed with its program at the expense of the landowner or land occupier. Any person who violates this chapter or any rule adopted by the department pursuant to section 141-3 shall be fined not less than \$100 nor more than \$500 for the first offense, and not less than \$1,000 nor more than \$5,000 for each offense thereafter."

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 27, 1992.)

**ACT 73**

H.B. NO. 1134

A Bill for an Act Relating to Indigenous Species of Plants.

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

SECTION 1. Pursuant to chapter 195D, the legislature recognized that many plant species indigenous only to Hawaii have become or are in danger of becoming extinct primarily because of increased land use resulting in disturbance of native ecosystems.

These indigenous species are an important component of Hawaii's native ecosystems and part of Hawaii's living heritage. Native Hawaiian culture, to a significant degree, is intertwined and dependent on certain indigenous plants, many of which have unique scientific, medicinal, educational, environmental, and economic value.

The legislature is firm in its commitment to protect Hawaii's indigenous plant species and is prepared to take affirmative action to ensure their survival.

In this regard, the legislature finds that carefully monitored release of Hawaii's indigenous land plant species for use in landscaping will heighten public awareness and promote public appreciation of the impending horticultural holocaust. Use in landscaping will also promote needed research on care and propagation.

The purpose of this Act is to encourage the propagation of Hawaii's indigenous species of land plants by requiring that they be employed, where feasible, in the landscaping of public buildings, facilities, and housing projects developed by the State. In so doing, it is also the purpose of this Act to foster public awareness and appreciation of these land plants through labelling and identification in the landscaped environments.

SECTION 2. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103- Indigenous 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; provided that suitable species can be transplanted or otherwise made available for this purpose without jeopardizing other species or any 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 91 appropriate to carry out the purposes of this section.”

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

SECTION 3.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 27, 1992.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 74

H.B. NO. 2139

A Bill for an Act Relating to Limitation of Actions.

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

SECTION 1. Section 657-5, Hawaii Revised Statutes, is amended to read as follows:

**“§657-5 Domestic judgments and decrees.** [Every] Unless an extension is granted, every judgment and decree of any court [of record] of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered[, and no]. No action shall be commenced [thereon] after the expiration of ten years [after] from the date a judgment or decree was rendered[.] or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and a hearing.”

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 27, 1992.)

ACT 75

H.B. NO. 2307

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Section 271-8.5, Hawaii Revised Statutes, is amended to read as follows:

**“§271-8.5 Advertising.** (a) It [is] shall be a misdemeanor for any person, including a person who is exempt [by] under section 271-5, to advertise as a motor carrier of passengers or property, unless [such] the person holds a valid certificate or permit required by this chapter [in] as to the classification so advertised. The term “advertise”, as used in this section, includes [but is not limited to,] the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on or in any building or motor vehicle, or the advertising in any newspaper [or], magazine, or advertising other than in-column listings in any directory, or the commercial broadcasting by airwave transmission[, with or without any limiting qualification].

(b) A licensee may advertise in print or broadcast medium as [defined] described in subsection (a) only if the licensee includes in the advertisement the licensee's applicable and current certificate or permit number and provides proof of the number's validity to the publisher or producer of the advertising medium.

The publisher or producer of a print or broadcast advertising medium shall [refuse to] not publish or broadcast an advertisement for a licensee who does not provide proof of a current certificate or permit [and] or who does not include a currently valid certificate or permit number in the advertisement.

(c) Upon notice from the public utilities commission of the entry of a final order of the commission pursuant to chapter 91 or a judgment by a court of competent jurisdiction, that a person has advertised in violation of either subsection (a) or section 271-8, the public utility furnishing the telecommunications service shall disconnect that person's access to the telephone number or telecommunications service number contained in the advertisement or listing. A public utility complying with a notice to disconnect is immune from liability for damages resulting from its compliance.

(d) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b)."

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 27, 1992.)

**ACT 76**

H.B. NO. 2308

A Bill for an Act Relating to Foreign Driver's Licenses.

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

SECTION 1. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person shall receive a driver's license [unless the person surrenders] without surrendering to the examiner of drivers all valid driver's licenses in the person's possession. All [such] licenses so surrendered [licenses] shall be returned to the issuing authority, together with information that the person is licensed in this State[.]; provided that with the exception of driver's licenses issued by any Canadian province, a foreign driver's license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; and provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State. No person shall be permitted to hold more than one valid driver's license at any time."

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

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

(Approved May 27, 1992.)

ACT 77

H.B. NO. 2349

A Bill for an Act Relating to Rental Motor Vehicle and Tour Vehicle Surcharge Tax.

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

SECTION 1. Section 251-1, Hawaii Revised Statutes, is amended:

1. By amending the definition of "tour vehicle" to read:

"Tour vehicle" means any vehicle, including vans, minibuses, and buses used for the purpose of transporting persons for pleasure or sightseeing trips[.], or transporting persons to pleasure or sightseeing cruises or destinations. The term does not include any vehicle used solely for the purposes of transporting individuals to and from a place of work or a public or private school or of transporting persons with disabilities."

2. By amending the definition of "tour vehicle operator" to read:

"Tour vehicle operator" means a person [regulated by the public utilities commission under chapter 271 and engaged in the business of transporting persons via tour vehicles.] who owns, manages, or dispatches tour vehicles."

SECTION 2. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

(b) There is levied and shall be assessed and collected each month a tour vehicle surcharge tax of:

- (1) \$65 for each tour vehicle used or partially used during the month [and categorized by the public utilities commission as an eighteen or over passenger carrier vehicle] that falls into the over twenty-five passenger seat category; and [of]
- (2) \$15 for each tour vehicle used or partially used during the month [and categorized by the public utilities commission as an eight to seventeen passenger carrier vehicle.] that falls into the eight to twenty-five passenger seat category.

The tour vehicle surcharge tax shall be levied upon the tour vehicle operator."

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

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1992.

(Approved May 27, 1992.)

ACT 78

H.B. NO. 2376

A Bill for an Act Relating to Prepaid Legal Services.

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

SECTION 1. The purpose of this Act is to delete the requirement that the

department of commerce and consumer affairs consider legislative intent favoring the formation of prepaid legal service plans when determining the amount and type of security required for plans that accumulate funds prior to paying persons providing legal services. The intent of having the department require security under these circumstances is to ensure that funds paid by innocent subscribers to these prepaid legal service plans are safeguarded and used solely for the purposes for which they were intended. The statutory provision directing the department to first consider the legislative intent to encourage the establishment of these plans undercuts this safeguard and may lead to diluted security requirements.

While the legislature is concerned about unreasonably onerous security requirements that might discourage the establishment of prepaid legal service plans, the primary intent must always be one of securing the assets of the subscribers. Security requirements established by the department should be based solely upon reasonable and relevant financial considerations. Encouraging or requiring the department to allow the establishment of unsecured or inadequately secured plans contradicts the spirit and intent of the prepaid legal services law. The legislature continues to support and encourage the establishment and maintenance of prepaid legal service plans, but seeks to ensure that gains made in this area are real and not illusory.

**SECTION 2.** Section 488-4, Hawaii Revised Statutes, is amended to read as follows:

**"[§488-4] Accumulated funds, protection, violation.** Any plan which accumulates funds prior to the payment of such funds to the persons providing legal services shall meet the requirements of this section.

The plan administrator shall obtain a bond in an amount and form approved by the department which shall be executed by the plan administrator and a surety company authorized to do business in the State as a surety. The bond shall be to the benefit of the members of the plan and shall be filed with the department. In lieu of the bond required by this section, the department shall accept letters of credit, certificates of deposits, or other evidences of security in form and amounts deemed appropriate by the department.

[In administering this chapter and this section in particular, it is the intention of the legislature to encourage the formation and operation of prepaid legal service plans. Therefore, all efforts shall be made by the department in determining the amount or type of security required to meet such legislative intent to encourage the formation of prepaid legal service plans.]”

**SECTION 3.** Statutory material to be repealed is bracketed.

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

(Approved May 27, 1992.)

**ACT 79**

H.B. NO. 2410

A Bill for an Act Relating to Guardianship.

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

**SECTION 1.** Section 560:5-430, Hawaii Revised Statutes, is amended to

## ACT 80

read as follows:

**“§560:5-430 Termination of proceeding.** The protected person, the person’s personal representative, the guardian of the property or any other interested person may petition the court to terminate the guardianship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining [after notice and hearing] that the minority or disability of the protected person has ceased, may terminate the guardianship. Upon termination, title to assets of the estate passes to the former protected person or to the person’s successors subject to provision in the order for expenses of administration or to conveyances from the guardian of the property to the former protected person or the person’s successors, to evidence the transfer.”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved May 27, 1992.)

## ACT 80

H.B. NO. 2479

A Bill for an Act Relating to Parking Fees.

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

SECTION 1. Chapter 26, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§26- Parking fees, exemption.** Notwithstanding any other law, rule, or provision to the contrary, special service deputies of the department of public safety are exempt from all state and county parking meter fees and county time parking restrictions while in the performance of their official duties, including attendance at court; provided that this exemption shall:

- (1) Apply exclusively to state owned law enforcement vehicles assigned to the department of public safety; and
- (2) Not apply to private individuals retained by the department on a contractual basis to serve civil process in any capacity.”

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

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

(Approved May 27, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 81

H.B. NO. 2486

A Bill for an Act Relating to Recycling.

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

SECTION 1. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§342H- Unauthorized removal of recyclable materials.** No person, other than an authorized agent of the State or a county, commercial waste generator, or private recycling system, shall knowingly remove any paper, glass, cardboard, plastic, used motor oil, ferrous metal, aluminum, or other recyclable materials that have been segregated from solid waste and placed at designated collection sites for the purposes of collection and recycling.”

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

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

(Approved May 27, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 82

H.B. NO. 2490

A Bill for an Act Relating to Garnishment Proceedings.

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

SECTION 1. Chapter 652, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§652- Service on garnishee.** Service of the copy upon the garnishee may be made in any of the manners here described, namely:

- (1) If the garnishee lives or has an office in the district in which process is issued, by the serving officer’s handing a copy to the garnishee in person or leaving it in the garnishee’s office in charge of some deputy or clerk or other employees or attache of the office; or
- (2) If the garnishee lives in a district other than that in which the process was issued, by the serving officer’s handing a copy to the garnishee in person, or by mailing it in a sealed envelope, registered or certified, postage prepaid, return receipt requested, and addressed to the garnishee’s last known home or business address.

**§652- Effect of service.** (a) In case of service upon the garnishee, the serving officer’s certificate of service or, if by mail, a copy of the return receipt shall be *prima facie* proof of the service.

(b) For purposes of this chapter, service is effective from the time when the summons is handed to or left in the office of the garnishee, or reaches the garnishee or the garnishee’s office by mail.”

## ACT 82

SECTION 2. Section 652-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Before judgment. When any goods or effects of a debtor are in the possession of an attorney, agent, factor, or trustee (in this chapter jointly and severally included in the term “garnishee”), or when any debt is due from any person (also included under the term “garnishee”) to a debtor, or when any person has in the person’s possession for safekeeping any moneys of the debtor, any creditor may bring the creditor’s action against the debtor and in the creditor’s petition for process, or by amendments of the complaint at any time before judgment, after meeting the requirements of section 652-1.5, may request the court to insert in the process a direction [to the officer serving the same to leave a true and attested copy thereof with the garnishee or at the garnishee’s usual place of abode] that service of a true and attested copy thereof be made upon the garnishee in any of the manners described under section 652- and to summon the garnishee to appear personally upon the day or term appointed in the process for hearing the action or at any other time appointed by the court and then and there on oath to answer all of the following inquiries, herein inclusively referred to as the “disclosure”:

- (1) Whether at the time the copy was served on the garnishee, the garnishee had any of the goods or effects of the defendant in the garnishee’s hands and, if so, the nature, amount and value thereof;
- (2) Whether at the time of service, the garnishee was indebted to the defendant and, if so, the nature and amount of the debt; or
- (3) Whether at the time of service on the garnishee, the garnishee had any moneys of the defendant in the garnishee’s possession for safekeeping and, if so, the amount thereof.

The summons and direction shall be signed and issued as is usual in other civil process after proceedings under section 652-1.5. The summons shall specify an amount or value of money, debt or goods or effects to be garnished which shall not exceed [120] one hundred twenty per cent of the amount of the plaintiff’s claim, including cost and interest. The summons shall be served [according to such accompanying direction. Upon receipt of the summons,] upon the garnishee in any of the manners described under section 652-. From the time of service, the garnishee shall secure in the garnishee’s hands to pay such judgment as the plaintiff shall recover in the action, such of the following property or choses then in the garnishee’s possession or owing to the defendant as shall equal the amount or value specified in the summons, except what the court has expressly found to be exempt from execution pursuant to section 652-1.5(d) or (f):

- (1) The goods and effects of the defendant then in the hands of the garnishee;
- (2) Any debt then owing from the garnishee to the defendant;
- (3) Moneys of the defendant then in the possession of the garnishee for safekeeping; and
- (4) A portion of the defendant’s wages, salary, stipend, commissions, annuity, or net income under a trust (in this chapter included under the term “wages”), remaining after the deduction of any amounts required by law to be withheld by withholding the amount to be determined as follows: five per cent of the first \$100 per month, ten per cent of the next \$100 per month, and twenty per cent of all sums in excess of \$200 per month, or an equivalent portion of the above amount per week, whether then or thereafter to become owing.

The property or choses described in (1), (2), (3), and (4) of this paragraph are included under the term "garnishee fund" (in this chapter). The cumulative total value of the fund, in advance of final judgment, shall be no more than the amount specified in the summons.

Except as provided in section 652-1.5, the summons and direction shall be sufficient notice to the defendant to enable the plaintiff to bring the plaintiff's action to trial, unless the defendant is an inhabitant of the State or has some time resided therein, in which case a like copy shall be served personally upon the defendant or left at the defendant's last and usual place of abode.

The court shall order the garnishee fund released at the hearing provided in section 652-1.5 or thereafter upon the filing by the debtor with the court of a bond or bonds issued by a surety or sureties licensed to do business as such in the State, in an amount sufficient to pay the claim of the creditor together with costs and interest, and conditioned upon judgment rendered in favor of the creditor and to the extent the claim or any portion thereof, together with costs and interest, if any, is awarded.

(b) After judgment. Wages may be garnisheed after judgment at the rate specified in subsection (a) [of this section]. In any action brought by a creditor against a debtor, the creditor may, after judgment rendered in the creditor's favor, request the court to summon any garnishee to appear personally, upon a day appointed in the summons for hearing the cause as against the garnishee, and make full disclosure; or in any action brought in the district court by a creditor against a debtor, the creditor may, ten days after judgment rendered in the creditor's favor, file a certified copy of the judgment and the creditor's affidavit as to the amount due and unpaid on account of the judgment with the employer of the judgment debtor and the employer shall thereupon either file a disclosure within one week or shall withhold from the wages of the judgment debtor the amounts as provided herein and pay the same to the judgment creditor.

Alias summons shall also be issued and served [similarly as other civil process. At the time of leaving the copy of the alias summons,] upon the garnishee in any of the manners described under section 652- . At the time of service, any and every element of any garnishee fund then in the hands of the garnishee shall be there secured to pay the judgment already recovered and may not otherwise be disposed of by the garnishee."

SECTION 3. Section 653-6, Hawaii Revised Statutes, is amended to read as follows:

**"§653-6 Garnishee [process.] summons.** (a) Any provision to the contrary notwithstanding, no garnishee summons shall be issued before judgment until the creditor upon motion and after hearing has proved to the satisfaction of the court any of the following allegations:

- (1) That the defendant debtor is not a resident of the State and may depart from the State within six months from the date of filing of the action;
- (2) That the defendant debtor has departed from the State;
- (3) That the defendant debtor has left the county of the defendant debtor's residence with intent to avoid service of summons; or
- (4) That the defendant debtor, although a resident of the State, intends to depart from the State and remain absent therefrom for a period in excess of nine months.

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If the ruling of the court is in favor of the creditor on any of the allegations above enumerated before judgment or if the creditor has received judgment in the creditor's favor on the creditor's complaint, the creditor may then request the court issuing the garnishee summons to direct [the officer serving the same to leave a true copy thereof, which shall be attested by the sheriff, the sheriff's deputy, a licensed process server or other serving officer, with] that service of a true and attested copy be made in any of the manners described under section 653-7 upon the comptroller of the State, or of the political or municipal subdivision of the State, or other officer through whom the salary, stipend, or wages of the debtor is sought to be attached, who shall [herein be called] be referred to as the garnishee[.] for purposes of this chapter.

(b) In any action brought in the district court by a creditor upon<sup>1</sup> a debtor, the creditor, ten days after judgment rendered in the creditor's favor, in lieu of requesting the issuance of a garnishee summons, may file a certified copy of the judgment and the creditor's affidavit as to the amount due and unpaid on account of the judgment with the comptroller of the State, or of the political or municipal subdivision of the State or other officers through whom the salary, stipend, or wages of the judgment debtor is paid, and upon that filing the comptroller or other officer shall withhold from the wages of the judgment debtor the amounts provided in section 652-1(a) subject to payment in good faith as provided in section 652-1(f) and pay the same to the judgment creditor."

SECTION 4. Section 653-7, Hawaii Revised Statutes, is amended to read as follows:

"**§653-7 Service on garnishee.** Service of the copy upon the garnishee may be made in any of the manners here described, namely:

- (1) If the garnishee lives[,] or has an office in the district in which process is issued, by the [officer] officer's handing a copy to the garnishee in person[,] or [by] leaving it in the garnishee's office[,] in charge of some deputy or clerk or other employees or attache of the office; [if] or
- (2) If the garnishee lives in a district other than that in which the process was issued, by an officer's handing a copy to the garnishee in person, or by [depositing it in the nearest post office,] mailing it in a sealed envelope, registered [and] or certified, postage prepaid, return receipt requested, and addressed to the [officer at the officer's accustomed post office.] garnishee's home or business address."

SECTION 5. Section 653-8, Hawaii Revised Statutes, is amended to read as follows:

"**§653-8 Effect of service.** (a) In case of service upon the garnishee, [if served by an officer,] the serving officer's certificate of service[, specifying the particulars thereof,] or, if by mail, a copy of the return receipt shall be prima facie proof of the service[; and shall be ample for the purposes of section 653-11,].

(b) For purposes of this chapter, service is effective from the time when the copy is handed to, or left in the office of the garnishee, or reaches the garnishee or the garnishee's office by mail."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved May 27, 1992.)

#### Notes

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

## ACT 83

H.B. NO. 2493

A Bill for an Act Relating to Unfair and Deceptive Practices.

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

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§481B- Gift certificates.** (a) Any restaurant or person engaged in the business of offering services or goods for sale at retail may allow customers to purchase gift certificates; provided that the certificate issuer shall honor the certificate for a period of at least one year from the date of issuance. If a certificate recipient is unable to redeem the certificate within the one-year period, the certificate issuer shall extend the life of the certificate for one additional year.

(b) A certificate issuer shall include the following information on the face of any gift certificate that has an expiration date:

- (1) The expiration date of the certificate, which shall be at least one year from the date the certificate was issued; and
- (2) That in the event the recipient does not redeem the certificate within the one-year period, the issuer shall extend the life of the certificate for one additional year.

(c) Any violation of subsection (a) or (b) shall constitute an unfair method of competition and an unfair or deceptive act or practice in the conduct of any trade or commerce under section 480-2.

(d) As used in this section, unless the context requires otherwise:

“Certificate issuer” or “issuer” means a restaurant or a person engaged in the business of offering services or goods for sale at retail who sells gift certificates to customers.

“Certificate recipient” or “recipient” means the person for whom the gift certificate is intended.

“Gift certificate” or “certificate” means a certificate for which the certificate issuer has received payment for the full face value of the certificate. The certificate shall be valid for purchases of goods and services offered for sale by the certificate issuer unless expressly excluded.”

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

## **ACT 84**

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

(Approved May 27, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 84**

H.B. NO. 2507

A Bill for an Act Relating to Medical Treatment Decisions for Psychotic Disorders.

*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 MEDICAL TREATMENT DECISIONS FOR PSYCHOTIC DISORDERS**

**§ -1 Purpose.** The legislature finds that all competent persons have the fundamental right to control decisions relating to their own medical care, including the decision to accept or refuse medical treatment, including the administration of psychotropic drugs, by a health care provider for a psychotic condition.

In order that the rights of patients suffering from a psychotic condition may be respected even when they have lapsed and are not able to participate actively in decisions about themselves or their medical care and treatment, the legislature hereby declares that the laws of the State of Hawaii shall recognize the right of any person aged eighteen or older suffering from a psychotic condition to make a written declaration instructing the person's physician to provide medical treatment, including the administration of psychotropic drugs.

**§ -2 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.

"Declarant" means a person suffering from a psychotic condition who has executed a declaration while in a state of remission in accordance with the requirements of section -3.

"Declaration" means a written document voluntarily executed by the declarant in accordance with the requirements of section -3 regardless of form.

"Health care facility" includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, rehabilitative, or preventive care to any person. The terms include, but is not limited to, health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

"Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by the law of this State to administer health care in the ordinary course of business or practice of a profession.

"Incompetent person" means any person suffering from a psychotic condition who is temporarily impaired by reason of having lapsed back into that

psychotic condition to the extent that while temporarily impaired, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person's health care.

"Physician" means an individual licensed to practice medicine under chapter 453 or chapter 460.

"Psychotic condition" means any disease, illness, or condition commonly referred to by the medical profession according to ordinary standards of current medical practice as any disorder exhibiting psychotic tendencies, manic-depressive behavior, schizophrenia, or other similar condition which, without the administration of appropriate medical treatment, including the use of psychotropic drugs, would constitute a danger to the patient or to others and would result in a patient being gravely disabled.

**§ -3 Execution of declaration.** (a) Any person aged eighteen or older suffering from a psychotic condition but who is competent and in a state of remission at the time of execution may execute a declaration directing that medical treatment, including the administration of psychotropic drugs, be provided at a time when the person has lapsed and is not able to make decisions regarding medical treatment.

(b) The declaration made pursuant to this chapter:

- (1) Shall be in writing;
- (2) Shall be signed by the person making the declaration, or by another person in the declarant's presence and at the declarant's expressed direction;
- (3) Shall be dated; and
- (4) Shall be signed in the presence of two or more witnesses who:
  - (A) Are at least eighteen years of age;
  - (B) Are not related to the declarant by blood, marriage, or adoption;
  - (C) Are not, at the time the declaration is executed, attending physicians, employees of an attending physician, or employees of a health care facility in which the declarant is a patient.

**§ -4 Presumed validity of declaration.** (a) If a patient is incompetent at the time of the decision to give medical treatment, a declaration executed in accordance with section -3 is presumed to be valid.

(b) For the purpose of this chapter, a physician or health care facility may presume, in the absence of actual notice to the contrary, that a person who executed a declaration was of sound mind when the declaration was executed.

(c) The fact of a person's having executed a declaration shall not be considered an indication of a declarant's mental incompetence.

**§ -5 Patient's wishes supersede declaration.** The wishes of a declarant, at all times while the declarant is in a state of remission and is competent, shall supersede the effect of the declaration.

**§ -6 Declaration becomes part of medical records.** It shall be the responsibility of the declarant to provide for delivery of the notarized declaration to the attending physician. In the event the declarant is comatose, incompetent, or otherwise mentally or physically incapable after executing the declaration, any other person may deliver the notarized declaration to the physician. An attending physician who is so notified shall promptly make the declaration a part of the declarant's medical records.

**§ -7 Duty to deliver.** Any person having a declaration of another in the person's possession and who becomes aware that the declarant is in circumstances under which the terms of the declaration may become applicable, shall deliver the declaration to the declarant's attending physician or to the health care facility in which the declarant is a patient.

**§ -8 Written certification.** (a) An attending physician who has been notified of the existence of a declaration executed under this chapter shall make all reasonable efforts to obtain the notarized declaration and shall ascertain without delay whether the declarant's current condition corresponds to the condition described in the declaration under which the declaration would take effect.

(b) In the event that a patient's condition corresponds to the condition described in the patient's declaration, a written certification of the declarant's condition shall be made a part of the declarant's medical record and shall be substantially in the following form:

#### CERTIFICATION OF CONDITION SPECIFIED IN PATIENT'S DECLARATION

In my professional opinion, I certify that (name of patient) is not able to participate in decisions concerning medical treatment to be administered and has the following condition: (diagnosis). According to the declaration, (name of patient) wishes to receive medical treatment according to a personal medical treatment plan as specified in the patient's declaration, under these circumstances.

Signed \_\_\_\_\_ Attending Physician

Signed \_\_\_\_\_ Second Attending Physician

**§ -9 Transfer to another physician.** (a) An attending physician and any other physician under the attending physician's direction or control, having possession of the patient's declaration or having knowledge that the declaration is part of the patient's record in the health care facility in which the declarant is receiving care, shall follow as closely as possible the terms of the declaration.

(b) An attending physician who, because of personal beliefs or conscience, refuses or is unable to certify a patient, or who is unable to comply with the terms of the patient's declaration shall make the necessary arrangements to transfer the patient and the appropriate medical records without delay to another physician. A physician who transfers the patient without unreasonable delay, or who makes a good faith attempt to do so, shall not be subject to criminal prosecution or civil liability, and shall not be found to have committed an act of unprofessional conduct for refusal to comply with the terms of the declaration. Transfer under these circumstances shall not constitute abandonment.

(c) Failure of an attending physician to transfer in accordance with this section shall constitute professional misconduct.

**§ -10 Revocation.** A declaration may be revoked by the declarant at any time while the declarant is in a state of remission and is competent by any of the following methods:

- (1) By being canceled, defaced, obliterated, burnt, torn, or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction;
- (2) By a written revocation signed and dated by the declarant expressing

the declarant's intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation;

- (3) By a declarant's unambiguous verbal expression, in the presence of two adult witnesses, of an intent to revoke the declaration. The revocation shall become effective upon communication to the attending physician by the declarant or by both witnesses. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the attending physician received notification of the revocation; or
- (4) By a declarant's unambiguous verbal expression to an attending physician.

**§ -11 Health care or health insurance.** No person or entity shall require any person to execute a declaration as a condition for being insured for, or for receiving insurance benefits or health care services.

**§ -12 Criminal penalties.** (a) Any person who threatens, directly or indirectly, or coerces, or intimidates any person to execute a declaration shall be guilty of a class C felony.

(b) Any person who willfully conceals, cancels, defaces, obliterates, or damages another's declaration without the declarant's consent or who falsifies or forges a declarant's revocation of declaration with the intent to create the false impression that the declarant has directed that no medical treatment be given shall be guilty of a misdemeanor.

(c) A physician who willfully fails to record a statement of revocation according to the requirements of section -10 shall be guilty of a class C felony.

**§ -13 Health personnel protections.** In the absence of actual notice of the revocation of a declaration, no health care provider, health care facility, physician, or other person acting under the direction of an attending physician shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the provision of medical treatment to a declarant in accordance with this chapter unless the absence of actual notice resulted from the negligence of the health care provider, physician, or other person.

**§ -14 Safeguard provision.** Anyone who has good reason to believe that the provision of medical treatment in a particular case:

- (1) Is contrary to the most recent expressed wishes of a declarant who was in remission and was competent at the time of expressing the wishes;
  - (2) Is being proposed pursuant to a declaration that has been falsified, forged, or coerced; or
  - (3) Is being considered without the benefit of a revocation which has been unlawfully concealed, destroyed, altered or cancelled;
- may petition the family court for appointment of a guardian for the declarant.

**§ -15 No presumption.** This chapter creates no presumption concerning the intention of a person who has revoked or has not executed a declaration to receive medical treatment.

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**§ -16 Effect of multiple documents.** Medical treatment instructions contained in a declaration executed in accordance with this chapter shall supersede:

- (1) Any contrary or conflicting instructions given by a proxy or an attorney for health care decisions unless the proxy appointment or the power of attorney expressly provides otherwise; and
- (2) Any instructions in any prior declaration."

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

(Approved May 27, 1992.)

## ACT 85

H.B. NO. 2678

A Bill for an Act Relating to Trustees.

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

**SECTION 1.** 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 [three-tenths] 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 [three-tenths] 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 book-keeping and clerical services at the expense of the estate, unless first approved by the court, nor shall such [three-tenths] 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."

**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 27, 1992.)

## ACT 86

H.B. NO. 2712

A Bill for an Act Relating to Family Court Jurisdiction.

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

SECTION 1. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

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

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved May 27, 1992.)

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. Chapter 490, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§490: Dishonored check; action for treble damages; procedures.”**

(a) In any action against a person who makes any check, draft, or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in an amount equal to \$100 or triple the amount for which the check, draft, or order is drawn, whichever is greater; provided that damages recovered under this section shall not exceed by more than \$500 the amount of the check, draft, or order, and may be awarded only if:

- (1) The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than ten days before commencing the action; and
- (2) The defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded.

The written demand shall include notice that if the money is not paid within ten days, triple damages may be incurred by the defendant. The plaintiff shall provide the defendant written notice of demand for payment by certified mail, restricted delivery, at the last known address of the defendant with a request for a return receipt and marked “deliver to addressee only”.

(b) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs.

(c) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the statutory damages; provided the court or jury shall render judgment against defendant for not less than the amount of the dishonored check plus incurred court and service costs.”

SECTION 2. Section 127-7, Hawaii Revised Statutes, is amended to read as follows:

**“§127-7 Compensation, rights, privileges, and immunities.”** No person engaged in actual disaster relief pursuant to this chapter, including a volunteer whose services are accepted by any person authorized by the director of disaster relief, shall be liable, civilly or criminally, for any act or acts done by the person in pursuance of the person’s duty; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section [41-6.] 41D-8, and the director is hereby authorized to insure vehicles owned by the State or in the custody and use

of the disaster relief agency.

All persons, including volunteers whose services have been accepted by persons authorized by the director, shall, while engaged in the performance of duty pursuant to this chapter, including duty performed during periods of training, be deemed state employees and shall have the powers, duties, rights, and privileges of employees in the performance of their duty. All persons who may otherwise be employees of the State or of any political subdivision shall continue to receive the compensation they would otherwise receive; and shall for the purposes of the employees retirement system, or any applicable workers' compensation law be deemed to be engaged in the performance of their ordinary duties. All other persons when engaged in actual disaster relief, including volunteers whose services have been accepted by persons authorized by the director, shall be entitled to compensation from the State at the rate paid to jurors; provided this provision shall not be construed to prohibit the contracting for medical or other technical services at higher rates of compensation. Further, in case of injury or death arising out of and in the performance of duty pursuant to this chapter, including duty performed during periods of training, such persons or their dependents shall be entitled to all of the benefits provided in chapter 386, including medical services and supplies; provided that for the purposes of the benefits, average weekly wages shall be computed upon the basis of earnings from the usual employment of such persons. The cost thereof shall be a charge upon the state insurance fund. Nothing herein shall affect the right of any person to receive any benefits or compensation under any act of Congress."

SECTION 3. Section 128-18, Hawaii Revised Statutes, is amended to read as follows:

**"§128-18 Immunities; rights.** Neither the State nor any political subdivision, nor, except in cases of wilful misconduct, the persons engaged in civil defense functions pursuant to this chapter (including volunteers whose services are accepted by any authorized person), shall be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of the employment or duties, and no act or omission shall be imputed to the owner of any vehicle by reason of the owner's ownership thereof; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section [41-6] 41D-8 to the extent of the insurance, and unless specifically provided, insurance effected under section [41-6] 41D-8 shall not include coverage of such risk during a civil defense emergency period. The governor may insure vehicles owned by the State or in the custody and use of the civil defense agency, but insurance effected under section [41-6] 41D-8 on vehicles used for purposes other than civil defense need not necessarily include coverage of the insured vehicle against the risk incurred or which would be incurred under this chapter as a result of the use of the insured vehicle for civil defense."

SECTION 4. Section 134-51, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"§134-51 Deadly weapons; prohibitions; penalty."**

SECTION 5. Section 174C-6, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

**"[§174C-6] Deputy to the chairperson of the commission [for] on water resource management.** (a) There shall be a first deputy to the chairperson of the commission [for] on water resource management ("deputy for water resource management") who shall be in addition to any other first deputy to the chairperson as the chairperson of the board of land and natural resources. The deputy shall have experience in the area of water resources and shall be appointed by the chairperson with the approval of a majority of the commission."

SECTION 6. Section 398-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) If unpaid leave under this [subsection] chapter conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period."

SECTION 7. Section 408-15, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

"(l) Open-end loan. A licensee shall also have power to make open-end loans subject to the following requirements:

- (1) A licensee may not contract for and receive interest on an open-end loan in excess of the higher of that set forth in subsection (c) or (d).
- (2) A licensee shall not compound interest by adding any unpaid interest authorized by this subsection to the unpaid principal balance of the borrower's open-end loan account; provided that the unpaid principal balance may include charges other than interest and late charges.
- (3) Interest authorized by this subsection shall be deemed not to exceed the maximum interest permitted by this section if such interest is computed for each billing cycle at an annual rate not to exceed that permitted in paragraph (1) [of this subsection] by any of the following methods:
  - (A) By converting such annual rate to a daily rate and multiplying such daily rate by each daily unpaid principal balance of the open-end loan account in the billing cycle, and then adding the products of all such multiplications (in which case the daily rate is determined by dividing the authorized annual rate by 365); or
  - (B) By multiplying such annual rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle and then dividing the product so obtained by 365 and then multiplying the quotient by the number of days in the billing cycle (in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle); or
  - (C) By converting such annual rate to a daily rate and multiplying such daily rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle, and then multiplying the product so obtained by the number of days in the billing cycle (in which case the daily rate is determined by dividing the authorized annual rate by 365, and the average daily unpaid principal balance is the sum of the amounts unpaid for all days during the cycle divided by the number of

- days in the cycle); or
- (D) By converting such annual rate to a daily rate by the method set forth in subparagraph (A) and multiplying such daily rate times the sum of all the daily unpaid principal balances of the open-end loan account during the billing cycle.
- (4) For all of the above methods of computation, 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.
- (5) A licensee may increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans, provided that with respect to open-end loans which are subject to the Truth in Lending Act (A) that the licensee shall mail or deliver written notice of the change to the borrower at least fifteen days prior to the effective date of the increase, unless the increase has been agreed to by the borrower, or the rate is increased as a result of the borrower's delinquency or default, and (B) that the borrower may choose to terminate the open-end loan account, and the licensee will allow the borrower to repay, under the existing open-end loan account terms, the unpaid balance incurred prior to the effective date of the increase, unless the borrower incurs additional debt on or after that date or otherwise agrees to the increase.
- (6) The borrower may pay all or any part of the unpaid balance in the borrower's open-end loan account, or the borrower may pay the unpaid balance in periodic installments subject to minimum payment requirements, date of maturity, and other conditions as determined by the licensee and set forth in the contract.
- (7) A licensee may charge, contract for, and receive the interest, fees, and charges permitted under subsections (c), (e), and (j) or subsections (d) and (e).
- (8) If credit life or disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance as such rate may be approved by the insurance commissioner pursuant to article 10B of chapter [435.] 431, to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in this subsection for the calculation of loan interest. A licensee shall not be responsible for advancing premiums for credit life or disability insurance on a borrower who is delinquent in the making of the required minimum payments on the loan if one or more of such payments is past due for a period of ninety days or more; provided that the licensee shall advance to the insurer the amounts required to keep such insurance, if provided, in force during such ninety-day period, which amounts may be debited to the borrower's open-end loan account.
- (9) A licensee, until the open-end loan account is terminated, may retain any security interest in real or personal property given to secure the open-end loan account. Upon such termination the licensee shall, within ten business days following receipt of written demand by the borrower, release the mortgage, security interest, pledge, or other security for the open-end loan. For the purposes of this paragraph,

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termination of the open-end loan account means the cancellation, rescission, or other cessation of the open-end loan account by mutual agreement where the borrower has paid all amounts owed on the open-end loan account and the borrower has complied with all of the terms of the open-end loan agreement. Nothing in this paragraph shall preclude any licensee from exercising any other rights the licensee has to or in the security for open-end loans in the event of the borrower's default."

SECTION 8. Section 411-2, Hawaii Revised Statutes, is amended by amending the definition of "state-chartered financial institution in danger of failing" to read as follows:

"State-chartered financial institution in danger of failing" means a state-chartered bank or financial services loan company, as those terms are defined in this chapter that:

- (1) Is not likely to be able to meet the demands of its depositors or its investment or thrift certificate holders or pay its obligations in the normal course of business, and there is no reasonable prospect that it will be able to meet such demands or pay such obligations; or
- (2) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the replenishment of the institution's capital; or
- (3) Is insolvent as defined in section [403-6] 403-2 as that section now exists or as it may be recodified, amended, or renumbered; or
- (4) Is an institution whose capital is impaired as defined by sections 403-161 and 403-162; or
- (5) Is an institution which the commissioner has determined to be suffering from severe financial conditions and circumstances which threaten the future financial stability of the institution and will require the financial assistance of the FDIC to facilitate an acquisition of its stock, an acquisition of its assets and assumption of its liabilities, or its merger with another corporation; or
- (6) Is an institution which has requested or agreed in a cease and desist order or similar order that the provisions of this chapter can be applied."

SECTION 9. Section 437B-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The certification program shall provide for issuing a certificate to mechanics generally skilled in the repair of motor vehicles and to mechanics who specialize in certain areas of motor vehicle repair. A person may be certified as being generally skilled in the repair of motor vehicles, specially skilled in one or more areas of motor vehicle repair, or both generally and specially skilled. Each area shall be separately tested and certified. The program shall provide for apprenticeship leading to certification as a mechanic. The program may be an apprenticeship program registered with the department of labor and industrial relations in accordance with chapter 372. Nothing in this section or chapter shall prevent a student in a course leading to certification from repairing motor vehicles so long as the student is supervised by a mechanic."

SECTION 10. Section 460J-16, Hawaii Revised Statutes, is amended by

amending subsection (c) to read as follows:

"(c) In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein."

SECTION 11. Section 485-14.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The exemption provided under [the] this section shall be limited to the sale of variable annuities and other variable insurance products. The sale of any other security shall constitute a violation of this chapter. The commissioner retains full powers to inspect the records of any dealer pursuant to section 485-16."

SECTION 12. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

SECTION 13. Section 584-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

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"(b) If it appears to the satisfaction of the court that [a man] an alleged, known, or presumed [to be the father] parent of the child is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal parents or guardian of the minor [and] as parties. The court may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parents 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.

(c) The county attorney or corporation counsel, upon request of the child support enforcement agency, shall represent the child's custodial parent, or the custodial parent's personal representative or parent if the custodial parent has died, or any agency authorized to seek the determination and establishment of paternity or maternity under chapter [346.] 576D, if an application for services is made. Fees may be charged of the applicant as provided for by [the provisions of] chapter [346.] 576D."

SECTION 14. Act 321, Session Laws of Hawaii 1991, is amended by amending the prefatory language in section 19 to read as follows:

"SECTION 19. Section 327D-24, Hawaii Revised Statutes, is [repealed:] amended to read as follows:"

SECTION 15. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1992, whether enacted before or after the effective date of this Act, unless the other acts specifically provided otherwise.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 17. This Act shall take effect upon its approval; provided that section 14 shall take effect retroactive to July 1, 1991.

(Approved May 27, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 88

H.B. NO. 2850

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 704-404, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of

health from within the department of health. The three examiners shall be appointed from a list of certified sanity examiners as determined by the [state] department of health. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose, and may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

SECTION 2. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) When ordering [such] a hearing pursuant to subsection (2) the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified sanity examiners as determined by the [state] department of health. To facilitate [such] the examination and the proceedings thereon, the court may cause the defendant, if not then [so] confined, to be committed to a hospital or other suitable facility for the purpose of examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

SECTION 3. Section 704-414, Hawaii Revised Statutes, is amended to read as follows:

**"§704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release.** Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge or for modification of conditions of release, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified sanity examiners as determined by the [state] department of health. To facilitate [such] the examination and the proceedings thereon, the court may cause [such person,] the defendant, if not then [so] confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the [person] defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a)[,] and (b), (6), (7), (8), and (9). As used in

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this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

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 27, 1992.)

## ACT 89

H.B. NO. 2861

A Bill for an Act Relating to Student Loan Funds.

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

SECTION 1. Section 309-1.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§309-1.5 Authorization corporation to acquire educational loan notes.]** In order to permit a corporation to issue obligations as contemplated by section 103(e) of the federal Internal Revenue Code of 1954, as amended, in an amount not to exceed \$20,000,000, the] The governor is [hereby] authorized to request the organization of a private not-for-profit corporation to be affiliated with United Student Aid Funds, Inc., which corporation shall be established and operated exclusively for the purpose of acquiring [educational] student loan notes [incurred] held by local financial institutions under the federal Higher Education Act of 1965[; provided any such corporation:], as amended. The governor is authorized to request that United Student Aid Funds organize a single private not-for-profit corporation known as the Secondary Market Services Corp.—Hawaii for the exclusive purpose of this section. The corporation:

- (1) Shall be a not-for-profit corporation organized under the laws of the State and authorized to do business within the State and shall be the [sole] only not-for-profit corporation organized within the State requested to [exercise the acquisition of] conduct a program of acquiring student loan notes;
- (2) Shall be required by its articles of incorporation and bylaws to devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the [State;] United States; and
- (3) [Shall provide in its articles of incorporation and bylaws that it will issue debt only:
  - (A) Upon the approval of the legislature;
  - (B) Upon the approval of the governor and director of finance not more than sixty days prior to the sale of that debt; and
  - (C) If the proceedings authorizing or providing for such debt and the face of each obligation evidencing all or a part of such obligations provide that such obligations shall not constitute nor be deemed to constitute a general, limited, or moral obligation of the State of Hawaii, or any department, agency, or political subdivision thereof under any constitutional, statutory,

or other construction; and the full faith and credit of neither the State of Hawaii nor any department, agency, or political subdivision thereof are pledged or shall be available for the payment of either the principal of or interest on such obligation. Such obligations shall provide that they are payable solely from the revenues and assets of the corporation pledged thereto.]

Is authorized to issue obligations pursuant to section 103 of the Internal Revenue Code of 1986, as amended. Those obligations shall be payable solely from the revenues and assets of the corporation pledged thereto and shall not constitute a general, limited, or moral obligation of the State, or any department, agency, or political subdivision thereof under any constitutional, statutory, or other provision. Neither the full faith and credit of the State nor that of any department, agency, or political subdivision thereof shall be pledged to the payment of the principal of, or interest on, those obligations and those obligations shall so state on their face."

**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 27, 1992.)

**ACT 90**

H.B. NO. 3038

A Bill for an Act Relating to the Use of Academic Designations in the Practice of Acupuncture.

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

**SECTION 1.** Section 436E-13, Hawaii Revised Statutes, is amended to read as follows:

**“[§436E-13] Use of titles.** (a) A licensee who has been awarded a license to practice acupuncture by the board [of acupuncture] in this State may use the title of “Licensed Acupuncturist” or designation “L.Ac.” with the licensee’s name in an advertisement for acupuncture or announce or append the designation to the licensee’s name.

(b) A licensee who has been awarded an earned doctoral degree may use the designation “Ph.D.” in an advertisement for acupuncture or announce or append the designation to the licensee’s name if the degree was granted from a university or college recognized [and approved by the board in recognition of accomplishments in the study or practice of acupuncture (traditional oriental medicine).] by a regional or national accrediting body recognized by the United States Department of Education. A Ph.D. recognized by the board under this subsection shall designate a non-practitioner as opposed to a practitioner or “doctor” of acupuncture as provided in subsection (c).

(c) A licensee who has been awarded an earned doctoral degree from a university or college recognized [and] by a regional or national accrediting body recognized by the United States Department of Education, or approved by the

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board in the study or practice of acupuncture (traditional oriental medicine), and who has met the standards for the use of academic designations as developed by the board may use the [word] designation "Doctor" [or], the prefix "Dr." [providing], or the designation "D.Ac.", provided that the word "Acupuncturist" immediately follows the licensee's name. The board shall establish the standards required for the use of these academic designations in its rules. The rules shall provide for a time period to enable a licensee to meet the requirements for the continued use of the academic designations and shall prohibit the use of the designations after that period unless those requirements are met.

(d) [Other] Except as provided in this section, use of other titles, prefixes, or designations shall not be permitted [under this chapter when authorized by the board or a department of education curriculum]."

SECTION 2. Act 161, Session Laws of Hawaii 1988, is amended by amending section 2, as amended by section 5 of Act 166, Session Laws of Hawaii 1990, to read as follows:

"SECTION 2. [The Board of Acupuncture shall develop academic standards for the use of academic designations in the practice of acupuncture. The standards shall include provisions that a Ph.D. for acupuncture shall not be awarded unless recognized by a regionally accredited review body. If a Ph.D. is awarded it will be to designate a non-practitioner of acupuncture as opposed to a doctor of acupuncture degree which would be for practitioners of acupuncture. These] Academic standards shall be adopted by the Board [by July 1, 1991, after which such academic standards] and shall be reviewed by the Office of the [Legislative] Auditor who will report to the Legislature twenty days before the convening of the [1992] 1999<sup>1</sup> Regular Session."

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

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

(Approved May 27, 1992.)

### Note

1. So in original.

## ACT 91

H.B. NO. 3039

A Bill for an Act Relating to the Design Professional Conciliation Panel.

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

SECTION 1. Section 672-2.1, Hawaii Revised Statutes, is amended to read as follows:

"[§672-2.1] **Determination of unsuitability.** Any party [or any person served with notice of a claim] may file a motion with the circuit court in the judicial circuit in which the claim arose for a determination that the subject matter of the dispute is unsuitable for review by a panel under this chapter; provided that no such application may be filed within ten days of the date on which the claim is scheduled to be heard by a panel or after such a hearing has taken place.

In determining whether the subject matter of a dispute is unsuitable for disposition pursuant to this chapter, a court may consider:

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Problems referred to the court where court regulated discovery is necessary;
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;
- (4) The fact that the design professional's involvement in the matter is distinctly secondary in importance to the involvement of parties not covered by this chapter;
- (5) The potential for unreasonable delays in reaching any resolution of the matter by its referral to a panel pursuant to this chapter; [or]
- (6) The fact that there are too many parties or issues involved to be effectively handled by the informal processes of this chapter[.]; or
- (7) The fact that one or more of the design professionals named in the claim is no longer subject to the jurisdiction of the panel, or refuses to participate in the proceedings before the panel, to the detriment of the remaining parties.

For the purpose of any such application there shall be a rebuttable presumption that the subject matter is unsuitable for review by a panel under this chapter where the claim against the design professional arises out of a third-party action in pending litigation.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions."

SECTION 2. Section 672-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 [handled] which will become payable when the decision of the panel is submitted [and shall]. 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 [and they]. These costs shall be paid by the department of commerce and consumer affairs from funds collected from the [claimant and defendant.] 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. [The] 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 [board] 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 3. Section 672-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person or the person's representative claiming that a tort has been committed by the design professional or entities employing such design professionals shall file a claim with the department of commerce and consumer affairs before a suit based on the claim may be commenced in any court of the State. All claims shall be submitted to the department of commerce and consumer affairs in writing [on forms provided by the department. If the claim is presented orally, the department of commerce and consumer affairs shall reduce the claim to writing]. The claimant shall set forth facts upon which the claim is or may be based and shall include the names of all parties against whom the claim is or may be made who are known to the claimant. Within five business days thereafter, the panel shall give notice of the claim, by certified mail, to all architects, engineers, surveyors, or landscape architects and others who are or may be parties to the claim and shall furnish copies of [written] the claims to such persons. Such notice shall set forth a date, not more than twenty days after mailing the notice, within which any design professional 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 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 hearing. The times originally set forth in the notice may be changed by the chairperson, on due notice to all parties, for good cause; provided that a party requesting the rescheduling of the hearing within seven days of the scheduled date shall be required in the sole discretion of the panel chairperson to additionally compensate the panel in an amount equal to the fee panel members

receive pursuant to section 672-3."

SECTION 4. Section 672-5, Hawaii Revised Statutes, is amended to read as follows:

**"§672-5 Design professional conciliation panel hearing; fact-finding; evidence; voluntary settlement.** Every claim of a tort shall be heard by the design professional conciliation panel [within thirty days] as soon as possible after the date for filing a response. No persons other than the panel, witnesses, and consultants called by the panel, and the persons listed in section 672-6 shall be present except with the permission of the chairperson. The panel may, in its discretion, conduct an inquiry of a party, witness, or consultant without the presence of any or all parties.

The hearing shall be informal. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but such record shall not be made available to the parties. The panel may receive any oral or documentary evidence. Questioning of parties, witnesses, and consultants may be conducted by the panel, and the panel may, in its discretion, permit any party, or any counsel for a party to question other parties, witnesses, or consultants. The panel may designate who, among the parties, shall have the burden of going forward with the evidence with respect to such issues as it may consider, and unless otherwise designated by the panel, when a design professional's records have been provided for the claimant's proper review, such burden shall initially rest with the claimant at the commencement of the hearing.

The panel shall have the power to require by subpoena the appearance and testimony of witnesses and the production of documentary evidence. When such subpoena power is utilized, notice shall be given to all parties. The testimony of witnesses may be taken either orally before the panel or by deposition. In cases of refusal to obey a subpoena issued by the panel, the panel may invoke the aid of any circuit court in the State, which may issue an order requiring compliance with the subpoena. Failure to obey such order may be punished by the court as a contempt thereof. Any member of the panel, the director of the department, or any person designated by the director of the department may sign subpoenas. Any member of the panel may administer oaths and affirmations, examine witnesses, and receive evidence. Notwithstanding such powers, the panel shall attempt to secure the voluntary appearance, testimony, and cooperation of parties, witnesses, and consultants without coercion.

At the hearing of the panel and in arriving at its opinion, the panel shall consider, but not be limited to, statements or testimony of witnesses, construction documents, inspection reports, calculations, and other records kept in the usual course of the practice of the design professional without the necessity for other identification or authentication, statements of fact, or opinion on a subject contained in a published treatise, periodical, book or pamphlet, or statements of experts without the necessity of the experts appearing at the hearing. The panel may, upon the application of any party or upon its own decision, appoint as a consultant, an impartial and qualified architect, engineer, surveyor, or landscape architect or other professional person or expert to testify before the panel or to conduct any necessary professional or expert examination of the claimant or relevant evidentiary matter and to report to or testify as a witness thereto. Such a consultant shall not be compensated or reimbursed except for travel and living expenses to be paid which may be incurred as a result of such person's appearance before the panel. Such expenses shall be paid by the department of commerce and

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consumer affairs [to be paid] as provided in section 672-3. [Discovery] Except for the production of documents and records kept in the usual course of the practice of an architect, engineer, surveyor, or landscape architect, discovery by the parties shall not be allowed. Requests for production of documents shall be submitted to the chairperson of the panel for approval, denial, or modification, at the chairperson's sole discretion.

During the hearing and at any time prior to the rendition of an advisory decision pursuant to section 672-7, the panel may encourage the parties to settle or otherwise dispose of the case voluntarily."

**SECTION 5.** Section 672-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within [fifteen] 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 counsell[.] 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 [and after]. 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 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 27, 1992.)

## **ACT 92**

H.B. NO. 3041

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, 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 under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended, or [under section \_\_\_\_ of the Act of \_\_\_\_ (Stat. \_\_\_, \_\_\_, )<sup>1]</sup>] under section 3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases such person or persons need not be eighteen years of age. Such designation shall be in writing, may be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest such 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;
- (2) If there is no husband or wife, then the children.

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 lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, or children 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 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 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<sup>2</sup> 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 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 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 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."

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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 27, 1992.)

### Notes

1. So in original.
2. Should be underscored.

## ACT 93

H.B. NO. 3047

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Section 286-234, Hawaii Revised Statutes, is amended to read as follows:

**“[§286-234] Employer responsibilities.** (a) Each employer [must] shall require the applicant to provide the information specified in section 286-233.

(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.
- (c) Any employer who violates this section shall for a first conviction be fined not more than \$100; for conviction of a second offense committed within one year after the date of the prior conviction, the employer shall be fined not more than \$300; for conviction of a third or subsequent offense committed within two years after the date of the second conviction, the employer shall be fined not more than \$1,000.”

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

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

(Approved May 27, 1992.)

## ACT 94

H.B. NO. 3051

A Bill for an Act Relating to Occupational Safety and Health Penalties.

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

SECTION 1. Section 396-10, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Any employer who has received an order or citation for a serious violation of any standard[,] or rule[, or regulation promulgated] adopted pursuant to this chapter[,] shall be assessed a civil penalty of not more than [\$1,000] \$7,000 for each [such] violation.

(c) Any employer who has received an order or citation for a violation of any standard[,] or rule[, or regulation promulgated] adopted pursuant to this chapter, and [such] the violation is specifically determined not to be of a serious nature,, may be assessed a civil penalty of up to [\$1,000] \$7,000 for each [such] violation."

SECTION 2. Section 396-10, Hawaii Revised Statutes, is amended by amending subsections (e), (f), and (g) to read as follows:

"(e) Any employer who violates any of the posting requirements[, as] prescribed under [the provisions of] this chapter[,] shall be assessed a civil penalty of up to [\$1,000] \$7,000 for each violation.

(f) Any employer who willfully or repeatedly violates this chapter, or any standard, rule, [regulation,] citation, or order issued under the authority of this chapter, shall be assessed a civil penalty of not less than \$5,000 nor more than [\$10,000] \$70,000 for each violation.

(g) Any employer [who willfully or repeatedly violates] convicted of willful or repeated violation of any standard, rule, [regulation,] citation,<sup>1</sup> or order issued under authority of this chapter [and that violation caused] resulting in the death [to] of an employee[, shall], upon conviction,[] be punished by a fine of not more than [\$10,000] \$70,000 or by imprisonment for not more than six months or both, except that if the conviction is for a violation committed after a first conviction [of such person], punishment shall be by a fine of not more than [\$20,000] \$70,000 or by imprisonment for not more than one year or [by] both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of willful conduct."

SECTION 3. Section 396-10, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

"(o) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, [or] 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 [\$10,000] \$50,000 shall be added to the maximum fine imposed for conviction [under] of a class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and [\$5,000] \$25,000 shall be added to the maximum fine imposed for conviction [under] of a class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and [\$1,000] \$10,000 shall be added to the maximum fine for conviction [under] of a class C felony;
- (4) One year shall be added to the maximum term of imprisonment and [\$500] \$2,000 shall be added to the maximum fine for conviction [for] 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 [for] of a petty misdemeanor."

SECTION 4. Section 396-11, Hawaii Revised Statutes, is amended to read as follows:

**"§396-11 Review.** (a) Any citation, proposed penalty, or order of the director shall be final and conclusive against the employer unless the employer files with the director a written notice of contest of the citation, the abatement period stated in the citation, the proposed penalty, or order within twenty days after receipt of [such] the citation, proposed penalty, or order.

(b) The employer may petition the director for modification of the abatement requirements in a citation[. The]; provided the employer shall file [said] the petition no later than the close of the next business day following the date on which abatement is required, or under exceptional circumstances and for good cause shown, at a later date. The petition for modification may be filed after the twenty-day period for contesting the citation has expired [where] if the initial abatement period stated in the citation expires after the twenty-day period for filing a notice of contest has run.

(c) The director shall issue an order either affirming or modifying the abatement requirement. The director may issue an order modifying the abatement requirement upon a showing by the employer of a good faith effort to comply with the abatement requirements of a citation and that abatement has not been completed because of factors beyond the employer's reasonable control.

(d) Any employee or representative of employees may file with the director a written notice of contest of the initial abatement period stated in a citation or order [with the director] alleging that the period of time fixed for abatement is unreasonable[.]; provided [such] the notice is filed within twenty days after the citation or order has been posted. Any employee or representative of employees may also file a written notice of contest of an order granting modification of the abatement period[. Such]; provided the notice shall be filed within ten days of the posting of the order.

(e) Any employee or representative of employees may file a notice of contest of an order of the director denying a complaint of discrimination filed by an employee pursuant to section 396-8(e)[.], provided that in each case [such] the notice is filed within twenty days after [the] receipt of [such] the order by the employee.

(f) Any employee or representative of employees may file a notice of contest of an order granting an employer's application for a variance under section 396-4(a)(3)[.], provided [such] the notice is filed within twenty days after the posting of a final order or decision of the director.

(g) [The] Upon receipt, the director shall advise the appeals board of [a] any notice of contest [upon receiving any such notice].

(h) The appeals board shall afford an opportunity for a de novo hearing on any notice of contest[. Such hearings before the appeals board shall be de novo] except where rules [and regulations] require a prior formal hearing at the department level, the proceedings of which are required to be transcribed, in which case review before the appeals board shall be confined to the record only.

(i) The appeals board may affirm, modify, or vacate the citation, the abatement requirement therein, or the proposed penalty or order or continue the matter upon [such] terms and conditions as may be deemed necessary, or remand the case to the director with instructions for further proceedings, or direct [such] other relief as may be appropriate.

(j) The affected employees or representatives of affected employees shall be provided an opportunity to participate as parties to hearings under this section.

(k) The director shall submit annual reports to the legislature on the number of contests filed pursuant to this section, the disposition of each, and information indicating whether the issue involved an employee or employees of the department who failed to act within the scope of their office, employment, or authority under this chapter.”

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 27, 1992.)

**Note**

1. Comma should be underscored.

**ACT 95**

H.B. NO. 3052

A Bill for an Act Relating to Boiler and Elevator Safety Inspector Qualifications.

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

SECTION 1. Section 397-6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A qualified elevator inspector is a person who [has worked at least five years as an elevator mechanic<sup>1</sup> who] meets the criteria of the American society of mechanical engineers and the standards for the qualification of elevator inspectors of the American national standards institute and has satisfied requirements established by the department of labor and industrial relations[; provided that these experience requirements shall not apply to any person who was serving as an elevator inspector or a supervisor elevator inspector for the department of labor and industrial relations on May 22, 1974].”

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 27, 1992.)

**Note**

1. So in original.

**ACT 96**

H.B. NO. 3059

A Bill for an Act Relating to Fishing Permits.

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

SECTION 1. Section 187A-6, Hawaii Revised Statutes, is amended by

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

“(b) Notwithstanding the provisions of any other law, the department may issue permits, not longer than one year in duration, to any person to fish or possess or use fishing gear otherwise prohibited by law, in any part of the State, for scientific, educational, or propagation purposes, except as prohibited by chapter 195D[,] and subject to those restrictions the department deems desirable. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) [Any aquatic life taken under the authority of the permit shall be accompanied by the permit while being taken or transported and shall be exempt from seizure while being transported or while in possession, in accordance with the permit.] The department may adopt rules pursuant to chapter 91 for the purpose of this section.”

SECTION 2. Section 188-31, Hawaii Revised Statutes, is amended to read as follows:

**“§188-31 [Nets and traps] Permits to take aquatic life for aquarium purposes.<sup>1</sup>** [The board of land and natural resources or agents designated by the board] (a) Except as prohibited by law, the department [may], upon receipt of a written application, may issue [a] an aquarium fish permit, not longer than one year in duration, to use fine meshed traps, or fine meshed nets[,] other than throw nets, for the taking of marine or [fresh water] freshwater nongame fish and other aquatic life for aquarium purposes. [The]

(b) Except as prohibited by law, the permits shall be issued only to persons who can satisfy the [board or its agents] department that they possess facilities to and can maintain fish and other aquatic life alive and in reasonable health. [The board may cancel any aquarium fish permit for any infraction of the terms of the permit when such fact is made evident to the satisfaction of the board; provided that no new aquarium fish permit shall be issued to any such permittee for a period of two years after the cancellation of the permittee's permit.]

(c) It shall be illegal to sell or offer for sale any fish and other aquatic life taken under [authority of] an aquarium fish permit unless [the] those fish [is] and other aquatic life are sold alive for aquarium purposes.

The department may adopt rules pursuant to chapter 91 for the purpose of this section.

(d) For the purposes of this section:

(1) “[aquarium] Aquarium purposes” means to hold salt water fish, fresh water nongame fish, or other aquatic life alive in a state of captivity as pets, for scientific study, or for public exhibition or display, or for sale for these purposes; and

(2) “[aquarium] Aquarium fish permit” means a permit issued by the board for the use of fine mesh nets and traps to take salt water fish, fresh water nongame fish, or other aquatic life for aquarium purposes.”

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 27, 1992.)

**Note**

1. "For aquarium purposes" should not be underscored.

**ACT 97**

H.B. NO. 3073

A Bill for an Act Relating to Irrigation Project Acreage Assessments.

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

SECTION 1. Section 167-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) The board of agriculture shall also have the power[:] to:
- (1) [To establish] Establish and certify the total amount of acreage assessments to be levied annually and collect the assessments within each project;
  - (2) [To set] Set and from time to time revise tolls [which] that it shall charge for the water provided by its facilities, subject to the rate policies established hereunder; [to establish]
  - (3) Establish priorities between the several lands included in a project according to the use to which the lands are put or other reasonable basis for classification; [to govern]
  - (4) Govern the furnishing of water in the event of a shortage of supply and to correlate water tolls with [such] these priorities;
  - [(3) To charge] (5) Charge and collect [such] water tolls, fees, and other charges established in connection herewith;
  - [(4) To sell,] (6) Sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein, to any person, firm, corporation, or government, except as prohibited by the laws of the State;
  - [(5) To hold,] (7) Hold, clear, and improve property;
  - [(6) To borrow] (8) Borrow money for any of the purposes hereunder;
  - [(7) To insure] (9) Insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable;
  - [(8) To include] (10) Include in any construction contract [let] executed in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions [which] that the federal government may have attached to its financial aid of the project[.];
  - (11) Delegate to the chairperson or employees of the department, subject to the board's control and responsibility, powers and duties as may be lawful or proper for the performance of the functions vested in the board;
  - (12) Set, charge, and collect interest and a service charge on delinquent payments due on water tolls, acreage assessments, or other related accounts; provided that the rate of interest shall not exceed one per cent per month and the service charge shall not exceed \$7 for each delinquent payment; and

- (13) Collect delinquent acreage assessments in accordance with sections 231-61 to 231-70; provided that the chairperson shall have all of the powers provided to the director of taxation or state tax collector under chapter 231 that may be necessary or convenient to collect delinquent acreage assessments.”

SECTION 2. Section 167-19, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) All irrigation projects established pursuant to this chapter shall be administered by the board of agriculture. In making the final determination to establish a project, the board shall [determine]:

- (1) Determine the proportion of acreage assessments to be borne by the agricultural land and pasture land within the project[.]; and
- (2)<sup>1</sup> Cause to be prepared by the engineering program manager a map setting forth in detail the exterior boundaries of the lands to be included within the project and an acreage assessment roll listing all known land occupiers whose lands are to be included within the project. The proportion of acreage assessments to be borne by pasture land [may], [in] at the discretion of the board, may be less than but not more than the proportion to be borne by agricultural land, in which event the agricultural land shall be first served with water in times of drought or shortage of supply. The proportions to be borne by agricultural and pasture lands shall be certified [to the director of taxation] by the board and shall not be changed after final determination to establish the project, except in conjunction with a redefinition of the boundaries of or consolidation or separation of the project, and then only in the manner and within the limitations specified in conjunction therewith.

The board shall determine and certify [to the director of taxation] on or before March 31 of each year [(1)] the amount of acreage assessments necessary in that calendar year for the acquisition, construction, and maintenance of irrigation facilities for each project, and [(2)] the acreage of agricultural and pasture land of each land occupier within the project. The department shall immediately notify the land occupiers by certified mail or registered letter of the amounts assessed on the respective properties and the payment due date.

(b) Upon the board's certification the [director of taxation or the director's properly authorized deputies or other assistants,] chairperson, or the chairperson's designee, shall determine the acreage assessment to be levied against the property of each land occupier in the following manner:

- (1) By determining the amount of acreage assessments to be borne by the agricultural land and the pasture land within the project according to the proportion previously certified [to the director] by the board;
- (2) By dividing the amount of acreage assessment to be borne by the agricultural land by [a] the number of acres of agricultural land within the project and multiplying the quotient by the number of acres of agricultural land of the occupier within the project; and
- (3) By dividing the amount of acreage assessment to be borne by the pasture land by the number of acres of pasture land within the project and multiplying the quotient by the number of acres of pasture land of the land occupier within the project.

The acreage assessments shall be in addition to any real property taxes, and shall

be collected by the [director of taxation in the same manner as the taxes.] board together with the monthly water tolls. Except in the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall be a paramount lien against the entire tract, including improvements, of the land occupier of which the assessed agricultural or pasture land, or both, of the land occupier included within the project forms a part. Acreage assessments levied pursuant to this chapter shall be a lien against each lot or parcel of land assessed from the date of board certification declaring the assessment, and these liens shall have priority over all other liens except real property tax liens and prior recorded state tax liens on real property. The lien may be foreclosed in the same manner as liens for [real property] taxes [and] in accordance with sections [246-55 to 246-61.] 231-61 to 231-70. In case of the foreclosure of any homestead land pursuant to [such] sections 231-61 to 231-70, the foreclosure sale shall be subject to chapter 171. In the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall not constitute a lien on the property involved and notice of any delinquent acreage assessment shall be served upon the board of land and natural resources or the Hawaiian homes commission, as the case may be, for payment."

**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 27, 1992.)

**Note**

1. Should be underscored.

**ACT 98**

H.B. NO. 3074

A Bill for an Act Relating to the Sale of Vegetable and Agricultural Seed.

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

**SECTION 1.** Section 150-22, Hawaii Revised Statutes, is amended to read as follows:

**"§150-22 Rules.** Subject to chapter 91, the department may adopt rules with respect to:

- (1) Designation of noxious weed seed for the purpose of this chapter;
- (2) Maximum amount of noxious weed seed and other weed seed which may be found in agricultural or vegetable seed sold in the State;
- (3) Germination standards for agricultural and vegetable seed;
- (4) Inspection, sampling, and testing of seed at the request of interested persons, and charges to be made for these services;
- (5) Minimum standards pertaining to the process of certifying seed; and
- (6) Other requirements regarding the sale and labeling of seed and seed licenses, including the license fee, as it deems necessary to effectuate this chapter.

In adopting rules with respect to standards for agricultural and vegetable seed and tolerances of noxious weed seed, the department shall follow as closely

## ACT 99

as practicable the standards and tolerances of the Federal Seed Act, or as adopted by the Association of Official Seed Analysts."

SECTION 2. Section 150-23, Hawaii Revised Statutes, is amended to read as follows:

"**§150-23 Prohibiting sales; germination tests.** A person may not sell, offer, or expose for sale within the State any agricultural or vegetable seed for planting purposes[, provided:] if any one or more of the following conditions exist:

- (1) The seed has not been labeled in accordance with sections 150-24 and 150-25;
- (2) [No false] A false or misleading advertisement has been made with respect to the seed;
- (3) The amount of noxious weed seed and other weed seed is [not] in excess of tolerances established by rules of the department;
- (4) A testing of the seed, to determine the percentages of germination, has not been completed within nine months, exclusive of the calendar month in which the test was completed, [to determine the percentage of germination.] before the date of sale or offer or exposure for sale. The department, by rule, may extend the nine-month limitation for seed that has been packaged or processed under conditions that would greatly extend the viability of the seed;
- (5) Descriptive words or phrases on labels are not clearly distinguishable from the kind and variety names[.]; or
- (6) The seed has a false or misleading label."

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 27, 1992.)

## ACT 99

H.B. NO. 3090

A Bill for an Act Relating to Health Care.

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

SECTION 1. Act 291, Session Laws of Hawaii 1990, is amended by amending section 3 to read as follows:

"**SECTION 3.** There is established a "blue ribbon" panel within the department of health to examine the financial and economic dynamics of the health care industry, including mental health, in Hawaii, with [a] special emphasis on utilizing the data already generated in previous studies, gathering other pertinent information, and pursuing the following goals:

- (1) To understand how Hawaii's health care businesses make money, lose money, finance their operations, and transfer costs to consumers;
- (2) To understand the true problems inherent in federal programs, such

- as medicare and medicaid, and to understand their impacts on the financial well-being of health care delivery systems;
- (3) To understand the difference between a long-term care business, an acute hospital business, a primary care business, a health maintenance organization, and outreach efforts, in terms of how each kind of health care delivery business attempts to survive and prosper; and
- (4) To determine the effectiveness and advisability of utilizing specific mechanisms to control the cost of health care by:
- (A) Regulating health insurance;
- (B) Regulating facility costs;
- (C) Using mechanisms such as the cooperative purchasing of vaccines and competitive bidding to procure services and equipment; and
- (D) Utilizing any combination of subparagraphs (A), (B), and (C), as well as other strategies.

The governor, in consultation with the speaker of the house of representatives and the president of the senate, shall appoint a "blue ribbon" panel to include representatives from: the office of state planning, labor unions, business groups, financial institutions, consumer advocates, and other state agencies, such as the state health planning and development agency, the department of labor and industrial relations, the department of personnel services, and the department of budget and finance, as well as one representative from the Hawaii medical association and one representative from the health care association of Hawaii. [The legislative auditor shall provide assistance to the blue ribbon panel upon request.]

The blue ribbon panel shall submit a preliminary report of its findings and recommendations to the legislature not less than twenty days prior to the convening of the regular session of 1991, and a final report not less than twenty days prior to the convening of the regular session of [1992] 1993.

SECTION 2. Act 291, Session Laws of Hawaii 1990, is amended by amending section 11 to read as follows:

"SECTION 11. This Act shall take effect on July 1, 1990, and shall be repealed on [June 30, 1992<sup>1</sup>] December 31, 1992."

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

SECTION 4. This Act shall take effect upon approval.

(Approved May 27, 1992.)

**Note**

1. So in original.

**ACT 100**

H.B. NO. 3111

A Bill for an Act Relating to Gifts.

*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:

## ACT 101

**“§353 -Gifts.** (a) Notwithstanding any other law to the contrary, the department may receive, use, manage, and invest moneys or property, real, personal, or mixed, which may be given, bequeathed, devised, or in any other manner provided from sources other than the legislature or the federal government, for any purpose authorized by this chapter and not inconsistent with any terms or conditions imposed by the donor, subsection (b), or chapter 84.

(b) A gift of money shall be deposited by the director of finance in a separate account in the state treasury and expended in accordance with law and any terms and conditions that may pertain to the gift. Unless otherwise specified as a term or condition, the department may convert a gift of property into money. Income derived from property or the conversion of property may be used to pay for the storage, handling, and distribution of other properties held by the department.

(c) All expenditures made pursuant to this section shall be subject to the approval of the director of public safety.

(d) The department shall maintain records of each gift, the essential facts of the management thereof, details relating to expenditures of all moneys made pursuant to this section, and the current disposition, use, and condition of each gifted property held by the department. This information shall be compiled and transmitted annually to the legislature and the governor, and shall be made available to the general public free of charge.”

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

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

(Approved May 27, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 101

H.B. NO. 3148

A Bill for an Act Relating to Pacific Basin and Other International Activities.

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

SECTION 1. The evolution of our island society has created a cosmopolitan people with an international outlook characterized by an appreciation of, and sensitivity to, cultures far different from our own. This spirit of internationalism has been the foundation for myriad activities in business, government, education, and culture, as well as personal ties between our citizens and those from many other nations, especially the Pacific-Asian region. Hawaii's ties to other nations and peoples are being further strengthened through the globalization of world trade. Hawaii must be fully prepared to assume a growing role in international affairs by fostering stronger cooperative relationships between the State and countries throughout the world, hosting visiting dignitaries to the State, and promoting endeavors that enhance Hawaii's standing as an international center.

This can be achieved through the establishment of one centralized office to coordinate the international activities of the various state agencies to maximize the use of resources and avoid duplication of efforts. This office will focus the State's international efforts, heighten public awareness of the importance of Hawaii's international role to our future, and propose new programs to achieve

our international goals.

The purpose of this Act is to create an office of international relations to play a critical and needed role in fostering, coordinating, and creating international programs and policies that will affect the State's future development.

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

## **"CHAPTER OFFICE OF INTERNATIONAL RELATIONS"**

**§ -1 Definitions.** As used in this chapter, unless the context requires otherwise:

"Director" means the director of the office of international relations.

"Office" means the office of international relations.

"Sister-state agreement" means a formal agreement between the State, through the governor of Hawaii, and an equivalent jurisdiction of another country, which provides for cultural and economic exchanges.

**§ -2 Office of international relations.** There is established, within the office of the governor, the office of international relations. The head of the office shall be known as the director of international relations. The director shall have experience in international affairs, business, law, or other related fields. The director shall be appointed by the governor without regard to chapters 76 and 77, and shall be compensated at a salary level set by the governor. The director, without regard to chapters 76 and 77, may retain such staff as may be necessary for the purpose of this chapter, and may set the salary levels for the same. The director and staff shall be included in any benefit program generally applicable to the officers and employees of the State.

**§ -3 General functions, duties, and powers of the office of international relations.** The office shall serve as the governor's principal resource for the overall analysis, formulation, and coordination of state policies and strategies relating to international matters. The office shall have the following powers, functions, and responsibilities:

- (1) Formulate and articulate comprehensive statewide goals, objectives, policies, and priorities with respect to matters of an international nature;
- (2) Identify and analyze significant issues, problems, and opportunities in the international arena that may confront the State and its citizens;
- (3) Collect, analyze, maintain, and disseminate information relating to international activities, programs, and organizations within the State and that involve or may involve the State and its agencies;
- (4) Serve as the governor's representative and the State's liaison with county, state, and federal agencies, as well as foreign governments and their local consulates, with respect to international matters;
- (5) Provide direction and coordination of the international programs, projects, and activities of the various state departments and agencies;
- (6) Devise and recommend legislative and administrative actions for the accomplishment of the State's international policies and goals;
- (7) Stimulate and promote an international awareness and education by

- the State and its citizens through various programs, including, but not limited to, the publication of newsletters, bulletins, and other materials, and community outreach efforts;
- (8) Meet with foreign governmental agencies and officials, institutions of higher education, and other organizations, to nurture and promote new cooperative ventures and agreements of scientific and technological exchange, as well as health, educational, and cultural exchanges;
  - (9) Host government and business officials and other foreign dignitaries at conferences, meetings, and social occasions, or other events on matters pertaining to economic opportunities overseas, to enhance the State's image in the global marketplace;
  - (10) Enter into contracts of cooperative agreements with foreign nations or political subdivisions thereof on behalf of the State, subject to approval by the governor and in accordance with the laws of the United States;
  - (11) Adopt rules pursuant to chapter 91 for the purposes of this chapter;
  - (12) Attract international trade, businesses, and investments to the State;
  - (13) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
  - (14) Do anything in its discretion, with the prior approval of the governor and within available resources, as may be relevant to this chapter and beneficial to the State's economy; and
  - (15) Submit an annual report to the legislature prior to the convening of each regular session on the status of international relations as it pertains to the activities of the office for the preceding year.

**§ -4 State strategic plan for international activities.** The office shall develop a comprehensive, state strategic plan for international activities. The plan shall include, but not be limited to, the establishment of immediate and long-range goals for programs and services relating to international activities in the State and the assignment of goals to appropriate state agencies. The office shall submit its plan to the legislature not later than December 31, 1992.

**§ -5 Protocol services.** The office shall develop uniform protocol procedures for state agencies.

**§ -6 Sister-state agreements.** The office shall develop criteria by which sister-state agreements shall be established, and shall be the lead agency to implement each sister-state agreement.

**§ -7 Powers of other departments and agencies; cooperation with office.** It shall be the duty and responsibility of every state agency operating programs and services relating to international activities, in actively working toward the goals and objectives articulated in the state strategic plan for international activities, to coordinate with the office. The executive heads of all appropriate departments and agencies shall cooperate with the office in providing information as the office deems necessary for the effective discharge of its duties. Nothing in this chapter shall be deemed to delegate or detract in any way from the functions, powers, and duties prescribed by law for any other department or agency of the State, nor to interrupt or preclude the direct relationships of any such department or agency or units of county government in the performance of their functions,

powers, and duties. Each department, agency, officer, and employee of the State shall cooperate and assist the office in the performance of the functions, powers, and duties of the office.

**§ -8 Gifts.** (a) The office may receive, manage, and invest moneys or other property, real, personal, or mixed, which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the benefit of the office, or the aid or advantage of the State or counties, and in general act as trustee on behalf of the governor for any of these purposes or objectives.

(b) The office shall keep suitable books of accounts to record each gift, the management of each gift, and the expenditure of the income. A statement of all receipts and expenditures shall be included in the regular reports required to be made by the office.

**§ -9 Gift account.** The office, with the approval of the director of finance, may establish a separate account to receive, manage, and invest moneys that may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the benefit of the office, or the aid or advantage of the State or counties."

**SECTION 3.** No person who transfers to the office of international relations from another state agency, after being retained by the director of the office of international relations pursuant to section -2, Hawaii Revised Statutes, shall suffer any loss of prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of that transfer.

**SECTION 4.** This Act shall take effect on July 1, 1992, and shall be repealed on June 30, 1995.

(Approved May 27, 1992.)

## ACT 102

H.B. NO. 3152

A Bill for an Act Relating to the Payment of Interest on Taxes.

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

**SECTION 1.** Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) This subsection shall apply to a refund for an overpayment of a tax.  
 (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection (c). The interest shall be allowed and paid at the rate of two-thirds of one per cent for each [calendar] month or fraction thereof, beginning with the first calendar day after the due date of the return or, if the return is filed after the prescribed due date, the [date<sup>1</sup>] first month following the month the return is

received, and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the director's approval, no interest on the overpayment will be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the first calendar day after the due date of the return or from the [date] first month following the month the return is received by the director if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to the taxpayer.

- (2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first calendar day after the due date of the original return or, if the original return is filed after the prescribed due date, the [date] first month following the month the return is received, to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the director's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.
- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed [not] to have been made [prior to] at the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest which would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts which are carried back.
- (4) In the case of credit, interest shall be allowed and paid from the first calendar day after the due date of the return, the [date] first month following the month the return is received by the director, or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

SECTION 2. Section 231-39, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) There shall be added to and become a part of the tax imposed by such tax or revenue law, and collected as such:

- (1) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return five per cent of the amount of the tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which the failure continues, not

exceeding twenty-five per cent in the aggregate. For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. This paragraph shall not apply to any failure to file a declaration of estimated tax required by section 235-97.

- (2) Failure to pay tax.
  - (A) If any part of any underpayment is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the tax an amount up to twenty-five per cent of the underpayment as determined by the director.
  - (B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to fifty per cent of the underpayment as determined by the director.
  - (C) If any penalty is assessed under subparagraph (B) (relating to fraud) for [any] an underpayment of tax which is required to be shown on a return, no penalty under paragraph (1) (relating to failure to file the return) shall be assessed with respect to the same underpayment.
- (3) Failure to pay tax after filing timely returns. If a return is filed on or before the date prescribed therefor and the amount shown as tax on the return is not completely paid within sixty days of the prescribed filing date, there shall be added to the unpaid tax an amount up to twenty per cent as determined by the director.
- (4) Interest on underpayment or nonpayment of tax.
  - (A) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of one per cent a month or fraction of a [calendar] month shall be paid for the period beginning with the first calendar day following the date prescribed for payment, or if the prescribed date for payment is the end of a calendar month, and section 231-21 is applicable, beginning with the [month on which] first calendar day after the due date [as] so extended [is a part], to the date paid.
  - (B) If the amount of any tax is reduced by reason of a carryback of a net operating loss allowed under chapter 235, such reduction in tax shall not affect the computation of interest under this paragraph for the period ending with the last day of the taxable year in which the net operating loss arises.
  - (C) Interest prescribed under this paragraph on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.
  - (D) No interest under this paragraph shall be imposed on interest provided by this paragraph.
  - (E) If any portion of a tax is satisfied by credit of any overpayment, then no interest shall be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to the overpayment.
  - (F) Interest prescribed under this paragraph on any tax may be assessed and collected at any time during the period within

## ACT 103

- (G) which the tax to which the interest relates may be collected.  
(G) This paragraph shall not apply to any failure to pay estimated tax required by section 235-97."

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

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

(Approved May 27, 1992.)

### Note

1. So in original.

## ACT 103

H.B. NO. 3156

A Bill for an Act Relating to the Taxation of Dividends Received from Affiliated Corporations.

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

SECTION 1. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The deductions of or based on dividends paid or received, allowed to a corporation under chapter 1, subchapter B, Part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking association, qualifying dividends, as defined in section 243(b) of the Internal Revenue Code, received by members of an affiliated group, or dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (Public Law 85-699) upon shares of stock qualifying under paragraph (3) [below, eighty], seventy per cent of the amount received by any corporation as dividends:

- (1) Upon the shares of stock of another corporation, if at the date of payment of the dividend at least ninety-five per cent of the other corporation's capital stock is owned by one or more corporations doing business in this State and if the other corporation is subjected to an income tax in another jurisdiction (but subject to federal tax does not constitute subject to income tax in another jurisdiction);
- (2) Upon the shares of stock of a bank or insurance company organized and doing business under the laws of the State;
- (3) Upon the shares of stock of another corporation, if at least fifteen per cent of the latter corporation's business, for the taxable year of the latter corporation preceding the payment of the dividend, has been attributed to this State.

However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have been allowed under section 243 of the Internal Revenue Code, as amended by Public Law 85-866, by reason of subsections (b) and (c) of section 246 of the Internal Revenue Code[, as amended]. For the purposes of this subsection fifteen per cent of a corporation's business shall be deemed to have been attributed to this State if fifteen per cent or more of the entire gross income of the corporation as defined in this chapter (which for

the purposes of this subsection shall be computed without regard to source in the State and shall include income not taxable by reason of the fact that it is from property not owned in the State or from a trade or business not carried on in the State in whole or in part) [shall], under section 235-5 and the other provisions of this chapter, shall have been attributed to the State and subjected to assessment of the taxable income therefrom (including the determination of the resulting net loss, if any)."

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

**SECTION 3.** This Act, upon its approval, shall apply to taxable years beginning after December 31, 1991.

(Approved May 27, 1992.)

## ACT 104

H.B. NO. 3159

A Bill for an Act Relating to General Excise Tax Limitation Periods.

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

**SECTION 1.** Section 237-40, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) Extension by agreement. Where, before the expiration of the period prescribed in subsection (a) [of this section,] or (d), both the department of taxation and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection (a)[, the tax may be assessed or levied] or the credit or refund of the tax after the date fixed by subsection (d), 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.

(d) Refunds. No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund shall be filed [within three years after the annual return was filed, or in any case of payment of tax without the filing of an annual return, within three years after payment of tax, or within three years of the date prescribed for the filing of the annual return, whichever is later.] 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.
- (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.

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Paragraphs (1) and (2) are mutually exclusive. The limitation shall not apply to a credit or refund pursuant to an appeal[,] provided for by section 237-42."

**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 27, 1992.)

## **ACT 105**

H.B. NO. 3160

A Bill for an Act Relating to Tax Credits for S Corporation Shareholders.

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

**SECTION 1.** Section 235-129, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each shareholder of an S corporation shall be allowed a credit against the tax imposed by section 235-51 in an amount equal to the shareholder's pro rata share of the tax credits described in sections 209E-10, 235-12, 235-71(c), 235-55.91, 235-110.6, 235-110.7, and 235-110.8. With the exception of the credit allowed by section 235-12, nonresident shareholders shall be allowed the credits allowed to resident shareholders which are earned by the S corporation in this State. The credit allowed by section 235-12 shall be allowed to nonresident shareholders to the extent the credit is earned by virtue of property purchased and placed in service in this State."

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

**SECTION 3.** This Act, upon its approval, shall apply to taxable years beginning after December 31, 1991.

(Approved May 27, 1992.)

## **ACT 106**

H.B. NO. 3163

A Bill for an Act Relating to the Taxation of Financial Institutions.

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

### **PART I**

**SECTION 1.** The legislature finds that the financial institutions of today are dramatically different from the way they were thirty years ago when the franchise tax on financial institutions was adopted.

In Hawaii, banks and other financial institutions are subject to the franchise tax in lieu of the general excise and corporate income tax. This unique method of taxation evolved during the period when the federal government imposed strict limitations on the ability of states to tax national banks. Since

1976, however, federal controls have been lifted and states have had the freedom to tax banks in any nondiscriminatory manner.

The Hawaii franchise tax was adopted in 1957, during the period of federal control, and has remained virtually unchanged, although the basic assumptions underlying its structure have changed.

The legislature finds that financial institutions have been treated differently from other taxpayers with respect to the general excise tax under chapter 237, Hawaii Revised Statutes, and the franchise tax under chapter 241, Hawaii Revised Statutes, as dictated by prior federal law.

The legislature also finds that the second tax review commission, in its 1989 report to the legislature, made several recommendations to correct the inefficiencies in the general excise tax and to streamline the franchise tax imposed upon financial institutions.

During the 1990 and 1991 legislative interim, the department of taxation met with representatives of the Tax Foundation of Hawaii, the Hawaii League of Savings Institutions, the Hawaii Bankers Association, the Hawaii Financial Services Association, and interested individuals from trust companies to consider the recommendations of the second tax review commission and to draft this Act relating to the taxation of financial institutions.

The purpose of this Act is to revise the manner in which financial institutions are taxed to provide for a more equitable method of taxation.

## PART II

SECTION 2. Section 235-9, Hawaii Revised Statutes, is amended to read as follows:

**“§235-9 Exemptions; generally.** Except as provided in sections 235-61 to 235-67 relating to withholding and collection of tax at source, and section 235-2.4 relating to “unrelated business taxable income”, the following persons and organizations shall not be taxable under this chapter: Banks, building and loan associations, financial services loan companies, financial corporations, small business investment companies, trust companies, mortgage loan companies, financial holding companies, subsidiaries of financial holding companies as defined in chapter 241, and development companies taxable under chapter 241; and insurance companies, agricultural cooperative associations, and fish marketing associations exclusively taxable under other laws.”

SECTION 3. This Part, upon its approval, shall apply to taxable years beginning after December 31, 1992.

## PART III

SECTION 4. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Amounts not taxable for financial institutions.** (a) In addition to the amounts not taxable under section 237-24, this chapter shall not apply to amounts received by:

(1) Financial institutions from:

(A) Interest, discount, points, commitment fees, loan fees, loan origination charges, and finance charges which are part of the computed annual percentage rate of interest and which are

- contracted and received for the use of money;
- (B) Leasing of personal property;
  - (C) Fees or charges relating to the administration of deposits;
  - (D) Gains resulting from changes in foreign currency exchange rates but not including commissions or compensation derived from the purchase or sale of foreign currency or numismatic currency whether legal tender or not;
  - (E) The servicing and sale of loans contracted for and received by the financial institution; and
  - (F) Interest received from the investment of deposits received by the financial institution from financial or debt instruments;
- (2) Trust companies or trust departments of financial institutions from:
- (A) Trust agreements and retirement plans where the trust companies or trust departments are acting as fiduciaries;
  - (B) Custodial agreements; and
  - (C) Activities relating to the general servicing of fiduciary/custodial accounts held by the trust companies or trust departments; and
- (3) Financial corporations acting as interbank brokers as defined by chapter 241 from brokerage services.

(b) As used in this section:

“Activities relating to the general servicing of fiduciary/custodial accounts” means those activities performed by trust companies which are directly or indirectly performed within the fiduciary/custodial relationship between the trust company or trust department of a financial institution and its client and which are not offered to any person outside of the fiduciary/custodial relationship.

“Annual percentage rate” and “finance charge” have the same meaning as defined in the federal Truth in Lending Act (15 U.S.C. sections 1605(a) to (c) and 1606).

“Deposit” means:

- (1) Money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit to:
  - (A) A commercial (including public deposits), checking, savings, time, or thrift account;
  - (B) A check or draft drawn against a deposit account and certified by the financial institution;
  - (C) A letter of credit; or
  - (D) A traveler's check, on which the financial institution is primarily liable;
- (2) Trust funds received or held by a financial institution, whether held in the trust department or held or deposited in any other department of the financial institution;
- (3) Money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institution in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial institution or others (including funds held as dealers' reserves) or for securities loaned by the financial institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to

- United States Government securities, funds held for distribution or purchase of securities, funds held to meet the financial institution's acceptances or letters of credit, and withheld taxes;
- (4) Outstanding drafts, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose; or
  - (5) Money or its equivalent held as a credit balance by a financial institution on behalf of its customer if the financial institution is engaged in soliciting and holding the balances in the regular course of its business.

"Financial institution" means banks, building and loan associations, development companies, financial corporations, financial services loan companies, small business investment companies, financial holding companies, mortgage loan companies, and trust companies all as defined in chapter 241.

"Leasing of personal property" occurs if:

- (1) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;
- (2) The property to be leased is acquired specifically for the leasing transaction under consideration, or was acquired specifically for an earlier leasing transaction;
- (3) The lease is on a nonoperating basis, i.e., the financial institution may not, directly or indirectly:
  - (A) Provide for the maintenance, repair, replacement, or servicing of the leased property during the lease term;
  - (B) Purchase parts and accessories in bulk or for an individual property after the lessee has taken delivery of the property; or
  - (C) Purchase insurance for the lessee;
- (4) At the inception of the lease the effect of the transaction will yield a return that will compensate the lessor financial institution for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease, from:
  - (A) Rentals;
  - (B) Estimated tax benefits (capital goods excise tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); and
  - (C) The estimated residual value of the property at the expiration of the initial term of the lease;
- (5) The maximum lease term during which the lessor financial institution must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be forty years; and
- (6) At the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or leased again on a nonoperating basis as soon as practicable (in no event later than two years from the expiration of the lease), but in no case shall the lessor retain any interest in the property beyond fifty years after the lessor's acquisition of the property."

SECTION 5. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

**"§237-4 "Wholesaler", "jobber", defined. "Wholesaler" or "jobber"**

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applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities which are to be incorporated by the producer or by the cooperative association into a finished or saleable product which is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities which are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(8)] 237-23(a)(7) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section [237-23(a)(8)] 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;
- (6) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(8)] 237-23(a)(7) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
- (7) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(8)] 237-23(a)(7) for sale to such

- producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property to a licensed person engaged in the service business; provided that (A) the property is not consumed or incidental to the performance of the services; (B) there is a resale of the article at the retail rate of four per cent; and (C) the resale of the article is separately charged or billed by the person rendering the services;
- (9) Sales to a licensed leasing company of capital goods which are thereafter leased as a service to others. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers.

If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service which buys and maintains at the person's place of business a stock or lines of merchandise which the person distributes; and which, through salesmen, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 6. 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 [shall ship] ships or [transport] transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or [shall sell] 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 [(1)]. 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, [are] 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.

- (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 [shall furnish] 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 [shall show] 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)(2)]) 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 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 7. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- "(a) This chapter shall not apply to the following persons:
- [(1)] Banks taxable under chapter 241;
  - [(2)] (1) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
  - [(3)] (2) Public utilities owned and operated by the State or any county or other political subdivision thereof;
  - [(4)] (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;
  - [(5)] (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under chapter 358D;
  - [(6)] (5) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or

- individual;
- [(7)] (6) Hospitals, infirmaries, and sanitaria;
- [(8)] (7) Cooperative associations incorporated under chapter 421 or 422 or Code section 521 cooperatives which fully meet the requirements of section 421-23 or 422-33, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
- (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421 or 422, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
- (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and
- (C) As used in this paragraph, "section 521 cooperatives" mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- [(9)] Building and loan associations taxable under chapter 241;
- [(10)] (8) Persons affected with Hansen's disease and kokusas, with respect to business within the county of Kalawao;
- [(11)] (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons); and
- [(12)] Financial services loan companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from the "engaging in the business of a financial services loan company" as defined in section 408-2;
- [(13)] Development companies taxable under chapter 241; provided that the exemption shall apply only to gross income derived from interest on loans made to borrowers as provided by Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended;
- [(14)] (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations[;
- [(15)] Small business investment companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from activities engaged in as provided by the federal Small Business Investment Act of 1958, Public Law 699, as amended; provided further that the exemption shall not apply to gross income derived from consulting and advisory services engaged in under the first sentence of section 308(b) of Public Law 699; and

(16) Financial corporations taxable under chapter 241; provided that the exemption shall apply only to interest, discount, points, loan fees, loan origination charges, and finance charges which are part of the computed annual percentage rate of interest and which are contracted and received for the use of money; provided further that in the case of financial corporations acting as interbank brokers taxable under chapter 241, the exemption shall apply only to gross income derived from brokerage services. As used in this paragraph, "finance charge" and "annual percentage rate" have the same meaning as defined in the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(b) The exemptions enumerated in subsection [(a)(4) to (7)] (a)(3) to (6) shall apply only:

- (1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department; and
- (2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and
- (3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of such hospitals, infirmaries, and sanitaria as such, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons."

SECTION 8. This Part shall take effect on January 1, 1993.

#### PART IV

SECTION 9. Chapter 241, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§241- Alternative tax.** Section 1201 (with respect to alternative tax for corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter and shall be applied as set forth in this section. If for any taxable year a bank, building and loan association, development company, financial corporation, financial services loan company, small business investment company, mortgage loan company, financial holding company, or trust company has a net capital gain, then, in lieu of the tax imposed by section 241-4, there is hereby imposed a tax (if such tax is less than the tax imposed under section 241-4) which shall consist of the sum of:

- (1) A tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this section had not been enacted; plus
- (2) Four per cent of the net capital gain for the taxable year."

## ACT 106

SECTION 10. Section 241-1, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read as follows:

"Financial holding company" means any corporation registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Home Owners' Loan Act of 1933, as amended.

"Mortgage loan company" means any company licensed under chapter 454.

"Subsidiary" means any corporation doing business in Hawaii engaged in activities set forth in Title 12 of the Code of Federal Regulations, sections 225.22 and 225.25 (1990) (Regulation Y) and sections 584.2-1 and 584.2-2 (1990) (Office of Thrift Supervision) and whose voting stock is more than eighty per cent owned, directly or indirectly, by a financial holding company, bank, building and loan association, financial services loan company, financial corporation, or trust company.

"Trust company" means a corporation or joint stock company authorized to conduct business as a trust company under chapter 406."

2. By amending the definition of "financial corporation" to read as follows:

"Financial corporation" means (1) any corporation, domestic or foreign, other than a bank or building and loan association, which is a financial corporation within the meaning of section 5219 of the Revised Statutes of the United States, as amended (12 U.S.C. 548), or other similar law, doing business in the State and not subject to the taxes imposed by [chapters] chapter 235 [and 237, or not subject to one of such taxes], but shall not include an insurance company which pays the tax on premiums imposed by chapter 431, and (2) an interbank broker doing business in the State and not subject to the taxes imposed by chapter 235 [and 237, or not subject to one of such taxes]."

SECTION 11. Section 241-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The tax imposed by this chapter applies to every bank, building and loan association, development company, financial corporation, financial services loan company, [or] trust company, mortgage loan company, financial holding company, small business investment company, or subsidiary as defined in section 241-1:

- (1) Which is in business at the commencement of a calendar year, as of January 1 of that year;
- (2) Which begins business after the commencement of a calendar year, as of the commencement of business."

SECTION 12. Section 241-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every national banking association located or doing business in the State shall annually[, as of January 1,] pay a franchise tax according to, or

measured by, its net income, to be computed as provided in section 241-4, at the rate there prescribed. The State is hereby [adopting method numbered (4), authorized by] adhering to the prescriptions of section 5219, Revised Statutes of the United States, as amended (12 U.S.C. 548), or other similar law."

SECTION 13. Section 241-3, Hawaii Revised Statutes, is amended to read as follows:

**"§241-3 Imposition of tax on other banks, building and loan associations, financial services loan companies, financial corporations, small business investment companies, [and] trust companies, mortgage loan companies, financial holding companies, development companies[.], and subsidiaries.** Every bank, other than a national banking association, every building and loan association, every financial services loan company, financial corporation, small business investment company, [and] trust company, mortgage loan company, financial holding company, development company, and subsidiary located or doing business in the State, shall annually[, as of January 1,] pay a franchise tax measured as, and at the rate, provided in section 241-4."

SECTION 14. Section 241-4, Hawaii Revised Statutes, is amended to read as follows:

**"§241-4 Measure and rate of tax.** (a) The measure of the tax imposed by this chapter is the entire net income from all sources for the preceding calendar year, or in the case of a taxpayer operating on a fiscal year basis, for the preceding fiscal year. The tax [imposed by this chapter is hereby fixed at eleven and seven-tenths per cent thereof.] shall be at the rate of seven and ninety-two one hundredths per cent of the entire net income from all sources.

(b) The "entire net income from all sources" shall be determined in the same manner as the "taxable income" of a corporation, as provided by chapter 235, with the following changes and adjustments:

- (1) There is included in gross income interest received upon the obligations of the United States or its possessions, or upon securities issued under the authority of an act of Congress, or upon state, territorial, municipal, county, or other bonds or securities whether or not the income from such obligations, bonds, or securities, is tax free. Section 235-7(a)(1), (5), and (6) does not apply.
- [2] Section 235-3(c), (d), and (e) does not apply.
- [3] (2) In lieu of section 235-4, it is provided that there shall be excluded the gross income from property owned, trade or business carried on, and other sources outside the State.
- [4] Section] (3) Sections 235-5 [does] and 235-21 to 235-39 do not apply. The income excluded pursuant to paragraph [(3)] (2) shall be determined by an allocation and separate accounting. Losses from property owned outside the State and from other sources outside the State shall not be deducted. Reserves shall be allocated to the State by an application of a fraction, the numerator of which consists of the gross income included in determining the "entire net income from all sources" pursuant to this chapter and the denominator of which consists in the gross income similarly ascertained but without regard to whether from sources within or without the State.
- [5] (4) Deductions connected with income which by this chapter is required to be included in the computation of net income shall be

- allowed, but deductions connected with income which by this chapter is not to be included in the computation of net income shall not be allowed. Section 235-7(e)(1) does not apply.
- [6] One-half of such amount of capital gain as, under the Internal Revenue Code, is entitled to the alternative tax treatment, is deductible in the determination of net income.
- (7) Section 166 of the Internal Revenue Code does not apply, except the provisions as to the basis for determining the amount of the deduction for a bad debt. Section 593 of the Internal Revenue Code does not apply. In lieu of the cited sections of the Internal Revenue Code, debts] (5) Debts ascertained to be worthless and charged off on the books of the taxpayer within the income year may be deducted, or in the discretion of the department of taxation may be treated as a reasonable addition to a reserve for bad debts; provided that when satisfied that a debt is recoverable only in part, the department may allow the debt to be charged off in part.
- [8] Federal income taxes upon income derived or received from sources in the State may be deducted.
- (9) (6) In the case of any life insurance company (as defined by the Internal Revenue Code), which is determined to be a financial corporation as defined by this chapter, sections 801, 811, and 812 of the Internal Revenue Code do not apply. The total of the deductions allowed by sections 807 and 810 of the Internal Revenue Code shall not exceed the amount of the required interest, as defined by section 807 of the Internal Revenue Code.
- [10] (7) Section 582[(c)] (with respect to bonds, etc., losses and gains of financial institutions) of the Internal Revenue Code shall be operative for the purposes of this chapter."

SECTION 15. Section 241-6, Hawaii Revised Statutes, is amended to read as follows:

**"§241-6 Chapter 235 applicable.** All of the provisions of chapter 235 not inconsistent with this chapter, and which may be appropriately applied to the taxes, persons, circumstances, and situations involved in this chapter, including without prejudice to the generality of the foregoing, sections 235-92, 235-98, 235-99, and 235-101 to 235-118, shall be applicable to the taxes imposed by this chapter, and to the assessment and collection thereof. Any tax refund payable under section 235-110, hereby made applicable to the taxes imposed by this chapter, shall be made in the manner provided in section 231-23(c).

The filing of a consolidated return under section 235-92 applies only to a bank, building and loan association, financial services loan company, financial corporation, small business investment company, development company, mortgage loan companies, trust company, or financial holding company, and their subsidiaries as defined in section 241-1.

SECTION 16. This Part shall take effect on January 1, 1994, so that the amendments made by this Part shall apply to the entire net income received for the calendar year preceding January 1, 1994, and for the calendar years thereafter. In the case of a taxpayer operating on a fiscal year basis, the amendments made by this Part shall apply to the entire net income received for the fiscal year in which January 1, 1994, occurs and for fiscal years thereafter.

## PART V

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 18. Subject to the foregoing effective dates, this Act shall take effect upon its approval.

(Approved May 27, 1992.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 107

H.B. NO. 3283

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

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

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

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

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such

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

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sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs.

- “Prosthetic device” means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by such practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that “prosthetic device” shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;
- (24) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter; and
- (25) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership.”

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

**SECTION 3.** This Act shall take effect on July 1, 1992.

(Approved May 27, 1992.)

## ACT 108

H.B. NO. 3441

A Bill for an Act Relating to Nonprofit Corporations.

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

**SECTION 1.** Section 415B-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§415B-4]] **Purposes.** A corporation may be organized under this chapter for any lawful purpose or purposes; provided that labor unions, cooperative organizations other than limited equity housing cooperatives, and organizations subject to any of the provisions of the insurance laws of this State, other than a pure captive insurance company with a nonprofit parent company, shall not be organized under this chapter.”

**SECTION 2.** Section 431:19-101, Hawaii Revised Statutes, is amended to read as follows:

**“§431:19-101 Definitions.** As used in this article:

[1] “Affiliated” company means any company in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management.

[2] “Association” means any legal association of individuals, corporations, partnerships, or associations, except labor organizations, the [[member]]

organizations of which collectively:

[(A)] (1) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

[(B)] (2) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

[(3)] "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.

[(4)] "Captive insurance company" means any pure captive insurance company or association captive insurance company formed or licensed under this article.

[(5)] "Member organization" means any individual, corporation, partnership, or association that belongs to an association.

[(6)] "Parent" means a corporation, partnership or individual that directly or indirectly owns, controls or holds with power to vote more than fifty per cent of the outstanding voting securities of a pure captive insurance company.

[(7)] "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

"Pure nonprofit captive insurance company" means a pure captive insurance company formed without capital stock as a nonprofit corporation under Chapter 415B, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by such nonprofit parent and its affiliated companies.

[(8)]<sup>1</sup> "Risk retention captive insurance company" means a captive insurance company which is formed as a "risk retention group" as defined in chapter 431K."

SECTION 3. 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 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

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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,<sup>2</sup> 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.

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

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 27, 1992.)

### Notes

1. So in original.

2. Comma should be underscored.

## ACT 109

H.B. NO. 3568

A Bill for an Act Relating to New Passenger Vehicles.

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

SECTION 1. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§437- Vehicle bumper impact notice.** (a) Every manufacturer or distributor of new passenger vehicles for sale in this State shall affix to a window or the windshield of the vehicle a notice with either of the following statements, whichever is appropriate:

(1) “THIS VEHICLE IS EQUIPPED WITH A BUMPER SYSTEM THAT CONFORMS TO THE CURRENT FEDERAL BUMPER STANDARD OF MILES PER HOUR, AND CAN WITHSTAND AN IMPACT SPEED SPECIFIED BY FEDERAL TEST PROCEDURES WITH NO DAMAGE TO THE VEHICLE’S BODY AND SAFETY SYSTEMS. ALTHOUGH THE BUMPER AND ATTACHMENT HARDWARE MAY SUSTAIN DAMAGE, THE EXTENT OF THE DAMAGE MAY VARY.”

(2) “THIS VEHICLE IS EQUIPPED WITH A BUMPER SYSTEM THAT EXCEEDS CURRENT FEDERAL BUMPER STANDARDS, AND CAN WITHSTAND A FRONTAL IMPACT SPEED OF MILES PER HOUR AND A REAR IMPACT SPEED OF MILES PER HOUR, AS SPECIFIED BY FEDERAL TEST PROCEDURES, WITH NO DAMAGE TO THE VEHICLE’S BODY AND SAFETY SYSTEMS. THE BUMPER AND ATTACHMENT

HARDWARE MAY SUSTAIN MINOR DAMAGE, WHICH CAN BE REPAIRED WITH THE USE OF COMMON REPAIR MATERIALS AND WITHOUT REPLACING ANY PARTS."

(b) The notice required by this section shall be printed legibly in English in bold typeface print and may be included in any notice or label required by federal law to be affixed to a window or windshield of the vehicle."

SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

"Attachment hardware" means the components and associated fasteners that directly attach the bumper to the chassis frame.

"Impact speed" means the maximum speed of impact tested upon the bumper of the vehicle pursuant to Sections 581.6 and 581.7 of Part 581 of Title 49 of the Code of Federal Regulations.

"Minor damage to the bumper and attachment hardware" means damage that can be repaired with the use of common repair materials and without replacing any parts. In addition, not later than 30 minutes after completion of each pendulum or barrier impact test, the bumper face bar shall have no permanent deviation greater than three-quarters of one inch from its original contour and position relative to the vehicle frame and no permanent deviation greater than three-eighths of one inch from its original contour on areas of contact with the barrier face or impact ridge of the pendulum test device, measured from a straight line connecting the bumper contours adjoining the contact area.

"No damage" means that, when a passenger vehicle is subjected to impact testing conducted pursuant to the conditions and test procedures of Sections 581.6 and 581.7 of Part 581 of Title 49 of the Code of Federal Regulations, the vehicle sustains no damage to the body and safety systems.

"Passenger vehicle" includes any vehicle, motor vehicle, or truck designed for carrying twelve persons or fewer and subject to impact testing conducted pursuant to Part 581 of Title 49 of the Code of Federal Regulations."

SECTION 3. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of "distributor" to read:

"Distributor" means any person, resident,<sup>1</sup> or nonresident, including a manufacturer, who in whole or in part imports, offers for sale, sells, or distributes new motor vehicles to dealers."

SECTION 4. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

(a) The board may, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed from time to time by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license if the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this

- chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
  - (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
  - (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
  - (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
  - (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
  - (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
  - (8) In the case of an individual applicant or holder of a license, is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
  - (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
  - (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
  - (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
  - (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
  - (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
  - (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
  - (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
  - (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;

- (17) Being a salesperson or dealer:
- (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
  - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
  - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty; or
  - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this subsection shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction;
  - (E) Has engaged in any improper business conduct;
- (18) Being an applicant or holder of a dealer's license:
- (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
  - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
  - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Being an applicant or holder of an auction's license:
- (A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or
  - (B) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
- (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer;
  - (B) Does not intend to be employed as a salesperson as the principal occupation; or
  - (C) Intends to be employed as a salesperson for more than one dealer;
- (21) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or
- (22) Being a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative:
- (A) Has attempted to coerce or has coerced any dealer in this State

to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter a new franchise agreement with the dealer;

- (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer;
- (C) Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon the cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement shall, at the dealer's option, either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts, and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used herein, "good faith" means the duty of each party to any franchise agreement fully to comply with that agreement, or to act in a fair and equitable manner towards each other;
- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be *prima facie* evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be *prima facie* evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without

- cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor or production difficulty, or other similar cause beyond the reasonable control of the manufacturer;
- (E) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or accessories or for similar transportation for the vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon the franchised dealer in this State during the same period is deemed to have so discriminated against the franchised dealer in this State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in this State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This subparagraph shall be liberally interpreted to effect its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs which are related to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;
- (F) Has required a dealer of new motor vehicles in this State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, which are regularly installed on that particular model of new motor vehicles as

## ACT 110

- "standard" equipment or to special features, appliances, accessories, or equipment which are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense; [or]
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval[.]
- (H) Has wilfully failed to affix the vehicle bumper impact notice pursuant to section 437- (a), or wilfully misstated any information in the notice. Each failure or misstatement is a separate offense; or
- (I) Has wilfully defaced, altered, or removed the vehicle bumper impact notice required by section 437- (a) prior to delivery of the vehicle, to which the notice is required to be affixed, to the registered owner or lessee. Each wilful defacement, alteration, or removal is a separate offense.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved May 27, 1992.)

### Notes

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.

## ACT 110

H.B. NO. 3617

A Bill for an Act Relating to the Department of Health.

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

SECTION 1. 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 plans.
- (6) Establish, administer, and maintain a communication system for the state [emergency medical services] 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.
- [(10)] (11) Consult with the advisory committee on matters relating to the implementation of this part."

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 27, 1992.)

**ACT 111**

H.B. NO. 3660

A Bill for an Act Relating to a Biological Survey.

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

SECTION 1. The legislature finds that alien species of plants and animals are increasing at an uncontrollable rate and become pests before they can be eradicated, controlled, or even identified.

In order to gain knowledge of these critical developments, the Bernice Pauahi Bishop Museum has expended over \$1,000,000, in a program to integrate and expand existing information on plant and animal collections into a computerized, interactive database. So far, 11,500 native and alien species have been estimated to occur in Hawaii.

The purpose of this Act is to establish a biological survey at the State of Hawaii museum of natural and cultural history, to conduct an ongoing natural

## **ACT 112**

history inventory of the archipelago to locate, identify, evaluate, and maintain the reference collections of all species of flora and fauna within the State.

**SECTION 2.** Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§6E- Biological survey; designation.** A Hawaii biological survey is established and designated as a program of the State of Hawaii museum of natural and cultural history. The survey shall consist of an ongoing natural history inventory of the Hawaiian archipelago to locate, identify, evaluate, and maintain the reference collections of all native and non-native species of flora and fauna within the State for a wide range of uses. The survey shall coordinate with and complement the work of the Hawaii heritage program, established by chapter 195, which manages data on rare native plants, animals, and natural communities throughout the State. To expand the use, control, and knowledge of biological species, the survey shall also be conducted in coordination with the existing databases of the department of agriculture, the department of land and natural resources, the University of Hawaii, and other appropriate organizations.”

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

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

(Approved May 27, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 112**

**H.B. NO. 3724**

A Bill for an Act Relating to the Forfeiture Law.

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

**SECTION 1.** The legislature finds that a major purpose of the 1988 Hawaii omnibus criminal forfeiture act was to deprive criminals of the profits of certain specified criminal activities while protecting the interest of innocent third parties who hold an interest in forfeited properties. The sensitivity displayed in the original legislative history of the 1988 act towards protecting innocent owners and interest holders of real property is maintained and promoted by granting the holders of the immediate reversionary interest in real property the first option to acquire the portion of years remaining on the existing lease and any improvements built or paid for by the lessee whose interest has been forfeited.

**SECTION 2.** Section 712A-16, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) All property forfeited to the State under this chapter shall be transferred to the attorney general who:

- (a) May transfer property, other than currency, which shall be distributed in accordance with subsection (2) [of this section,] to any local or state government entity, municipality, or law enforcement agency within the State;

- (b) May sell forfeited property to the public by public sale; provided that for leasehold real property:
  - (i) The attorney general shall first offer the holder of the immediate reversionary interest the right to acquire the leasehold interest and any improvements built or paid for by the lessee for the then fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest.
  - (ii) If the holder of the immediate reversionary interest fails to exercise the right of first refusal provided in subparagraph (i), the attorney general may proceed to sell the leasehold interest and any improvements by public sale.
  - (iii) Any dispute between the attorney general and the holder of the immediate reversionary interest as to the fair market value of the leasehold interest and improvements shall be settled by arbitration pursuant to chapter 658;
- (c) May sell or destroy all raw materials, products, and equipment of any kind used or intended for use in manufacturing, compounding, or processing a controlled substance;
- (d) May compromise and pay valid claims against property forfeited pursuant to this chapter; or
- (e) May make any other disposition of forfeited property authorized by 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 May 27, 1992.)

## ACT 113

H.B. NO. 3794

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Section 6E-2, Hawaii Revised Statutes, is amended by amending the definition of "Burial site" to read as follows:

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and

## ACT 113

its immediate surrounding archaeological context, deemed a unique class of historic property and not otherwise included in section 6E-41.”

SECTION 2. Section 6E-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before any construction, alteration, disposition or improvement of any nature, by, for, or permitted by a private landowner may be commenced which will affect an historic property on the Hawaii register of historic places, the landowner shall notify the department of the construction, alteration, disposition, or improvement of any nature and allow the department opportunity for review of the effect of the proposed construction, alteration, disposition, or improvement of any nature on the historic property. The proposed construction, alteration, disposition, or improvement of any nature shall not be commenced, or in the event it has already begun, continue, until the department shall have given its concurrence or ninety days have elapsed. Within ninety days after notification, the department shall [either commence]:

- (1) Commence condemnation proceedings for the purchase of the historic property[, permit] if the department and property owner do not agree upon an appropriate course of action;
- (2) Permit the owner to proceed with the owner’s construction, alteration, or improvement[, or undertake]; or
- (3) In coordination with the owner, undertake or permit the investigation, recording, preservation, and salvage of any historical information deemed necessary to preserve Hawaiian history, by any qualified agency for this purpose.”

SECTION 3. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department. Violators of this subsection are also subject to prosecution pursuant to section 711-1107, the penalties for which shall be imposed in addition to, and not in lieu of, any penalties imposed under this section.”

SECTION 4. Section 6E-43, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All burial sites are significant and shall be preserved in place until compliance with this section is met, except as provided in section 6E-43.6. The appropriate island burial council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites is warranted, following criteria which shall include recognition that burial sites of high preservation value, such as areas with a concentration of skeletal remains, or prehistoric or historic burials associated with important individuals and events, or areas that are within a context of historic properties, or have known lineal descendants, shall receive greater consideration for preservation in place. The criteria shall be developed by the department in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai’i

Nei, through rules adopted pursuant to chapter 91. A council's determination shall be rendered within [thirty] forty-five days of referral by the department[.] unless otherwise extended by agreement between the landowner and the department."

**SECTION 5.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved May 27, 1992.)

## ACT 114

H.B. NO. 3898

A Bill for an Act Relating to Child Care.

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

**SECTION 1.** Section 346-152, Hawaii Revised Statutes, is amended to read as follows:

**"§346-152 Exclusions; exemptions.** (a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
  - (2) A person, group of persons, or facility caring for a child less than six hours a week;
  - (3) A kindergarten, school, or program licensed by the department of education;
  - (4) A program which provides exclusively for a specialized training or skill development for children, including but not limited to programs providing such activities as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
  - (5) A multiservice organization or community association duly incorporated under the laws of the State which operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through age seventeen;
  - (6) Programs for children four years and older, which operate for no more than two consecutive calendar weeks in a three-month period; and
  - (7) A provider agency operating or managing a homeless facility, or any other program for the homeless authorized under chapter 358D.
- (b) Staff members of programs taught solely in Hawaiian which promote fluency in the Hawaiian language shall be exempt from any regulations requiring academic training or certification.

(c) Minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups listed in this section which provide child care services and are reimbursed with federal funds."

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SECTION 2. New statutory material is underscored.

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

(Approved May 27, 1992.)

## **ACT 115**

H.B. NO. 3943

A Bill for an Act Relating to Child Support.

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

SECTION 1. Section 576D-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The establishment of the guidelines or the adoption of any substantive modifications made to the guidelines set forth in this section may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 2. Section 576E-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The establishment of the guidelines or the adoption of any substantive modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 3. Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No order entered under the authority of subsection (a) or entered thereafter revising so much of such an order as provides for the support, maintenance, and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance, and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to such support, maintenance, and education. The establishment of the guidelines or the adoption of any substantive modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect ninety days after its approval by the governor.

(Approved May 27, 1992.)

## ACT 116

S.B. NO. 771

A Bill for an Act Relating to Penalties for Littering.

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

SECTION 1. Section 291C-132, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-132 Littering from vehicles.** (a) No person shall throw, place, or drop litter from a vehicle on any highway. The driver of the vehicle may be cited for any litter thrown, placed, or dropped from [such] the vehicle.

(b) “Litter” means rubbish, refuse, waste material, garbage, trash, offal, or debris of whatever kind or description, whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.

(c) The court [may, in addition to the penalties imposed under section 291C-161,] shall sentence any person convicted of the offense of littering from vehicles as follows:

- (1) For the first offense, defendant shall spend [up to] four hours of either picking up litter on public property[; and] or performing community service.
- (2) For any subsequent offense, defendant shall spend [up to] eight hours of either picking up litter on public property or performing community service.

(d) The court shall fine the person convicted of committing the offense of littering at least \$25, but not more than \$500.”

SECTION 2. Section 339-8, Hawaii Revised Statutes, is amended to read as follows:

**“§339-8 Penalties.** Except as otherwise provided by this chapter, any person violating any provision of this chapter or any rule adopted hereunder shall be guilty of a violation, and shall be fined not less than \$25, and not more than \$500 for each offense, and ordered to pick up and remove litter from a public place under the supervision of the director as follows:

- (1) For the first offense, defendant shall spend four hours of either picking up litter or performing community service.
- (2) For any subsequent offense, defendant shall spend eight hours of either picking up litter or performing community service.

If the court judges the violator to be incapable of litter removal and pick up, the court may provide some other community work as it deems appropriate. All persons who are caught littering shall be required to remove the litter that they caused or shall be liable for the costs of removing that litter.”

SECTION 3. Section 708-829, Hawaii Revised Statutes, is amended to read as follows:

**“§708-829 Criminal littering.** (1) A person commits the offense of criminal littering if [he] that person knowingly places, throws, or drops litter on any public or private property or in any public or private waters, except:

## ACT 117

- (a) In a place which is designated by the department of health or the county for the disposal of garbage and refuse;
  - (b) Into a litter receptacle;
  - (c) Into a litter bag, provided that the bag is disposed of properly into a litter receptacle or in a place which is designated by the department of health or the county for the disposal of garbage and refuse.
- (2) "Litter" means rubbish, refuse, waste material, garbage, trash, offal, or debris of whatever kind or description, and whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.
- (3) Criminal littering is a petty misdemeanor.
- (4) The court [may] shall sentence any person convicted of committing the offense of criminal littering as follows:
- (a) For the first offense, defendant shall spend [up to] four hours of either picking up litter on public property[; and] or performing community service.
  - (b) For any subsequent offense, defendant shall spend [up to] eight hours of either picking up litter on public property or performing community service.
  - (c) The court shall fine the person convicted of committing the offense of criminal littering at least \$25, but not more than \$500.
- (5) It shall be an affirmative defense that the defendant had consent of the owner in control of the property."

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 27, 1992.)

## ACT 117

S.B. NO. 2200

A Bill for an Act Relating to the Defrauding of Carriers of Passengers.

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

SECTION 1. The legislature finds that the proscription in chapter 272, Hawaii Revised Statutes, against the refusal to pay for transportation fares is already encompassed under sections 708-831, et seq. as a theft of services under the State's general theft statute in the penal code. Enacted prior to the penal code, chapter 272 now stands as a redundant measure. In repealing this chapter, the purpose of the legislature is merely to remove such redundancies in the law; it is not to decriminalize the defrauding of carriers of passengers.

SECTION 2. Chapter 272, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved May 27, 1992.)

## ACT 118

S.B. NO. 2673

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

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

SECTION 1. Chapter 92F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§92F- Funding, services, and other federal assistance.** Where compliance with any provision of this chapter would cause an agency to lose or be denied funding, services, or other assistance from the federal government, compliance with that provision shall be waived but only to the extent necessary to protect eligibility for federal funding, services, or other assistance.”

SECTION 2. 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 [September 30, 1992.] December 31, 1993. The public reports shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;
- (6) The categories of uses and disclosures made of the records;
- (7) The agencies and categories of persons outside of the agency which routinely use the records;
- (8) The records routinely used by the agency which are maintained by:
  - (A) Another agency; or
  - (B) A person other than an agency;
- (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
- (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
- (11) The agency procedures whereby an individual may request access to records; and
- (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 3. Section 11 of Act 192, Session Laws of Hawaii 1989, as amended by Section 3 of Act 167, Session Laws of Hawaii 1991, 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

## ACT 119

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, [1991,] 1992, fifty per cent on or before March 31, [1992,] 1993, seventy-five [percent] per cent on or before July 1, [1992] 1993, and one hundred per cent on or before [September 30, 1992.] December 31, 1993."

SECTION 4. Statutory and Session Law material to be repealed is bracketed. New statutory and Session Law material is underscored.<sup>1</sup>

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

(Approved May 27, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 119

S.B. NO. 2706

A Bill for an Act Relating to School Personnel.

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

SECTION 1. Section 297-12, Hawaii Revised Statutes, is repealed.

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

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

(Approved May 27, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 120

S.B. NO. 2871

A Bill for an Act Relating to Motor Vehicle Safety Responsibility.

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

SECTION 1. Section 287-36, Hawaii Revised Statutes, is amended to read as follows:

**"§287-36 Money or [securities] bonds as proof.** (a) Proof of financial responsibility may be evidenced by the certificate of the [state director of finance] administrator that the person named therein has deposited with the [state director of finance] administrator \$25,000 in cash[, or securities such as may legally be purchased for investment by insurance companies organized under chapter 431 of a market value of \$25,000.] or bonds. The [state director of finance] administrator shall not accept any such deposit and issue a certificate therefor [and the administrator shall not accept the certificate] unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) The deposit shall be held by the [director] 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<sup>1</sup> 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 [securities] 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 2. Section 287-38, Hawaii Revised Statutes, is amended to read as follows:

**"§287-38 Substitution of proof.** The administrator shall consent to the cancellation of any bond or certificate of insurance or the administrator [shall direct and the state director of finance] shall return any money or securities<sup>2</sup> to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter."

SECTION 3. Section 287-40, Hawaii Revised Statutes, is amended to read as follows:

**"§287-40 Duration of proof,<sup>3</sup> when proof may be cancelled or returned.** The administrator shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the administrator [shall direct and the state director of finance] shall return to the person entitled thereto any money or [securities] 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<sup>4</sup> 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 [securities] 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 [securities,] 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 [subdivision] 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

## **ACT 121**

such application shall be refused unless the applicant reestablishes the proof for the remainder of the three-year period."

SECTION 4. Section 287-48, Hawaii Revised Statutes, is amended to read as follows:

**"§287-48 Application of chapter to suspensions and revocations prior to January 1, 1950.** Notwithstanding any provision herein to the contrary, the administrators of the several counties may accept the prescribed proof of financial responsibility from any person whose license has been suspended or revoked on account of a conviction based on an offense occurring prior to January 1, 1950, and who now applies for the issuance of a license. Upon acceptance of such proof, the duration, cancellation, or return thereof shall be governed by section 287-40.

The administrators may also waive the requirement of furnishing such proof if the person mentioned in the preceding paragraph, for a period of three years prior to the person's application for a license, has not been convicted of any additional offense or offenses which would require or permit the suspension or revocation of a license.

[The duration, cancellation, or return of any proof of financial responsibility filed and maintained with the state director of finance prior to January 1, 1950, shall be governed by section 287-40.]"

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 27, 1992.)

### **Notes**

1. Prior to amendment "to" appeared here.
2. So in original.
3. Prior to amendment ";" appeared here.
4. Prior to amendment "the death of" appeared here.

## **ACT 121**

S.B. NO. 2873

A Bill for an Act Relating to the Hawaii Strategic Development Corporation.

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

SECTION 1. Section 211F-3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

**"(e) [The corporation] A board member shall not participate in any corporation decision to invest in, purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any person with whom or entity in which [any] the board member has [any] a substantial financial interest."**

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 27, 1992.)

**ACT 122**

H.B. NO. 3076

A Bill for an Act Making Emergency Appropriations for Operating Expenses for Community Hospitals.

*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 1991-1992, to be exceeded by \$15,000,000, or 0.53 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** Act 296, Session Laws of Hawaii 1991, appropriated a designated sum to the department of health to provide funds for public hospitals and medical services under the division of community hospitals for the fiscal period beginning July 1, 1991, and ending June 30, 1993.

A critical funding emergency exists. The community hospital system will run out of appropriated funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to operate its hospitals. The rapid escalation of health care costs in Hawaii is the cause for this financial crisis. In addition, provisions were not made for collective bargaining costs. Personnel costs, equipment costs, and medical costs have steadily increased, together with a decrease in Medicare and Medicaid reimbursements. The health care industry is continuing to experience an average increase in inflation of thirteen per cent.

To prevent the reduction or discontinuance of services, additional funds are urgently needed.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$15,000,000, or so much thereof as may be necessary for fiscal year 1991-1992, for operating expenses for community hospitals for the current fiscal year ending June 30, 1992.

**SECTION 5.** The sum is appropriated subject to the requirement that, as soon as possible after the effective date of this Act, the department of health shall meet in good faith in a series of meetings with private sector health care facility operators, including operators of private hospitals, insurance providers, private health care administrators, and private health care professionals to avail itself of the private sector's collective knowledge and expertise for the operation of the community hospitals and the effective and efficient administration and financial

## **ACT 123**

management of the community hospitals system. Based on the meetings, the department shall report its findings to the legislature not later than September 30, 1992. The report shall include the private sector's specific suggestions and recommendations for improving the administration and management of the community hospitals system and provide concrete, specific, and detailed steps for the immediate implementation of these suggestions, and shall include drafts of proposed legislation, if appropriate.

**SECTION 6.** The sum appropriated shall be expended by the department of health for the purposes of this Act.

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

(Approved May 29, 1992.)

## **ACT 123**

S.B. NO. 2361

A Bill for an Act Relating to No-fault Insurance.

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

**SECTION 1.** Chapter 431:10C, Hawaii Revised Statutes, is amended by adding six<sup>1</sup> new sections to be appropriately designated and to read as follows:

**“§431:10C-A Immediate rate freeze; rate reduction; relief.** (a) No insurer may increase motor vehicle insurance rates between the effective date of this Act and December 31, 1993.

(b) Commencing on January 1, 1993, all authorized insurers transacting motor vehicle insurance in this State shall implement a fifteen per cent rate reduction from the rates on file with the commissioner for all motor vehicle insurance policies in effect on March 1, 1992, and for each new and renewal policy issued thereafter. The reduced rate shall continue to apply to each new and renewal policy for a period of one year.

(c) There shall be no exception to the requirements of this section unless the commissioner, pursuant to an insurer's petition, finds that those requirements will result in imminent danger of insolvency of the insurer. An insurer who contends that a rate required by this section will result in imminent danger of insolvency of the insurer shall designate in its petition the rate it contends is appropriate and shall state with specificity the factors and data upon which it relies. The insurer shall be permitted to use all generally accepted actuarial techniques in filing any petition pursuant to this subsection. The insurer shall have the burden of proof to actuarially justify any rate increase from those provided for in subsections (a) and (b) and shall furnish all information, facts, and data requested by the commissioner reviewing any rate request.

(d) Effective January 1, 1994, all insurers shall include data on the impact of the provisions of this Act on all requested rate adjustments. The commissioner shall not approve any rate adjustments that do not contain a statement of the impact of the provisions of this Act, the method used in calculating such impact, and the data used to determine such impact.

**§431:10C-B Limitation on charges.** (a) As used in this article, the term “workers' compensation schedules” means the schedules adopted and as may be

amended by the director of labor and industrial relations for workers' compensation cases under chapter 386, establishing fees and frequency of treatment guidelines, and contained in sections 12-13-30, 12-13-35, 12-13-38, 12-13-39, 12-13-45, 12-13-85 through 92, and 12-13-94, Hawaii Administrative Rules. References in the workers' compensation schedules to "the employer", "the director", and "the industrial injury", shall be respectively construed as references to "the insurer", "the commissioner", and "the injury covered by no-fault benefits" for purposes of this article.

(b) Effective January 1, 1993, the charges and frequency of treatment for services specified in section 431:10C-103(10)(A)(i) and (ii), except for emergency services provided within seventy-two hours following a motor vehicle accident resulting in injury, shall not exceed the charges and frequency of treatment permissible under the workers' compensation schedules, except as provided in section 431:10C-C. Charges for independent medical examinations to be conducted by a licensed Hawaii provider, unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the workers' compensation schedules for consultation for a complex medical problem. The workers' compensation schedules shall not apply to independent medical examinations conducted by out-of-state providers; provided that the charges for the examinations are reasonable. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by no-fault benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers' compensation schedules.

(c) Charges for services for which no fee is set by the workers' compensation schedules or other administrative rules adopted by the commissioner shall be limited to eighty per cent of the provider's usual and customary charges for these services. These charges shall be deemed appropriate and reasonable if so determined by a provider unless they are found inappropriate or unreasonable by a peer review organization in accordance with section 431:10C-C.

(d) Services for which no frequency of treatment guidelines are set forth in the workers' compensation schedules or other administrative rules adopted by the commissioner shall be deemed appropriate and reasonable expenses necessarily incurred if so determined by a provider unless they are found inappropriate or unreasonable by a peer review organization in accordance with section 431:10C-C.

(e) The provider of services described in section 431:10C-103(10)(A)(i) and (ii) shall not bill the insured directly for those services but shall bill the insurer for a determination of the amount payable. The provider shall not bill or otherwise attempt to collect from the insured the difference between the provider's full charge and the amount paid by the insurer.

**§431:10C-C Permissible charges in excess of the fee schedules and guidelines for frequency of treatment and reasonable utilization of services; peer review process.** (a) Charges and treatment in excess of fee schedules or treatment guidelines shall be governed by this section. The fee schedules or treatment guidelines may be exceeded if a provider of treatment or rehabilitative services finds that the nature of the injuries and the process of recovery require a treatment plan resulting in fee schedules or treatment guidelines to be exceeded. If an insurer desires to challenge treatment and rehabilitative services in excess of the fee schedules or treatment guidelines, the insurer may do so by filing, within five working days of a request made pursuant to subsection (d), a challenge with the commissioner for submission to a peer review organization as provided in this section.

(b) For the purposes of this section, "peer review organization" means any

health care review company, approved by the commissioner, that engages in peer review for the purpose of determining that medical and rehabilitative services are appropriate and reasonable. The membership of any peer review organization utilized in connection with this section shall include representation from the profession of the provider whose services are subject to the review. Peer review recommendations or decisions shall contain a statement of the reasons for the recommendations or decisions and the data utilized by the peer review organization.

(c) The commissioner shall contract with one or more peer review organizations established for the purpose of evaluating treatment and rehabilitative services provided to any injured person. The evaluation shall be for the purpose of confirming that such treatment and rehabilitative services are appropriate and reasonable. An insurer's challenge shall be filed with the commissioner for submission to a peer review organization within ten working days of the insurer's receipt of the provider's bill for treatment or rehabilitative services; provided that a challenge may be made at any time for continuing treatment or services. Notice of the challenge shall be given in writing to both the insured and the service provider.

(d) A provider may request prior approval from the insurer for treatment exceeding the workers' compensation schedules or treatment guidelines. The request shall include a treatment plan with a time schedule of measurable objectives and an estimate of the total cost of services. The insurer shall respond to such a request within five working days of mailing of the request, giving authorization or stating in writing the reasons for refusal to the provider and the insured. Any such refusal shall be filed concurrently for submission to the peer review organization. Failure by the insurer to respond within five working days shall constitute approval of the treatment.

(e) A health care provider shall be compensated by the insurer for preparing reports documenting the need for treatments which exceed the schedules in accordance with the fee schedule for special reports.

(f) An insurer, provider, or insured may request a reconsideration by the peer review organization of its initial determination within thirty days of the initial determination. If reconsideration is requested for the services of a physician or other licensed health care professional, then the reviewing individual shall be, or the reviewing panel shall include, an individual in the same specialty as the individual subject to review. Any insured or provider may, in addition to or in lieu of reconsideration, seek an administrative hearing, arbitration, or court review of a denial of no-fault benefits based, in whole or in part, upon a peer review organization determination.

(g) If the insurer challenges a bill for medical treatment or rehabilitative services within thirty days of receipt, the insurer need not pay the provider for the disputed portion of the bill subject to the challenge until a determination has been made by the peer review organization.

(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 per cent per year on any amount withheld by the insurer pending the peer review.

(i) Payment of interest under this section shall not reduce the amount of no-fault benefits available to the insured beyond the actual expense of treatment or rehabilitative services.

(j) If a peer review organization determines that a provider has provided treatment or rehabilitative services that are not appropriate or reasonable or that future provision of such treatment or rehabilitative services will not be appropriate or reasonable, or both, the provider shall not collect payment for the inappropriate or unreasonable treatment or rehabilitative services from either the insurer

or the insured. The peer review organization shall report all such decisions to the regulated industries complaints office of the department of commerce and consumer affairs. In no case shall the failure of a provider to return any payment made by the insurer for treatment or services determined to be inappropriate or unreasonable obligate the insured to reimburse the insurer for the payment.

**§431:10C-D No-fault administration revolving fund.** (a) There is established a separate revolving fund to be administered by the commissioner and to be designated as the no-fault administration revolving fund.

(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.

(c) Every insurer making a challenge which is submitted to a peer review organization pursuant to section 431:10C-C, 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, 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 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 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.

(e) Moneys in the no-fault administration revolving fund shall not revert to the general fund.

(f) The commissioner shall report annually to the legislature before the convening of each regular session as to fund administration and expenditures.

**§431:10C-E Disclosure of no-fault limits and payments.** (a) Effective January 1, 1993, every insurer shall advise every person entitled to no-fault benefits, as defined in section 431:10C-103(10)(A), of the maximum amount of no-fault benefits available under the policy within thirty days of receiving an initial notice, claim, or application for no-fault benefits. The disclosure of no-fault policy limits shall include a description of the nature of no-fault benefits, matters covered by no-fault benefits, and the procedure for submitting no-fault claims.

(b) Every no-fault insurer shall give written notice to every person eligible for no-fault benefits when \$5,000 in benefits has been paid and at \$5,000 increments thereafter up to the policy limits, including any optional additional coverages.

**§431:10C-F Client-patient referrals prohibited.** (a) An attorney or a law firm of which the attorney is a member or by which the attorney is employed may not establish a pattern of consistently referring clients to the same health care provider as a result of any accidental harm which is subject to benefits under this article, and a health care provider may not establish a pattern of consistently referring patients to the same attorney or law firm as a result of any accidental harm which is subject to benefits under this article. Any attorney, or any attorney from the law firm of which the attorney is a member or by which the attorney is employed, and that health care provider engaged in such pattern shall be presumed to be in violation of this section.

As used in this subsection, "law firm" means any sole proprietorship, partnership, corporation, or other entity having members or employees who engage in the practice of law in this State.

(b) The regulated industries complaints office, department of commerce and consumer affairs, shall refer any attorney or health care provider in violation of this section to the appropriate professional licensing or regulatory body, for appropriate disciplinary action, including the suspension or revocation of the attorney's or health care provider's license to practice.

(c) The regulated industries complaints office, department of commerce and consumer affairs, may initiate investigations to enforce this section and shall investigate any reports of attorney-health care provider referrals of persons eligible for benefits under this article that may violate this section.

**§431:10C-G Notice of cancellation for insurer ceasing to issue no-fault policies.** Any insurer authorized to issue no-fault policies, which ceases to engage in the motor vehicle insurance business in this State, shall give written notice to each insured not less than sixty days prior to the effective date of closing its business."

SECTION 2. Section 431:10C-103, Hawaii Revised Statutes, is amended:

1. By amending the definition of "maximum limit" to read:

"(6) Maximum limit means the total no-fault benefits payable per person or, on the person's death, to the person's survivor on account of accidental harm sustained by the person in any one motor vehicle accident shall be [\$15,000,] \$20,000, regardless of the number of motor vehicles involved or policies applicable., to be applied as follows:

- (A) \$10,000 for benefits described in section 431:10C-103(10)  
(A)(i) and (ii); and
- (B) \$10,000 for benefits described in section 431:10C-103(10)  
(A)(iii) and (iv).

During the course of a pending claim, the no-fault insured or legal representative shall at his or her sole option, be allowed to transfer any part of all of the unused portion of the benefits under (A) to (B) or from (B) to (A); provided that the total benefits payable shall not exceed the maximum limit of \$20,000.

(For example, if the insured has \$5,000 in unused benefits under (B), that amount may be transferred for use under (A) thereby increasing the limits under (A) to \$15,000.) In the event that the amount in (A) is exhausted for any reason, no-fault benefits for medical expenses shall be deemed exhausted for purposes of other contractual insurance medical benefits available to the insured.”

2. By amending the definition of “no-fault benefits” to read:

- “(10) (A) No-fault benefits, sometimes referred to as personal injury protection benefits, with respect to any accidental harm means:
- (i) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, and x-ray. The foregoing expenses may include any nonmedical remedial care and treatment rendered in accordance with the teachings, faith, or belief of any group which depends for healing upon spiritual means through prayer;
  - (ii) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
  - (iii) Monthly earnings loss measured by an amount equal to the lesser of:
    - (I) [\$900] \$1,200 a month; or
    - (II) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity;
  - (iv) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to:
    - (I) Expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but for the benefit of the person or the person’s family up to \$800 a month;
    - (II) Funeral expenses not to exceed \$1,500; and
    - (III) Attorney’s fees and costs to the extent provided in section 431:10C-211(a);
- provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section 431:10C-410(3)(A), shall not include benefits under items (i), (ii), and (iii) for any person receiving public assistance benefits.
- (B) No-fault benefits shall be subject to:
- (i) An aggregate limit of [\$15,000] \$10,000 for services provided under section 431:10C-103(10)(A)(i) and (ii) and \$10,000 for services provided under section 431:10C-103(A)(iii) and (iv) per person or such person’s survivor where each applicable policy provides only the basic no-fault coverage; [or]
  - (ii) An aggregate limit of the expanded limits where the insured has contracted for it under an optional additional coverage[.]; or

- (iii) The aggregate limit shall be subject to the application of benefits or transfer thereof as provided in section 431:10C-103(6)."

SECTION 3. Section 431:10C-202, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Notwithstanding any provision in this section to the contrary, the plans and rates for any surcharge or credit included by an insurer as part of the proposed rate filing shall be separately identified. Only reasonable surcharges [and credits that] approved by the commissioner [deems reasonable] shall be used; provided that [surcharges and credits] no surcharge for the failure to maintain no-fault insurance shall be approved by the commissioner unless the insured has previously been convicted of driving without insurance within the preceding three years. Credits shall be deemed reasonable if there is no objection by the commissioner [within sixty days of their filing]. Insurers shall furnish the prospective insured with a written explanation, in easily understandable language, clearly describing the reason for the surcharge or credit and how the amount of the surcharge or credit is determined."

SECTION 4. Section 431:10C-301<sup>1</sup> is amended to read as follows:

**"§431:10C-301 Required motor vehicle policy coverage.** (a) In order to meet the requirements of a no-fault policy as provided in this article, an insurance policy covering a motor vehicle shall provide:

- (1) Coverage specified in section 431:10C-304; and
  - (2) Insurance to pay on behalf of the owner or any operator of the insured motor vehicle using the motor vehicle with the express or implied permission of the named insured, sums which the owner or operator may legally be obligated to pay for injury, death, or damage to property of others, except property owned by, being transported by, or in the charge of the insured, which arise out of the ownership, operation, maintenance, or use of the motor vehicle.
- (b) A motor vehicle insurance policy shall include:
- (1) Liability coverage of not less than [\$35,000] \$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 section 287-7], 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 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 or underinsured motorist coverage, whichever is applicable, is prohibited. However, an insurer shall offer an option to stack uninsured motorist and underinsured motorist coverage, as applicable, in each no-fault policy whenever any policy is issued, delivered, or renewed.

(d) An insurer shall offer uninsured motorist coverage and underinsured motorist coverage of not less than the amount of the maximum bodily injury liability coverage in the insured's policy when the policy is first issued; provided that written rejection shall only be required when the policy is first issued or first renewed. No further rejections are required. Provided further that for any existing policies an insurer shall offer such coverage at the first renewal after January 1, 1993."

**SECTION 5.** The commissioner shall monitor the impact of the provisions of this Act and the provisions of H.B. 3974, H.D. 1, S.D. 1, C.D. 1,<sup>2</sup> on the motor vehicle insurance (no-fault) system in Hawaii. In monitoring the impact of these provisions, the commissioner shall be guided by the primary purposes of the Hawaii motor vehicle insurance law as set forth in section 431:10C-102, Hawaii Revised Statutes. The commissioner shall also make determinations, as a result of this monitoring, which shall include but not be limited to:

- (1) Whether premium rates can be further reduced or stabilized by further adjusting the minimum no-fault coverage set forth in this Act;
- (2) Whether the rate reduction set forth in this Act may be continued and for what period of time, or whether any modification is necessary; and
- (3) Whether the medical-rehabilitation limit is sufficient to ensure that ninety per cent of all no-fault claims are screened out.

**SECTION 6. Severability.** If any provision of this Act, or its application 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 7.** The provisions of this Act do not affect rights, duties, or

## ACT 124

actions that are based upon events or acts which have taken place prior to the effective date of this Act, or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 9. In codifying this Act in the Hawaii Revised Statutes, the revisor of statutes shall substitute, in section 1, the references to "Act" with the appropriate act number assigned to this Act and the alphabetic section designations with appropriate numeric designations.

SECTION 10. This Act shall take effect upon its approval; provided that:

- (1) The provisions in section 1 relating to rate reduction (431:10C-A(b) and (c)); fee schedules (section 431:10C-B); peer review (section 431:10C-C); and disclosure of no-fault payments (section 431:10C-E) shall take effect on January 1, 1993;
- (2) The provision in section 3<sup>1</sup> prohibiting stacking of uninsured or underinsured motorist coverage (section 431:10C-301(c) and (d)) shall take effect on January 1, 1993; and
- (3) This Act, upon its approval, shall take effect only if H.B. No. 3974<sup>2</sup> in conference draft is passed by the legislature, regular session of 1992, and becomes an Act.

(Approved June 3, 1992.)

### Notes

1. So in original.
2. Act 124.
3. Edited pursuant to HRS §23G-16.5.

## ACT 124

H.B. NO. 3974

A Bill for an Act Relating to No-Fault Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding two new sections to article 10C to be appropriately designated and to read as follows:

**"§431:10C- Amnesty period for uninsured motorists.** Notwithstanding any other provision of law to the contrary, any penalties and any provision for surcharge based on prior failure to maintain no-fault insurance shall not apply to any uninsured motorist who obtains the required coverages prior to December 31, 1992.

**§431:10C- Immediate rate freeze; rate reduction; relief.** (a) No insurer may increase motor vehicle insurance rates between the effective date of this Act and December 31, 1993.

(b) Commencing on January 1, 1993, all authorized insurers transacting motor vehicle insurance in this State shall implement a fifteen per cent rate reduction from the rates on file with the commissioner for all motor vehicle insurance

policies in effect on March 1, 1992, and for each new and renewal policy issued thereafter. The reduced rate shall continue to apply to each new and renewal policy for a period of one year.

(c) There shall be no exception to the requirements of this section unless the commissioner, pursuant to an insurer's petition, finds that those requirements will result in imminent danger of insolvency of the insurer. An insurer who contends that a rate required by this section will result in imminent danger of insolvency of the insurer shall designate in its petition the rate it contends is appropriate and shall state with specificity the factors and data upon which it relies. The insurer shall be permitted to use all generally accepted actuarial techniques in filing any petition pursuant to this subsection. The insurer shall have the burden of proof to actuarily justify any rate increase from those provided for in subsections (a) and (b) and shall furnish all information, facts, and data requested by the commissioner reviewing any rate request.

(d) Effective January 1, 1994, all insurers shall include data on the impact of the provisions of this Act on all requested rate adjustments. The commissioner shall not approve any rate adjustments that do not contain a statement of the impact of the provisions of this Act, the method used in calculating such impact and the data used to determine such impact."

**SECTION 2.** Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definition of "uninsured motor vehicle" to read:

- "(23) "Uninsured motor vehicle" means any of the following:
  - (A) A motor vehicle for which there is no bodily injury liability insurance or self-insurance applicable at the time of the accident; or
  - (B) An unidentified motor vehicle that causes an accident resulting in injury provided the accident is reported to the police or proper governmental authority, [physical or independent evidence exists of its involvement,] and claimant notifies the claimant's insurer within thirty days or as soon as practicable thereafter, that the claimant or the claimant's legal representative has a legal action arising out of the accident."

**SECTION 3.** Section 431:10C-202, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-202 Making of motor vehicle insurance rates.** All premium rates for motor vehicle insurance shall be made in accordance with article 14 and the following provisions:

- [1] (1) Rates shall not be excessive, inadequate, or unfairly discriminatory;
- (2) Due consideration shall be given to:
  - (A) Past and prospective loss experience in this State, catastrophe hazards, if any, reasonable margin for profit and contingencies, dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
  - (B) Reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold;
  - (C) Past and prospective expenses in the sale and administration of motor vehicle insurance;

- (D) Investment income from reserves, unearned insurance premiums, and other unearned proceeds received on account of motor vehicle insurance sold, and all other factors that may be deemed relevant, such as but not limited to types of vehicles, occupations, and involvement in past accidents, provided they are established to have a probable effect upon losses or expense, or rates; and
  - (E) Optionally, to past or prospective loss, sales, and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce rates;
- (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable; and
- (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (b) Except to the extent necessary to meet the provisions of subsection (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.
- (c) The commissioner shall be prohibited from setting, maintaining, or in any way fixing the rates charged by motor vehicle insurers for motor vehicle insurance issued in conformity with this article as either no-fault insurance or as optional additional insurance except as provided in part IV of this article. Each insurer licensed to underwrite no-fault insurance in the State shall establish its own rate schedule. The commissioner, however, shall monitor and survey the several companies' rate making methods and systems. The commissioner shall require of each insurer and of each self-insurer any and all information, data, internal memoranda, studies, and audits the commissioner deems desirable for the purpose of evaluation, comparison, and study of the methods and schedules.
- (d) Notwithstanding subsection (c), and in addition to all other premium reductions required under this section, commencing on October 1, 1986, and ending on September 30, 1989, all insurers of any motor vehicle shall provide a 1.5 per cent reduction for bodily injury liability, property damage liability, no-fault benefits, uninsured motorist, and underinsured motorist coverages, and a 0.75 per cent reduction for collision coverage off premium charges each insurer assesses for each new and renewal policy, based on the anticipated effects of section 281-78. Commencing on October 1, 1989, and ending on September 30, 1990, at the discretion of and as determined by the commissioner, based on the difference between the actual and anticipated effects of section 281-78, all insurers of any motor vehicle shall provide a refund or credit to each insured at the time of renewal of a no-fault policy.
- (e) (1) Notwithstanding any other law to the contrary, no insurer shall agree, combine or conspire with any other private insurer or enter into, become a member of, or participate in any understanding, pool, or trust, to fix, control, or maintain, directly or indirectly, motor

vehicle insurance rates. Any violation of this section shall subject the insurer and each of its officers and employees involved to the penalties of chapter 480 without benefit of any exemption otherwise permitted by section 480-11; provided that this subsection shall not apply to advisory organizations referred to in section 431:14-111 which are not involved in rate making under this article.

- [f] (2) Notwithstanding any provision in this section to the contrary, the plans and rates for any surcharge or credit included by an insurer as part of the proposed rate filing shall be separately identified. Only reasonable surcharges [and credits that] approved by the commissioner [deems reasonable] shall be used; provided that [surcharges and credits] no surcharge for the failure to maintain no-fault insurance shall be approved by the commissioner unless the insured has previously been convicted of driving without insurance within the preceding three years. Credits shall be deemed reasonable if there is no objection by the commissioner within sixty days of their filing. Insurers shall furnish the prospective insured with a written explanation, in easily understandable language, clearly describing the reason for the surcharge or credit and how the amount of the surcharge or credit is determined."

SECTION 4. Section 431:10C-203, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-203 Rate filings.** [(a) At least thirty days before an insurer proposes its filing to become effective, the insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance which it proposes to use. Each filing shall indicate the proposed effective date of the filing and the character and extent of the coverage contemplated.

(b) An insurer shall not implement a rate pursuant to a proposed rate filing until the effective date of the filing unless the insurer requests in writing and receives authorization from the commissioner to implement the rate filing prior to the expiration of the thirty-day period.

(c) The commissioner [also] may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers.

[(d) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(e) A filing and any supporting information shall be open to the public upon filing with the commissioner.]"

SECTION 5. Section 431:10C-210, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-210 Publication of premium rates.** The commissioner shall publish annually, in a newspaper of general circulation in the State, a list of all motor vehicle insurers with representative annual premiums for motor vehicle insurance. In addition, the commissioner shall have information on premiums for motor vehicle insurance which shall be available to the public on request."

SECTION 6. Section 431:10C-211, Hawaii Revised Statutes, is amended

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by amending subsection (a) to read as follows:

“(a) A person making a claim for no-fault benefits may be allowed an award of a reasonable sum for attorney’s fees, and reasonable costs of suit in an action brought by or against an insurer who denies all or part of a claim for benefits under the policy, unless the court upon judicial proceeding or the commissioner upon administrative proceeding determines that the claim was unreasonable, fraudulent, excessive or frivolous. Reasonable attorney’s fees, based upon actual time expended, shall be treated separately from the claim and be paid directly by the insurer to the attorney.”

SECTION 7. Section 431:10C-212, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If a claimant or provider of services objects to the denial of benefits by an insurer or self-insurer pursuant to section 431:10C-304(3)(B) and desires an administrative hearing thereupon, the claimant or provider of services shall file with the commissioner, within sixty days after the date of denial of the claim, the following:

- (1) Two copies of the denial;
- (2) A written request for review; and
- (3) A written statement setting forth specific reasons for the [claimant’s] objections.”

(b) The commissioner has jurisdiction to review any denial of no-fault benefits, [where:

- (1) The disputed amount does not exceed \$5,000 as of the date of the denial; or
- (2) The disputed amount exceeds \$5,000 solely because an insurer or self-insurer has failed to comply with section 431:10C-304.]”

SECTION 8. Section 431:10C-213, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A claimant [or], insurer, or provider of services may submit any dispute relating to a no-fault policy to an arbitrator by filing a written request with the clerk of the circuit court in the circuit where the accident occurred.”

SECTION 9. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A motor vehicle insurance policy shall include:

- (1) Liability coverage of not less than [\$35,000] \$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 section 287-7, 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 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."

SECTION 10. Section 431:10C-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to the no-fault coverages described in section 431:10C-301, every insurer issuing a no-fault policy shall make available to the insured the following optional insurance under the following conditions:

- (1) At the option of the insured, provisions covering loss resulting from damage to the insured's motor vehicle with such deductibles, including but not limited to collision and comprehensive deductibles of \$50, \$100, \$250, \$500, \$1,000, \$1,500 and \$2,000, at appropriately reduced premium rates, as the commissioner, by regulation, shall provide;
- (2) At the option of the insured, compensation to the insured, the insured's spouse, any dependents, or any occupants of the insured's vehicle for damages not covered by no-fault benefits;
- (3) Additional coverages and benefits with respect to any injury, death, or any other loss from motor vehicle accidents or from operation of a motor vehicle for which the insurer may provide for aggregate limits with respect to such additional coverage so long as the basic liability coverages provided are not less than those required by section 431:10C-301(b)(1) and (b)(2);
- (4) Terms, conditions, exclusions, and deductible clauses, coverages and benefits which:
  - (A) Are consistent with the required provisions of such policy,

- (B) Limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers, and
- (C) Are approved by the commissioner as fair and equitable; [and]
- (5) At appropriately reduced premium rates, deductibles applicable only to claims of a no-fault insured or of the insured's survivors in case of the insured's death in the amounts of \$100, \$300, [and] \$500, and \$1,000 from all no-fault benefits otherwise payable; provided that if two or more no-fault insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them[.]; and
- (6) Every insurer shall fully disclose the availability of all deductibles, including the nature of the deductible, amount of the deductible, and amount of savings in premium rates associated with each deductible at the time any policy is issued, delivered, or renewed."

SECTION 11. 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; [or]
  - (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
  - [B)] (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<sup>1</sup> for the benefit of the surviving spouse and any defendant,<sup>2</sup> 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) [and], (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 [the] 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) [If] Subject to section 431:10C- , 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 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 12. Section 431:10C-308, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-308 Medical-rehabilitative limit.** (a) The commissioner shall annually revise the medical-rehabilitative limit [in the following manner:

- (1) The commissioner shall determine the percentage change in the medical care category of the consumer price index for all urban consumers for the Western region as published by the bureau of labor statistics from April of the previous year to April of the current year;

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- (2) The medical-rehabilitative limit for the next no-fault policy term year shall be the current medical-rehabilitative limit increased or decreased by the product of the current medical-rehabilitative limit multiplied by the percentage change in the medical care index;
- (3) The medical-rehabilitative limit shall then be rounded to the nearest \$100 for actual use, but the exact value shall be used in subsequent determinations under this section; and
- (4) The commissioner shall use the amount of \$5,000 as the initial threshold base on which calculations shall be made in accordance with this section for the purpose of determining the medical-rehabilitative limit for the next no-fault policy term year.]

by accumulating experience data on a yearly basis for all motor vehicle accidents in the State resulting in accidental harm, and shall tabulate the amounts of benefits paid or reserved, hereinafter collectively termed "claims", for medical-rehabilitative benefits for each of these accidents. The commissioner shall perform such actuarial evaluations of this data necessary to determine, annually, that specific figure in dollar value, below which ninety per cent of all non-zero motor vehicle accident medical-rehabilitative claims arising from motor vehicle accidents occurring during the next no-fault policy term year are expected to fall. This specific figure shall be utilized annually as the medical-rehabilitative limit for all accidents occurring during the next no-fault policy term for the purpose of section 431:10C-306(b)(2).

(b) For the purposes of this section, the no-fault policy term year shall commence annually on September 1 and terminate the following August 31. For each term year, the commissioner shall make the tabulation of data necessary for the computation of the [medical-rehabilitation] medical-rehabilitative limit during the period [April] January 1 to [March] December 31 preceding the September 1 start of the no-fault policy term year.

(c) The medical-rehabilitative limit for the one-year period commencing September 1, 1992 shall be \$10,000, provided that if the commissioner is unable to revise the medical-rehabilitative limit within the one-year period, the medical-rehabilitative limit shall continue at \$10,000 for the next no-fault policy term year commencing September 1, 1993."

SECTION 13. Section 431:10C-204, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 431:10C-206, Hawaii Revised Statutes is repealed.

SECTION 15. The provisions of this Act do not affect rights, duties, or actions that are based upon events or acts which have taken place prior to the effective date of this Act, or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act.

SECTION 16. If any provision of this Act, or its application 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 17. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 18. This Act shall take effect upon its approval except sections 7, 8, 9, and 11 shall take effect on January 1, 1993; and provided that this Act, upon its approval, shall take effect only if S.B. No. 2361<sup>4</sup> in conference draft is passed by the legislature, Regular Session of 1992, and becomes an Act.

(Approved June 3, 1992.)

#### Notes

1. Prior to amendment “,” appeared here.
2. Prior to amendment “dependent” appeared here.
3. Edited pursuant to HRS §23G-16.5.
4. Act 123.

## ACT 125

S.B. NO. 1293

A Bill for an Act Relating to Criminal Injuries Compensation.

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

SECTION 1. Section 351-62.5, Hawaii Revised Statutes, is amended to read as follows:

**“§351-62.5 Criminal injuries compensation fund; when payments authorized.** (a) There is established a criminal injuries compensation fund from which the criminal injuries compensation commission may make payments as provided in subsection (b). The director of finance shall be custodian of the fund, and all payments therefrom shall be paid by the director upon orders by the commission.

(b) Where the [criminal injuries compensation] commission has made an award pursuant to this chapter, the commission shall make [such] the payments to or on behalf of the victim[,] or [to or for the benefit of] one or more of the dependents of a deceased victim, or to or for the benefit of other persons who have suffered pecuniary loss or incurred expenses on account of hospital, medical, funeral, or burial expenses as a result of the victim’s injury or death. Victims or dependents entitled to receive awards shall be notified of the option to have payments made on their behalf to other designated persons. Payments made pursuant to this section shall not exceed the total amount of the award.

(c) The amount appropriated under section 351-70 shall be redeposited into the [criminal injuries compensation] fund [established by this section, to be applied to making] and applied to other payments as authorized by the [criminal injuries compensation] commission.

(d) Funds received pursuant to section 354D-12(b)(1) shall be deposited into the criminal injuries compensation fund.”

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 [distributed periodically for:] paid:

(1) [Reimbursement to] To the criminal injuries compensation fund [by the qualified, able-bodied inmate in an amount not to exceed forty

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per cent of the qualified, able-bodied inmate's wages for payments actually and reasonably made by the criminal injuries compensation commission under chapter 351 to the victim of any crime of which the inmate was convicted;] 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;

- (2) [Payment for the] To support [of] the qualified, able-bodied inmate's dependents in amounts deemed appropriate by the department after consultation with the department of human services;
- (3) [Establishment of funds in trust] Into trust funds that may be established for the qualified, able-bodied inmate [to be released] and shall be payable upon the inmate's release; and
- (4) [Payment of] 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.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 3, 1992.)

## **ACT 126**

S.B. NO. 2918

A Bill for an Act Relating to the Rental Vehicle Surcharge Tax.

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

**SECTION 1.** Section 251-1, Hawaii Revised Statutes, is amended by amending the definition of "rental motor vehicle" to read as follows:

"Rental motor vehicle" or "vehicle" means every vehicle which is [self-propelled]:

- (1) Self-propelled and every vehicle which is propelled by electric power but which is not operated upon rails[, but excluding mopeds as defined in section 286-2,] which is rented or leased or offered for rent or lease in this State, whether for personal or commercial use, for a period of six months or less[.]; and
- (2) Designed to carry seventeen passengers or fewer.

"Rental motor vehicle" or "vehicle" shall not include:

- (1) Mopeds as defined in section 286-2;
- (2) Any trucks, truck-tractors, tractor-semitrailer combinations, or truck-trailer combinations, with:
  - (A) A manufacturer's nominal carrying capacity of one thousand pounds or more; and

- (B) A barrier or separation between the operator's compartment and the cargo area; and
- (3) Cargo vans with no more than two seats, including the driver's seat; provided that vans with a recreational vehicle converter package and vans with quick release passenger seats shall not be classified as cargo vans."

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

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved June 3, 1992.)

## ACT 127

S.B. NO. 3062

A Bill for an Act Relating to Hunting.

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

SECTION 1. Section 183D-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The hunting license fee shall be:
- (1) \$10 for any person who has resided in the State for one year or longer, or who is a member of the armed forces of the United States on active duty and the spouse and children thereof[;], or who elects to forgo the exemption provided in paragraph (3);
- (2) [\$20] \$95 for all other persons; and
- (3) Free to all [persons] Hawaii residents sixty-five years of age or older[.] and to all persons with Hansen's disease who are residents of Kalauapapa, Molokai.”

SECTION 2. Section 183D-28, Hawaii Revised Statutes, is amended to read as follows:

**“§183D-28 Hunter education program.** (a) The department shall establish a hunter education program to provide instruction in hunter safety, principles of conservation, and sportsmanship. Upon successful completion of the program, the department shall issue to the graduate a hunter education certificate which shall be valid for the life of the person. This certification shall be rescinded by judicial action upon the conviction of a wildlife and/or firearms violation. No person shall be eligible for a hunting license unless the person possesses a valid hunter education certificate [issued under this section or is exempted from completing the hunter education program as provided under this section.

(b) Successful completion of the hunter education program shall be mandatory for any person who is:] or meets the requirements for exemption provided in subsection (b)(2), and is either:

- (1) Born after December 31, 1971[, unless that person meets the requirements of subsection (c)(2)]; or
- (2) Born before January 1, 1972, [but who] and has never been issued a

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hunting license in the State], unless that person meets the requirements of subsection (c)(2).

Upon successful completion of the program, the department shall issue to the person a hunter education certificate which shall be valid for the life of the person].

[(c) The following persons]

(b) A person who meets the minimum age requirements adopted pursuant to subsection (c) shall [not be required to successfully complete the hunter education program provided they meet at least one of the following requirements:] be exempt from the requirements of subsection (a) if the person:

- (1) [A person born] Was born before January 1, 1972, and [who] at one time possessed a hunting license issued by the State; provided that the person shows satisfactory proof to the department that the person had possessed the hunting license; [and] or
- (2) [A person who has] Has successfully completed a course or program of hunter education and safety which is approved by the Hunter Education Association and meets the requirements of chapter 12 of the United States Fish and Wildlife Service Federal Aid Manual, as revised; provided that the person shows satisfactory proof to the department in the form of a certificate, wallet card, or other document issued by a state or province agency evidencing successful completion of the course or program.

Upon application and satisfaction of the requirements of either [subsection (c)(1) or (c)(2),] paragraphs (1) or (2), the department shall issue [an] a written exemption which shall be [in written form and be] valid for the life of the person.

(c) The department, by rules adopted pursuant to chapter 91, shall establish minimum age requirements for issuance of the hunter education certificate, or the exemption therefrom, required to obtain a hunting license pursuant to section 183D-22 (a)(3).

(d) The department may establish a hunter education officer position to administer the program, outline all phases of instruction, conduct general supervision of individual programs, and distribute information on the program, or may contract the program to a qualified organization.

(e) The department may construct, operate, and maintain public outdoor and indoor target ranges for the program.

(f) The department shall prepare reports as may be necessary to seek approval under Public Law 91-503 for federal assistance in this program of hunter safety, conservation, and sportsmanship."

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

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

(Approved June 3, 1992.)

## ACT 128

H.B. NO. 736

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 eleventh 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 1992. 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 states as follows:

### **"DISPOSITION OF EXCESS REVENUES"**

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law."

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

(Approved June 3, 1992.)

### **ACT 129**

H.B. NO. 770

A Bill for an Act Relating to Same Day Voter Registration.

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

**SECTION 1.** Section 11-18, Hawaii Revised Statutes, is amended to read as follows:

**"§11-18 Transfer of registration on removal from one precinct to another in same county.** A registered voter who changes residence from one

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precinct to another prior to any election shall notify the clerk and change the registration to the proper precinct by the appropriate registration deadline; provided that no change of registration shall be allowed [or required] if the change of residence occurs after the close of registration for an election[.] except pursuant to section 11-21(c). The change of registration due to a change of residence may be challenged as provided in section 11-25.”

SECTION 2. Section 11-19, Hawaii Revised Statutes, is amended to read as follows:

“**§11-19 Registration from one county to another.** Whenever a registered voter changes residence from one county to another, the person shall notify the clerk and change the registration to the proper county by the appropriate registration deadline; provided that no [such] change of registration shall be allowed [or required if the change of residence occurs] after the close of registration for an election[.] except pursuant to section 11-21(c). Thereupon [such clerk], if the person applying is legally qualified to register, the clerk shall accept [such] the registration and shall immediately thereafter forward to the clerk of the county in which the person was formerly registered, a notice that the name of the registered voter is to be removed from the general county register of that county.”

SECTION 3. Section 11-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person whose name appears on the registered voters list whose residence has changed since the last election, and [who] whom the county clerk has not transferred under section 11-20, may apply on a form prescribed by the chief elections officer at the person’s [old] new polling place on the day of the election for transfer of registration to the precinct of the new residence. Any person so transferring voter registration shall be immediately added to the register of the new precinct and may vote only at the new precinct.”

SECTION 4. Section 11-21, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) No person shall be prevented from voting at the election in the precinct in which the person’s name appears on the voters list due to a change of name, [change of registration.] or other correction made under this section [except those who have<sup>1</sup> failed to reregister pursuant to section 11-18 or 11-19]. However, any voter registered in the wrong precinct who shall refuse to make the correction of registration may be challenged in accordance with section 11-25.”

SECTION 5. Section 11-24, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) At 4:30 p.m. on the thirtieth day prior to each primary, special primary, or special election (but if [such] the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter), the general county register shall be closed to registration for persons seeking to vote at [such] the primary, special primary or special election and remain closed to [such] registration until after the election, subject to change only as provided in sections 11-21(c), 11-22, 11-25, 11-26, and this section.

(b) Notwithstanding the closing of the register for registration to vote at the primary or special primary election, the register shall remain open for the registration of persons seeking to vote at the general or special general election, until 4:30 p.m. on the thirtieth day prior to the general or special general election (but if [such] the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter), at the end of which period the general county register shall be closed to registration and remain closed until after the general or special general election next following, subject to change only as provided in sections 11-21(c), 11-22, 11-25, and 11-26.”

**SECTION 6.** 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 before election day to handle the absentee voters who are voting in person.”

**SECTION 7.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 8.** This Act shall take effect upon its approval.

(Approved June 3, 1992.)

**Notes**

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

**ACT 130**

H.B. NO. 1817

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 production of sugarcane and the supply or cost of electricity to the neighbor islands, as a result of a disruption in the continued supply of heavy fuel oil by interisland tank barge shipment. Accordingly, liability of any person under section 128D-6, Hawaii Revised Statutes, for a release of a heavy fuel oil from a tank barge carrying heavy fuel oil interisland, which release is subject to the federal Oil Pollution Act of 1990, and which tank barge can carry not more than 60,000 barrels of heavy fuel oil, shall not exceed \$700,000,000. “Heavy fuel oil” means petroleum that is No. 6 technical grades of fuel oil, and other residual fuel oils such as Navy Special Fuel Oil and Bunker C. “Tank barge” means any vessel that carries oil in bulk as cargo or in residue and is not equipped with a means of self-propulsion.

SECTION 2. The legislature further finds that certain nonfossil fuel producers generate a portion of the energy they supply to public utilities, that in turn supply electricity to the public, from fossil fuels including heavy fuel oil. There is an approaching threat that the interisland shipment of heavy fuel oil to such nonfossil fuel producers will be discontinued. The nonfossil fuel producers may be able to continue to supply to the public utilities the portion of the energy currently generated from heavy fuel oil by substituting an alternative fuel, but the cost of generating energy using an alternative fuel may be prohibitive unless the rate paid to the nonfossil fuel producers by the public utilities for such energy is increased to cover the additional fuel costs incurred by the nonfossil fuel producers.

SECTION 3. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Emergency rate action; interruption of fuel supply.** (a) The rate payable by a public utility for energy purchased from a nonfossil fuel producer may temporarily exceed the rate approved or prescribed by the public utilities commission pursuant to section 269-27.2(c) or pursuant to rules adopted by the commission under such section if the commission, upon application by the utility or the nonfossil fuel producer, approves such higher rate and finds that the nonfossil fuel producer has demonstrated that:

- (1) The nonfossil fuel producer had agreed to supply or has supplied energy to the utility at the rate approved or prescribed by the commission based on the generation of such energy from a combination of nonfossil fuel sources and heavy fuel oil;
- (2) Heavy fuel oil is and will probably continue to be unavailable to the nonfossil fuel producer;
- (3) The nonfossil fuel producer has the ability to substitute a higher cost alternative fuel for the unavailable heavy fuel oil, and the payment of a rate in excess of the rate approved or prescribed by the commission is reasonably necessary:
  - (A) For the nonfossil fuel producer to continue to supply the energy to the public utility that was previously generated from heavy fuel oil; and
  - (B) For the public utility to provide a reliable supply of electricity to its customers;
- (4) The excess of the payment rate for such energy over and above the approved or prescribed rate is based solely on the higher cost of the alternative fuel used by the nonfossil fuel producer and is limited to the portion of the higher fuel cost that is not recovered by the nonfossil fuel producer through an increase in the utility's avoided energy cost and a resulting increase in the approved or prescribed rate;
- (5) The nonfossil fuel producer's production of electrical energy and use of existing nonfossil fuel sources, such as bagasse, for the generation of that energy will, at a minimum, continue at normal levels. Other Hawaii grown biomass may be used only to supplement and not to substitute for the existing nonfossil fuel sources. However, other Hawaii grown sources of biomass produced as a by-product by the producers of other agricultural crops may substitute for the existing nonfossil fuel sources; provided that the normal level of usage

of the existing nonfossil fuel sources is reduced as a result of reduced yield due to growing conditions or reduced cultivated acreage due to agricultural or business practices or the existing nonfossil fuel sources being put to another economic use; and

- (6) The use of an alternative fuel by the nonfossil fuel producer is in the overall best interest of the general public, including consideration of the environmental effects resulting from the use of a type of fuel other than heavy fuel oil.

(b) The higher rate that may be paid under subsection (a) shall be applicable only to the percentage of the energy that is normally produced by the nonfossil fuel producer and supplied to the public utility from heavy fuel oil, and shall be applicable only until the commission determines that heavy fuel oil is no longer unavailable to the nonfossil fuel producer, or until the commission determines that any of the other findings required by subsection (a) are no longer applicable. The higher rate that may be paid under subsection (a) shall include the excess alternative fuel costs allowable under this section from the date the nonfossil fuel producer commences generating energy supplied to the public utility using the higher cost alternative fuel; provided that the nonfossil fuel producer has provided written notice to the public utility, consumer advocate, and the commission prior to its switch to an alternate fuel and an application is filed with the commission not later than 30 days after the switch is made requesting approval of the higher rate. However, the higher rate shall not be payable until approved by the commission.

(c) As a condition to the applicability of subsection (a) to a nonfossil fuel producer, the nonfossil fuel producer shall provide such information to the commission, the consumer advocate, and the affected public utility as the commission deems necessary for the implementation of subsections (a) and (b).

(d) Any higher rate payable by the public utility under subsection (a) and related revenue taxes shall be passed on to the public utility's ratepayers through an automatic rate adjustment clause. At the commission's discretion, the higher rate payable by the public utility under subsection (a) and related revenue taxes may be passed on to ratepayers statewide through an automatic rate adjustment clause; provided that no such statewide increase shall be imposed unless the commission finds that:

- (1) The higher rate is estimated to result in an increase of more than fifteen per cent for the ratepayers of the affected utility; and
- (2) Such a statewide increase is otherwise appropriate and in the public interest.

A statewide increase may be imposed only upon the ratepayers of the affected utility and the ratepayers of other public utilities whose rates are lower than the rates of the affected public utility.

(e) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible."

#### **SECTION 4. New statutory material is underscored.<sup>1</sup>**

**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 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. Applications seeking relief pursuant to section 3 of this Act

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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.

(Approved June 3, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 131

H.B. NO. 2366

A Bill for an Act Relating to the Molokai Irrigation System.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$5,000, or 0.00016 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** The legislature finds that a 1987 legislative reference bureau study entitled "The Molokai Irrigation System: A Management Study," recommended the establishment of a more formal role for water users in Molokai irrigation system management decisions. Specifically, the bureau recommended the creation of a Molokai irrigation system water users advisory board as a means of ensuring effective input from users.

Act 179, Session Laws of Hawaii 1987, added a new section to chapter 175, Hawaii Revised Statutes, to establish for a four-year period (until June 6, 1991), the Molokai irrigation system water users advisory board. However, Act 306, Session Laws of Hawaii 1987, provided for the repeal of chapter 175, effective July 1, 1989, concurrent with the transfer of the Molokai irrigation system from the department of land and natural resources to the department of agriculture. Act 306's repeal of chapter 175, without exception for the board, literally terminated the board's existence before the originally intended termination date of June 6, 1991. Act 48, Session Laws of Hawaii 1990, clarified the legislative intent as to the status of the advisory board by re-establishing its existence until June 6, 1991.

The legislature finds that the Molokai irrigation system water users advisory board serves a useful purpose and that its functions should continue.

The purpose of this Act is to re-establish the Molokai irrigation system water users advisory board to advise the department of agriculture on matters of concern to the users of the Molokai irrigation system.

**SECTION 3.** Chapter 167, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§167-23 Molokai irrigation system water users advisory board; establishment; meetings.** (a) There is established a Molokai irrigation system

water users advisory board, to be appointed by the governor under section 26-34. The advisory board shall consist of six members, as follows:

- (1) A homestead farmer user on Molokai;
- (2) A nonhomestead farmer user on Molokai;
- (3) The designee (by name rather than office) of the Molokai Farm Bureau;
- (4) The designee (by name rather than office) of Hikiola Cooperative, Inc.;
- (5) The designee (by name rather than office) of the Molokai-Lanai soil and water conservation district; and
- (6) The designee (by name rather than office) of the department of Hawaiian home lands.

The members of the advisory board shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties. For administrative purposes, and pursuant to section 26-35, the advisory board shall be placed within the department of agriculture.

(b) The advisory board shall meet with the department of agriculture at least six times each year. The meetings shall be held on Molokai, whenever possible.

The advisory board's duties and responsibilities shall be to advise the department on matters of concern to the users of the system, to provide support for improvements to the irrigation facilities, to participate in the long-range planning of the system, and to act as liaison between the users and the department."

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000, or so much thereof as may be necessary for fiscal year 1992-1993, to reimburse the advisory board members for necessary expenses, including travel expenses, incurred in the performance of their duties. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

**SECTION 5.** New statutory material is underscored.<sup>1</sup>

**SECTION 6.** This Act shall take effect upon its approval; provided that Section 3 shall take effect on July 1, 1992.

(Approved June 3, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 132**

H.B. NO. 3028

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 484-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately designated.

"Common promotional plan" means a plan undertaken by a single developer or group of developers acting in concert, to offer subdivided land for sale or lease; provided that where such land is offered for sale by the developer or group of developers acting in concert, and the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan.

"Material change" means any change which either renders the information contained in the application or public offering statement misleading or which substantively affects the rights or obligations of a purchaser or a prospective purchaser of a subdivision lot, such as, but not limited to, change in the nature or usage of the subdivision, or change in the underlying encumbrances or restrictive covenants.

"Public offering statement" means a statement that fully and accurately discloses the physical characteristics of the subdivided lands offered and all unusual or material circumstances or features affecting the subdivided lands. The statement shall include the information and statements required by section 484-6, and any other information or statements required by rules adopted by the director pursuant to chapter 91."

2. By amending the definition of "subdivider" to read:

"Subdivider" means any owner of subdivided land who offers [it] the land for disposition or the principal agent of an [inactive] owner[.], who has been duly authorized in a writing filed with the director."

SECTION 2. Section 484-3, Hawaii Revised Statutes, is amended to read as follows:

"§484-3 Exemptions. (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 not apply to offers or dispositions 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[, unless the subdivider files with the director a written election that this chapter shall apply to that subdivision;];
- (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 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 [building] buildings for resale[, unless the subdivider files with the director a written election that this chapter shall apply to that subdivision]; 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 [of] or interests;
- (8) [Established] Registered as a condominium property regime pursuant to chapter 514A.

(b) 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 not apply to:

- (1) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;
- (2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
- (3) A subdivision as to which the plan of disposition is to dispose to ten or fewer persons;
- (4) Offers or dispositions of securities currently registered with the commissioner of securities of this State;
- (5) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of [such] the interests are regulated as securities by the United States or by the commissioner of securities of this State; and
- (6) Subdivisions of less than twenty lots, parcels, units, or interests, if [they] the lots, parcels, units, or interests are all located in jurisdictions requiring the developer prior to sale to provide or post bond for road access, sewage disposal, water, and other public utilities, if [such] the requirements have been complied with."

SECTION 3. Section 484-4, Hawaii Revised Statutes, is amended to read as follows:

**"§484-4 Prohibitions on dispositions of interests in subdivisions.** Unless the subdivided lands or the transaction is exempt by section 484-3 [or exempted by the director under section 484-10(g)]:

- (1) No person may offer or dispose of any interest in subdivided lands located in this State, or offer or dispose in this State of any interest in subdivided lands located without this State before a preliminary or final order registering the subdivided land is entered in accordance with this chapter;
- (2) No person may dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition."

SECTION 4. Section 484-5, Hawaii Revised Statutes, is amended to read as follows:

**"§484-5 Application for registration.** (a) The application for registration of subdivided lands shall be filed in accordance with this chapter and rules adopted by the director pursuant to chapter 91, and shall contain the following documents and information:

- (1) An irrevocable appointment of the director to receive service of any lawful process in any noncriminal proceeding arising under this

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- chapter against the applicant or the applicant's personal representative;
- (2) A [legal description of the subdivided lands offered for registration, together with a] map or maps of the subdivided lands offered for registration showing the name and location of the subdivided lands, the division proposed or made, the topographic features of the lands, and the land area of the lots, parcels, units, or interests and the relation of the subdivided lands to existing and proposed streets, roads, easements, and other off-site improvements;
  - (3) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
  - (4) The applicant's name, address, and the form, date, [and] jurisdiction of organization[;], current evidence of being admitted to conduct business in this State, and the address of each of [its] the applicant's offices in this State;
  - (5) The name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions[;], including, but not limited to, every director and officer of the managing general partner of a partnership; and the extent and nature of the director's and officer's or person's interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application;
  - (6) A statement, in a form acceptable to the director, of the condition of the title to the subdivided lands containing a legal description of the subdivided lands offered for registration, including all encumbrances thereon, as of a specified date within thirty days of the date of application by a title report prepared by a title company authorized to do business in the State of Hawaii, or by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the director;
  - (7) Copies of the instruments which will be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and copies of the contracts and other agreements which a purchaser will be required to agree to or sign;
  - (8) Copies of the instruments by which the interest in the subdivided lands was acquired by the subdivider and a statement of [any lien or encumbrance] all liens or encumbrances upon the subdivider's title to the subdivided lands, and copies of the instruments creating the [lien or encumbrance,] liens or encumbrances, if any, with data as to recording;
  - (9) If there is a monetary lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences [for] to a purchaser in the event of a failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
  - (10) Copies of instruments creating easements, restrictions, or other encumbrances, and a statement describing all proposed easements, restrictions, or other encumbrances, affecting the subdivided lands;
  - (11) A statement [of the zoning and other governmental regulations affecting the use of the subdivided lands and also] of any existing

- tax and existing or proposed special taxes or assessments which affect the subdivided lands[;] and evidence that all current taxes and assessments have been paid;
- (12) A statement of the existing provisions for access, sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the [schedule for their] completion[,] schedule, and a statement as to the provisions for improvement maintenance;
- (13) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which have been prepared for public distribution by any means of communication[,] or a statement that no such advertising materials have been produced as of the date of application;
- (14) The proposed public offering statement[;] and a copy of the receipt for the public offering statement;
- (15) An executed copy of the escrow agreement between the subdivider and a bank, savings and loan association, trust company authorized to do business in the State under an escrow arrangement, or a corporation licensed as an escrow depository under chapter 449; which agreement:
- (A) Provides that all funds and instruments received from purchasers or prospective purchasers shall be held by the escrow agent in accordance with this chapter and any rules adopted by the director pursuant to chapter 91; [and]
  - (B) Complies with the requirements of this chapter and any rules adopted by the director pursuant to chapter 91; and
  - (C) Contains a statement that no disbursement shall be made from the escrow account to or on behalf of the subdivider until the director enters a final order registering the subdivided land and until the requirements of sections 484-8.6(b) and (c) and 484-8.7 are met;
- (16) Any other documents or information, including any current financial statement, which the director by the director's rules requires:
- (A) For the protection of purchasers; or
  - (B) To obtain, or as a result of having obtained, certification of Hawaii law by the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708;
- (17) A statement which indicates the existing zoning and the [general plan] land use designation of each lot and the proposed use of each lot in the subdivision, [to include] including, without limitation, such uses as roadway lots, residential dwellings, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information[.];
- (18) If federal registration is required, the date of registration (date of filing if pending registration) and a copy of the "Statement of Record";
- (19) A letter of preliminary or final subdivision approval, or both, from the county or other appropriate jurisdiction;
- (20) A description of a road maintenance fund or any other maintenance fund that may have been established by the developer;
- (21) A specimen of a receipt for the written notice advising of the purchaser's right to rescind a contract within seven days after signing the contract, without penalty to the purchaser;

- (22) An executed copy of a listing agreement between the subdivider and a real estate broker duly licensed and in good standing under the laws of this State;
- (23) The name, address, and telephone number of the subdivider's representative or real estate broker in this State; and
- (24) A statement that the subdivider has not, or if a corporation, the officers, directors, and principals, or if a partnership, general partners, have not been convicted of a crime involving land dispositions or any aspect of land sales business in the United States or any foreign country within the past ten years, and have not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, the subdivider may consolidate or incorporate by reference the subsequent registration with any earlier registration offering subdivided lands for disposition under the same common promotional plan[.] if the subdivider files an application for the subsequent registration within two years after a final order of registration has been issued in connection with the earlier registration.

(c) The application shall be submitted with payment of the appropriate registration, consultant, and inspection fees.

[c] (d) The subdivider shall immediately report any material changes in the information contained in any application for registration."

SECTION 5. Section 484-6, Hawaii Revised Statutes, is amended to read as follows:

**"§484-6 Public offering statement.** (a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the director shall be in a form prescribed by the director's rules and shall include, but not be limited to, the following:

- (1) The name and principal address of the subdivider;
- (2) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;
- (3) The significant terms of any encumbrances, easements, current or proposed liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;
- (4) A statement of the use for which the property is offered;
- (5) Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;
- (6) Additional information required by the director to assure full and fair disclosure:
  - (A) To prospective purchasers; or
  - (B) To obtain, or as a result of having obtained, certification by

- the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708;
- (7) A statement which indicates the existing zoning and the [general plan] land use designation of each lot and the proposed use of each lot in the subdivision, to include without limitation such uses as roadway lots, residential dwellings, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information; and
  - (8) A statement that the purchaser has a seven-day period, after signing a contract to purchase subdivided lands from the subdivider, to rescind the contract at no penalty to the purchaser.
- (b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the director approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement, except for headings, may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director requires it[.] or as prescribed in rules adopted in accordance with chapter 91.
- (c) The director may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.”

SECTION 6. Section 484-7, Hawaii Revised Statutes, is amended to read as follows:

**“§484-7 Notice of filing; inquiry and examination.** [(a)] Upon receipt of [an] a complete application for registration in proper form, including all standardized application forms, if any, prescribed by the director, the director shall issue a notice of filing to the applicant subject to section 484-20, and forthwith initiate an examination to determine that:

- (1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;
- (2) There is reasonable assurance that all proposed improvements will be completed as represented;
- (3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director and afford full and fair disclosure;
- (4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;
- (5) The public offering statement requirements of this chapter and the rules have been satisfied;

- (6) The purchaser has a seven-day period, after signing a contract to purchase subdivided lands from the subdivider, to rescind the contract at no penalty to the purchaser, and the subdivider has established a mechanism by which the purchaser will receive and sign a receipt for a written notice of such rescission right and the receipt will be deposited with the escrow agent[.]; and
  - (7) Preliminary or final subdivision approval has been granted by the county in which the land is situated.
- [[(b) Upon receipt of an application for exemption from registration pursuant to section 484-10(g) in proper form, the director shall issue a notice of filing to the applicant, and forthwith initiate an examination to determine that:
- (1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;
  - (2) There is reasonable assurance that all proposed improvements will be completed as represented;
  - (3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director and afford full and fair disclosure;
  - (4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;
  - (5) If the subdivided land has not yet received final subdivision approval from the county:
    - (A) Preliminary subdivision approval has been granted by the county in which the land is situated;
    - (B) The purchaser has a seven-day period after signing a contract to purchase subdivided lands from the subdivider to rescind the contract at no penalty to the purchaser;
    - (C) The subdivider has established a mechanism by which the purchaser will receive and sign a receipt for a written notice of such rescission right and the receipt will be deposited with the escrow agent.]”

SECTION 7. Section 484-8, Hawaii Revised Statutes, is amended to read as follows:

**“§484-8 Orders of registration[, exemption,] and rejection; general provisions.** (a) Within forty-five days from the date of the notice of filing, the director shall enter a preliminary or final order registering the subdivided lands or rejecting the registration[, or shall enter a preliminary or final order exempting the subdivided lands pursuant to section 484-10(g) or rejecting the application for exemption].

Unless the applicant has consented in writing to a delay, the land shall be deemed registered [in the case of an application for registration, or the land shall be deemed exempt from registration in the case of an application for a section 484-10(g) exemption,] if the director fails to enter an order of rejection within forty-five days from the date of the notice of filing.

(b) If, in the case of an application for a final order of registration, the director affirmatively determines, upon inquiry and examination, that the requirements of section 484-7 have been met, the director shall enter a final order registering the subdivided lands and shall designate the form of the public offering statement.

[If, in the case of an application for a final order exempting the subdivided lands pursuant to section 484-10(g), the director affirmatively determines, upon inquiry and examination, that the requirements of section 484-10(g) have been met, the director shall enter a final order exempting the subdivided lands from registration pursuant to section 484-10(g).]

(c) If the director determines upon inquiry and examination that, in the case of an application for a final order of registration, any of the requirements of section 484-7, [or, in the case of an application for a final order of exemption under section 484-10(g), any of the requirements of section 484-10(g),] have not been met, the director shall notify the applicant that the application for a final order of registration[, or exemption under section 484-10(g),] must be corrected in the particulars specified within [ten] forty-five days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration [or application for a section 484-10(g) exemption], which order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing."

SECTION 8. Section 484-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§484-8.5 Preliminary order of registration [or exemption].** (a) The director shall enter a preliminary order of registration [or of exemption under section 484-10(g)] when:

- (1) The director receives a request therefor together with [an] a complete application for registration [or for exemption under section 484-10(g);] containing all information required under this chapter, including, without limitation, all standardized application forms prescribed by the director;
- (2) The director affirmatively determines, upon inquiry and examination, that the applicable requirements of section 484-7 have been met except for some particular requirement or requirements which is, or are, at the time not fulfilled, but which reasonably may be expected to be fulfilled; and
- (3) Preliminary subdivision approval has been granted by the county in which the land is situated.

No preliminary order of registration shall be issued unless the director is satisfied that the public offering statement adequately discloses all matters required by section 484-6(a)[.] and the rules adopted by the director hereunder.

(b) If the director determines upon inquiry and examination that any of the requirements for issuance of a preliminary order of registration [or of exemption under section 484-10(g)] have not been met, the director shall notify the applicant that the application for a preliminary order of registration [or exemption] must be corrected in the particulars specified within forty-five days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration [or application for a section 484-10(g) exemption], which order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the

applicant may petition for reconsideration and shall be entitled to a hearing.

(c) Upon issuance by the director of a preliminary order of registration [or of exemption under section 484-10(g)], the subdivider may solicit and accept binding sales contracts (subject to any rights of rescission in favor of the purchaser as set forth in this chapter) or nonbinding reservation agreements to purchase the subdivided lands, notwithstanding any law requiring that final subdivision approval be granted prior to the offer or sale of subdivided lands; provided that [any] all earnest money deposits, if any, received by the subdivider or [its] the subdivider's agents shall take the form of a check or other instrument within the meaning of Article 3 of chapter 490 and shall be payable to the escrow agent, and that no cash shall be accepted by the subdivider or [its] the subdivider's agents.

(d) All sums paid by purchasers and prospective purchasers prior to the time the director issues a final order registering the subdivided lands [or exempting the subdivided lands pursuant to section 484-10(g)] shall be placed in an escrow account under an escrow agreement which provides that no disbursements shall be made from such escrow account to or on behalf of the subdivider until the director enters a final order registering the subdivided lands [or exempting the subdivided lands pursuant to section 484-10(g)] and the requirements of sections 484-8.7 and 484-8.6(b) and (c) have been met. However, the subdivider or [its] the subdivider's agents may hold, until the expiration of the seven-day cancellation period provided by section 484-7(6)<sup>1</sup> or any longer purchaser cancellation period (not exceeding sixty days) provided in the sales contract, any instrument made by a purchaser:

- (1) For which subsequent holders may not claim holder-in-due-course status within the meaning of [Article] article 3 of chapter 490; or
- (2) Where the payee is the escrow agent.

(e) Rights under contracts for the sale of subdivided lands, although binding on the [purchaser,] purchasers, may not be enforced against the purchasers so as to require the purchasers to close until:

- (1) A final order of registration [or of exemption pursuant to section 484-10(g)] is entered by the director; and
- (2) [If the purchasers are provided a rescission right under 484-8.7 or 484-8.6(b) or (c), the] The purchasers have had a full opportunity to obtain a refund of any sums paid and a release from [their] the purchasers' obligations under [their] the purchasers' sales contracts[.] in accordance with section 484-8.7 or section 484-8.6(b) or (c)."

SECTION 9. Section 484-8.6, Hawaii Revised Statutes, is amended to read as follows:

**“§484-8.6 Final order of registration [or exemption].** (a) If the subdivider has obtained a preliminary order of registration [or section 484-10(g) exemption], then upon the issuance of final subdivision approval of the subdivision by the county in which the land is situated, the subdivider shall submit to the director an application for a final order of registration [or exemption pursuant to section 484-10(g)], which application shall contain, among other things:

- (1) A copy of the subdivision map for the subdivision and evidence satisfactory to the director that final subdivision approval has been granted by the county; and
- (2) A written statement disclosing any material changes to the subdivision which may have occurred between the date of preliminary subdivision approval and the date of final subdivision approval[.] or a statement that no changes have occurred.

Upon receipt of the subdivider's application, the director shall enter a final order of registration or [exemption, or] rejection, pursuant to section 484-8.

(b) As a condition to issuing a final order of registration [or exemption] for a subdivision with respect to which a preliminary order was entered, the director may require that the subdivider[:

- (1) Amend] amend the public offering statement[, in the case of an application for registration,] to provide fair and full disclosures to the purchasers of any material changes to the subdivision[; or]
- (2) In the case of an application for section 484-10(g) exemption, prepare a written summary in form approved by the director providing fair and full disclosure to the purchasers of any material changes to the subdivision].

The amended public offering statements [or written summary] shall be delivered to the purchaser either personally or by certified or registered mail with return receipt requested, and at the same time the purchaser shall be notified in writing of the purchaser's right of refund and cancellation of obligation and the waiver of such right upon the purchaser's failure to act within a seven-day period. Each purchaser shall have a right to cancel the sales contract signed by the purchaser and receive a refund of all sums paid by the purchaser, without penalty, within the seven-day period from the date of delivery of the amended public offering statement [or written summary] to exercise the purchaser's right of refund and cancellation of obligation], after which period such right shall be deemed waived.

(c) If the final order of registration [or section 484-10(g) exemption] is not issued within one year from the date of entry of the preliminary order, each purchaser shall have a right to cancel the sales contract signed by the purchaser and receive a refund of all sums paid by the purchaser; provided that if the final order is issued after the one-year period and a written notice is delivered to the purchaser either personally or by certified or registered mail with return receipt requested, notifying the purchaser of the issuance of the final order of registration [or section 484-10(g) exemption] and of the purchaser's right of refund and cancellation of obligation and waiver of such right upon the purchaser's failure to act within a seven-day period, which notice shall be accompanied by any amended public offering statement [or written summary] required under subsection (b), the purchaser shall have seven days from the date of delivery of the notice to exercise the purchaser's right of refund and cancellation of obligation, after which period such right shall be deemed waived.

(d) The requirements of subsections (b) and (c) shall apply only to purchasers who sign a binding sales contract before the issuance of a final order of registration [or of section 484-10(g) exemption]. The requirements of subsections (b) and (c) do not apply to prospective purchasers holding a reservation agreement which may be canceled at the request of the purchaser at any time prior to the execution by [such] the prospective purchaser of a sales contract, or to persons who sign a sales contract or reservation agreement after the issuance of a final order by the director."

SECTION 10. Section 484-8.7, Hawaii Revised Statutes, is amended to read as follows:

**"§484-8.7 Copy of amended public offering statements [or written summary] to be given to prospective purchasers.** If a subdivider enters into a reservation agreement with a prospective purchaser for the subdivision before the issuance of a final order, any sales contract later entered into by the subdivider

and that prospective purchaser after the final order is issued shall not be binding on the purchaser until the requirements of section 484-8.6(b) have been met, and unless any amended public offering statement [or written summary] required by the director under section 484-8.6(d) is provided to the prospective purchaser before the purchaser signs the sales contract.

The requirements of section 484-8.6(b) shall apply as if the purchaser had signed the purchaser's sales contract before the final order was entered by the director; provided that the requirements of this section shall not apply if the director does not require under section 484-8.6(b) that an amended public offering statement [or written summary] be prepared in connection with the issuance of a final order."

SECTION 11. Section 484-8.8, Hawaii Revised Statutes, is amended to read as follows:

**"§484-8.8 Receipt for amended public offering statement [and written summary].** (a) Whenever the director requires pursuant to section 484-8.6(b) that an amended public offering statement [or written summary] be prepared by the subdivider, the subdivider shall obtain a receipt therefor from each purchaser or prospective purchaser who signed a sales contract or reservation agreement to purchase subdivided lands before the issuance of the director's final order. If the amended public offering statement [or written summary] is delivered to the purchaser or prospective purchaser by certified or registered mail, return receipt requested, and the prospective purchaser does not execute and return the purchaser's receipt for the amended public offering statement [or written summary] within seven days from the date of delivery, the purchaser shall be deemed to have received it; provided that the receipt shall be effective only if at the time of the delivery of the amended public offering statement [or written summary] the prospective purchaser is notified in writing of the fact that the purchaser will be deemed to have executed the receipt for it upon the purchaser's failure to act within the seven-day period.

(b) Receipts taken for any amended public offering statement [or written summary] shall be kept on file in possession of the subdivider, subject to inspection at any reasonable time by the director, for a period of three years from the date the receipt was taken."

SECTION 12. Section 484-10, Hawaii Revised Statutes, is amended by amending subsections (e), (f), and (g) to read as follows:

"(e) The director may[:], but shall not be obligated to:

- (1) Accept registrations filed in other states or with the federal government;
- (2) Contract with similar agencies in this State or other jurisdictions to perform investigative functions;
- (3) Accept grants-in-aid from any source.

(f) The director shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices. [The director may seek certification of this chapter from the Secretary of Housing and Urban Development pursuant to 15 U.S.C. section 1708.]

(g) The director may [exempt a subdivision of one hundred or fewer lots, parcels, units, or interests from registration required by this chapter if the director

determines that, the requirements of section 484-7(b) and the applicable provisions of section 484-8.5 are met.

This subsection shall not be construed or interpreted to exempt subdivisions, subdividers, or any persons from the enforcement provisions of this chapter.

The director shall establish, through properly adopted rules, a section 484-10(g) exemption from registration application procedure, subject to section 484-8.] seek certification of this chapter from the Secretary of Housing and Urban Development pursuant to 15 U.S.C. section 1708."

**SECTION 13.** Section 484-10, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) The director, from time to time, may hire consultants in connection with the review of a subdivider's application for a preliminary or final order of registration [or section 484-10(g) exemption]. The consultant shall be asked to review thoroughly the application for the purpose of examining its compliance with the requirements of this chapter and any rules adopted, including the documentation and other materials provided in connection therewith, and[; in the case of an application for registration,] the disclosure thereof in the public offering statement, [or in the case of] a final order of registration [or section 484-10(g) exemption], or any amended public offering statement [or written summary] to be provided to the purchasers. Upon completing the review, the consultant shall provide a written analysis of the application and any public offering statement [or written summary,] and an opinion of the nature and extent to which [they comply] the application and any public offering statement comply with this chapter and the rules adopted pursuant thereto. The [consultant] consultants shall not be subject to chapters 76 and 77, and the cost of retaining them shall be borne by the subdivider."

**SECTION 14.** Section 484-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the director [of commerce and consumer affairs] determines after notice and hearing that a person has:

- (1) Violated this chapter;
- (2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (3) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the director;
- (4) Disposed of any subdivided lands which have not been registered with the director[; or are exempted under this chapter];
- (5) Violated any lawful order or rule of the director;

the director may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter."

**SECTION 15.** Section 484-13, Hawaii Revised Statutes, is amended to read as follows:

**“§484-13 Revocation.** (a) A registration [or exemption] may be revoked

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by the director after notice and hearing upon a written finding of fact that the subdivider has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Been convicted in any court subsequent to the filing of the application for registration [or exemption] for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (4) Failed faithfully to perform any stipulation or agreement made with the director as an inducement to grant any registration [or exemption], to reinstate any registration [or exemption], or to approve any promotional plan or public offering statement;
- (5) Made intentional misrepresentations or concealed material facts in an application for registration [or exemption.] or in the public offering statement.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the director finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, the director may issue a cease and desist order instead."

SECTION 16. Section 484-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Every person whose occupation gives authority to a statement which with [his] the person's consent has been used in an application for registration [or exemption] or public offering statement, if [he] the person is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in [his] the person's statement and only if [he] the person fails to prove that [he] the person did not know and in the exercise of the reasonable care of a [man and his] person in the person's occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist."

SECTION 17. Section 484-16, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) [A] No person [may not] shall be entitled to recover under this section [in actions] unless the person has commenced [more than] action for such recovery within four years after [his] the person's first payment of money to the subdivider in the contested transaction."

SECTION 18. Section 484-20, Hawaii Revised Statutes, is amended to read as follows:

**"§484-20 Fees and inspection expenses.** (a) Notices of filing pursuant to section 484-8 shall not be issued until the applicant has paid to the director the proper registration or [section 484-10(g) exemption fee] consultant fees, and has advanced the inspection expenses set forth in subsection (b). Neither the [fee] registration or consultant fees, nor the advanced inspection expenses shall be

refunded regardless of whether the application for registration [or exemption] is rejected or approved; provided that the director may return any unused inspection expenses [moneys] monies advanced under this section. The registration [and exemption] fee shall be based upon the number of lots, parcels, units, or interests to be registered [or exempt from registration,] at the following rates:

- |                           |       |
|---------------------------|-------|
| (1) Up to 100 lots .....  | \$100 |
| (2) 101 to 500 lots ..... | \$200 |
| (3) over 500.....         | \$300 |

(b) In addition to the registration [or section 484-10(g) exemption fee,] and consultant fees, the applicant shall deposit with the director sufficient sums to cover [the following] inspection expenses[:]

- (1) Round trip air and ground transportation from Honolulu to site of the subdivision;
- (2) Per diem of \$65 per day for each day in which travel is required, plus one day for site inspection; and
- (3) \$150 per day for salary of state official or consultant inspecting all subdivisions.] established by rules adopted in accordance with chapter 91.

(c) The director may waive the requirement for inspection.

(d) The director, from time to time, may raise the registration fee, [exemption fee,] consultant fees, and inspection expenses under this section by rules adopted in accordance with chapter 91."

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval.

(Approved June 3, 1992.)

**Note**

1. Prior to amendment "484-7(a)(6)" appeared here.

**ACT 133**

H.B. NO. 3110

A Bill for an Act Relating to the Uniform Unclaimed Property Act.

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

SECTION 1. Section 523A-2.5, Hawaii Revised Statutes, is amended to read as follows:

"[§523A-2.5[]] **Property originated or issued by this State, any political subdivision, or any entity incorporated, organized, [or] created, or otherwise located in this State.** (a) All intangible property, including but not limited to any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government, or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within three years after the date prescribed for payment or delivery, shall be presumed abandoned and shall be subject to the custody of this State as unclaimed property if:

- (1) The address of the owner is unknown; and
  - (2) The person or entity originating or issuing the intangible property is this State or any political subdivision of this State or is incorporated, organized, [or] created, or otherwise located in this State.
- (b) Subsection (a) shall not apply to property which is or may be presumed abandoned and subject to the custody of this State pursuant to any other provision of law containing a dormancy period different from that prescribed under<sup>1</sup> subsection (a).
- (c) Subsection (a) shall apply to all property held at the time of enactment, or at any time thereafter, regardless of when the property became or becomes presumptively abandoned."

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

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

(Approved June 3, 1992.)

Note

1. Prior to amendment "in" appeared here.

**ACT 134**

H.B. NO. 3155

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

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

SECTION 1. Section 235-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For the purposes of [section 235-5(d),] sections 235-21 to 235-39, a foreign corporation engaged in the business of manufacturing without the State, having its manufactured products warehoused in this State by another person who is engaged in the business of warehousing in this State and whose compensation for providing the warehousing is included in the measure of the tax imposed by chapter 237 or 239, shall not be deemed to be carrying on a trade or business in this State if all of the following requirements are met:

- (1) Every delivery of sale of such products so warehoused is made at the warehouse to fill an order for such property procured by a representative (as defined in subsection (b)) from a seller licensed under chapter 237 and purchasing such property for purposes of resale;
- (2) Every order so procured was made subject to acceptance and was accepted by the corporation at an office located out of this State;
- (3) No collection for the payment of the products delivered as described in paragraph (1) [of this subsection] is made in this State by any of its employees or agents or by any representative; and
- (4) Except as provided in this section, it is not carrying on a trade or business in this State within the meaning of [section 235-5(d).] sections 235-21 to 235-39."

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 3, 1992.)

## ACT 135

H.B. NO. 3248

A Bill for an Act Relating to Registration of Vehicles.

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

SECTION 1. Section 286-42, Hawaii Revised Statutes, is amended to read as follows:

**“§286-42 County finance director’s duties.** (a) The county director of finance shall examine and to the best of the director’s ability determine the genuineness and regularity of every registration and transfer of registration of a vehicle as in this part provided, in order that every certificate issued for a vehicle shall contain true statements of the ownership thereof, and to prevent the registration of a vehicle by any person not entitled thereto, and the director of finance may require any applicant to furnish such information, in addition to that contained in the application, as may be necessary to satisfy the director of finance of the truth and regularity of the application. The director of finance may accept any county certificate of title issued for a vehicle as prima facie evidence of ownership for registration and transfer of registration.

(b) For the purpose of registering standard makes and body types of new passenger motor vehicles the director of finance may accept the certificate of any licensed motor vehicle dealer certifying to the weight and identification of such vehicle. The director of finance of any county may accept the certificate of the director of finance of any other county as to weight and identification of any such vehicle.

(c) In the event the director of finance is not satisfied as to the ownership of any vehicle sought to be registered, unless the applicant presents satisfactory evidence to the director of finance of the applicant’s ownership of the vehicle and as to any liens thereon, the director of finance may accept from the applicant a bond [or securities] in such form as may be determined by the director of finance in an amount equal to the retail value of the vehicle. The bond [or securities] and the deposit thereof shall be conditioned to protect the director of finance and any subsequent purchaser of the vehicle or person acquiring any lien thereon or the successor in interest of any such person against any loss or damage on account of any defect in or undisclosed encumbrance upon the right, title, and interest of the applicant in and to the vehicle. Any such interested person shall have a right of action to recover on any such bond [or securities] for any breach of the conditions for which the same was deposited. The aggregate liability of the surety to all such persons shall in no event exceed the amount of the bond and interest thereon, plus a reasonable attorney’s fee to be allowed by the court incurred to procure the recovery under the bond. The bond [or securities] shall (unless suit has been instituted thereon) be returned and surrendered at the end of three years [or prior thereto in the event that the vehicle is no longer registered and the currently valid certificate of ownership is surrendered to the director of finance. Any licensed dealer who has filed and has in effect a bond of an amount in excess of the value of any vehicle in question shall not be required to furnish an additional bond under this section].

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[(d) Whenever the registration of any motor vehicle discloses that it is adapted for the use of<sup>1</sup> fuel other than gasoline, the director of finance shall inform the director of taxation of such registration, and upon each transfer of any such motor vehicle the director shall be informed thereof.

(e)] (d) The county finance director, upon being notified by the designated county department that a vehicle has been inspected and approved as a reconstructed vehicle, shall cause that fact to be shown upon the registration [certificate and registration records] and title certificates for that vehicle."

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 3, 1992.)

### Note

1. So in original.

## ACT 136

H.B. NO. 3697

A Bill for an Act Relating to Private Source Revenues.

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

SECTION 1. Section 46-16.7, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The general excise and use tax surcharges received from the State by each county shall be used as follows:

(1) The city and county of Honolulu shall use the surcharges to develop a fixed rail rapid transit system. All private source revenues generated or pledged to develop a fixed rail rapid transit system that are received prior to the operation of the system shall be used as county matching funds for moneys requested from the transit capital development fund, pursuant to chapter 51D, before surcharges may be used. The director of finance shall determine whether or not private sources are adequate to meet county matching requirements. The director of finance shall submit a report of the findings to the legislature. Upon legislative acceptance of the findings, within sixty days of the first regular legislative session convened following the submittal of the findings, no additional moneys may be expended from the transit fund; provided that:

(A) Such limitation on the expenditure of moneys from the transit fund shall not occur prior to December 31, 1992; and  
(B) Private source revenues received prior to the operation of the system or received in each year that the surcharge is in effect shall be committed to the funding of the capital costs of the fixed rail rapid transit system prior to any determination regarding the duration of the surcharge.

(2) All surcharges collected but not used for the purpose of developing a fixed rail rapid transit system shall be deposited into the state treasury to be returned to the taxpayers in the form of an income tax

- credit, the amount of the credit to be determined by law.
- (3) The general excise and use tax surcharge shall be repealed upon the determination by the director of finance that all authorized capital costs of the fixed rail rapid transit system or county projects under paragraph (4) have been collected and distributed pursuant to chapter 248.
- (4) The counties of Hawaii, Kauai, and Maui shall use the surcharges for public transportation systems, including mass transportation, sewage, or water development, and parks, including park operation, maintenance, infrastructure, or purchase.

(d) As used in this section:

“Capital costs” means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, including equipping and furnishing the facility or system.

“Private source revenue” means all funds, concessions, development rights, or those assets of value contractually agreed upon with the county from sources other than state, county, or federal governments as a result of, or for the purposes of, developing mass transportation.”

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

**SECTION 3.** This Act shall take effect on July 1, 1992.

(Approved June 3, 1992.)

**ACT 137**

H.B. NO. 3698

A Bill for an Act Relating to Job Sharing for Public Employees.

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

**SECTION 1.** Act 244, Session Laws of Hawaii 1989, section 1, is amended to read as follows:

“**SECTION 1.** The legislature finds that the increasing mobility of society, changing patterns of socioeconomic needs and values, and the economic realities of life in Hawaii require consideration of innovative approaches to ensure the availability of flexible employment opportunities to meet the varying needs of Hawaii’s people. Job-sharing, which would provide half-time positions in place of full-time positions, is an innovation that will increase available employment options so that people may be employed on the basis of their financial or other needs, such as raising a family, without the necessity of being employed on a full-time basis, or perhaps, the necessity of resigning from full-time employment.

The legislature further finds that the success of the pilot projects in the department of education and the libraries[,] warrants further expansion of the job-sharing concept to other departments. Moreover, implementation of job-sharing may create a more stimulating and healthy environment for employees in their professional capacities, especially for those who are faced with the dilemma of desiring to spend more time with their families without totally leaving the job market. In addition, the implementation of this project for employees would allow them more time to pursue additional training and education, further benefiting the

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citizens of the State.

The purpose of this Act is to establish a voluntary job-sharing pilot project for all permanent, full-time employees belonging to units 2, 3, 4, 8, 9, and 13 of the executive branch, the judicial branch, the department of education, the University of Hawaii, the legislative reference bureau, the legislative auditor, and the office of the ombudsman; other than persons allowed to job-share under sections 297-12.5 and 312-7[, and Act 73, Session Laws of Hawaii 1986]."

SECTION 2. Act 244, Session Laws of Hawaii 1989, section 4, is amended to read as follows:

**"SECTION 4. Duties.** The office of the legislative auditor shall monitor and evaluate the pilot project, with particular regard to the efficacy of the job-sharing concept, and shall evaluate factors such as turnover rates, absenteeism, productivity, morale, and demographic factors such as ethnicity, sex, and age composition of participants, and other pertinent data. The office of the legislative auditor [shall], among other analyses, shall identify factors that facilitated or made more difficult the implementation of this Act.

The office of the legislative auditor shall [submit status reports] report on its findings and recommendations to the legislature prior to the convening of the regular [sessions] session of [1991, 1992, and 1993 and shall submit a report to the legislature on its findings and recommendations prior to the convening of the regular session of] 1994."

SECTION 3. Session law material to be repealed is bracketed. New material is underscored.

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

(Approved June 3, 1992.)

## ACT 138

H.B. NO. 3770

A Bill for an Act Relating to Involuntary Hospitalization.

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

SECTION 1. Section 334-59, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Initiation of proceedings. An emergency admission may be initiated as follows:

- (1) If a police officer<sup>1</sup> has reason to believe that a person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the officer shall call for assistance from the mental health emergency workers designated by the director. Upon determination by the mental health emergency workers that [said] the person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the person shall be transported by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and

- possible emergency hospitalization. A police officer may also take into custody and transport to any facility designated by the director any person threatening or attempting suicide. The officer<sup>1</sup> shall make application for the examination, observation, and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to some physician at the facility.
- (2) Upon written or oral application of any licensed physician, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of [his] employment, a judge may issue an ex parte order orally, but shall reduce the order to writing by the close of the next court day following the application, stating that there is probable cause to believe a person is mentally ill or suffering from substance abuse, is imminently dangerous to self or others, or<sup>2</sup> is gravely disabled, or is obviously ill, and in need of care and/or treatment, giving the findings on which the conclusion is based and directing that a police officer<sup>1</sup> or other suitable individual take the person in<sup>3</sup> custody and deliver [him] the person to the nearest facility designated by the director for emergency examination and treatment. The ex parte order shall be made a part of the patient's clinical record. If the application is oral, the person making the application shall reduce the application to writing and shall submit the same by noon of the next court day to the judge who issued the oral ex parte order. The written application shall be executed subject to the penalties of perjury but need not be sworn to before a notary public.
- (3) Any licensed physician who has examined a person and has reason to believe the person is (A) mentally ill or suffering from substance abuse, and (B) is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, and (C) is in need of care and/or treatment, may direct transportation, by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization and may administer such treatment as is medically necessary for the person's safe transportation."

2. By amending subsection (d) to read:

"(d) Emergency hospitalization. If the physician who performs the emergency examination has reason to believe that the patient is (1) mentally ill or suffering from substance abuse, and (2) is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, and (3) is in need of care and/or treatment, the physician may hospitalize [him] the patient on an emergency basis and/or cause the patient to be transferred to another psychiatric facility for emergency hospitalization. The patient shall have the right immediately upon admission to telephone [his] the patient's guardian or a [member of his family] family member or an adult friend and [his] an attorney. If the patient declines to exercise [his] that right, the staff of the facility shall inform an adult patient of [his] the right to waive notification to [his] the family and shall make reasonable efforts to ensure that the patient's guardian or family is notified of the emergency admission but the patient's family need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with [his] an attorney in private."

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SECTION 2. Section 334-121, Hawaii Revised Statutes, is amended to read as follows:

**[§334-121]** **Criteria for involuntary outpatient treatment.** A person may be ordered to obtain involuntary outpatient treatment if the family court finds that:

- (1) The person is suffering from a severe mental disorder or from substance abuse; and
- (2) The person is capable of surviving safely in the community with available supervision from family, friends, or others; and
- (3) The person, at some time in the past: (A) has received inpatient hospital treatment for a severe mental disorder or substance abuse, or (B) has been imminently dangerous to self or others, or is gravely disabled, as a result of a severe mental disorder or substance abuse; and
- (4) The person, based on the person's treatment history and current behavior, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others; and
- (5) The person's current mental status or the nature of the person's disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment; and
- (6) There is a reasonable prospect that the outpatient treatment ordered will be beneficial to the person."

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

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

(Approved June 3, 1992.)

### Notes

1. "Office" changed to "officer".
2. Should be underscored.
3. Prior to amendment "into" appeared here.

## ACT 139

H.B. NO. 3945

A Bill for an Act Relating to Parentage.

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

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

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

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

markers.

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

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

(e) In any trial brought under this chapter, a report of the facts and results of genetic tests ordered by the court under this chapter shall be admissible in evidence by affidavit of the person whose name is signed to the report, attesting to the procedures followed in obtaining the report. An alleged parent or party to the paternity action who objects to the admission of the report concerning the genetic test results must file a motion no later than twenty (20) days after receiving a copy of the report and shall show good cause as to why a witness is necessary to lay the foundation for the admission of the report as evidence. The court may, sua sponte, or at a hearing on the motion determine whether a witness shall be required to lay the foundation for the admission of the report as evidence. The right to call witnesses to rebut the report is reserved to all parties."

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

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

(Approved June 3, 1992.)

Note

1. No bracketed material.

ACT 140

H.B. NO. 2374

A Bill for an Act Relating to Ocean Resources.

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

SECTION 1. The department of land and natural resources may participate on behalf of the State of Hawaii with the states of Washington, California, Alaska, and Oregon in a joint liaison program with the Center for Ocean Analysis and Prediction of the National Oceanic and Atmospheric Administration. The objective of the program shall be to assist the states in taking maximum advantage of the oceanographic data, products, and services available from the federal government through the Center for Ocean Analysis and Prediction.

SECTION 2. The liaison program shall:

- (1) Assist state and local governments to become fully aware of oceanographic data and products available from the federal government and in particular from the Center for Ocean Analysis and Prediction;
- (2) Assist the Center for Ocean Analysis and Prediction and the National Oceanic and Atmospheric Administration to become more fully aware of state and local problems and the requirements of state and local governments; and
- (3) Assist in setting up lines of communication to move oceanographic data and products from the Center for Ocean Analysis and Prediction to the people in the states who need those data and products.

The liaison program shall also include workshops for small groups of technical

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experts from state and local governments, academic institutions, and the private sector. The workshops shall be held at the Center for Ocean Analysis and Prediction in Monterey, California, and at other facilities in the western states as appropriate.

**SECTION 3.** The department of land and natural resources, in cooperation with the office of state planning, shall integrate data obtained through the liaison program for use by other state agencies and maximize the use of the Hawaii statewide Geographic Information System.

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

(Approved June 4, 1992.)

## **ACT 141**

H.B. NO. 2385

A Bill for an Act Relating to Hotels.

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

**SECTION 1.** Section 486K-1, Hawaii Revised Statutes, is amended by amending the definition of "hotel" to read as follows:

"[“Hotel”] “Hotel/Hotel-condo” [applies to] means an establishment consisting of any [and all buildings or structures] building or structure used [by the keeper thereof for the accommodation of guests therein.] primarily for the business of providing for consideration transient accommodation lodging facilities and that furnishes, as part of its routine operations, one or more customary lodging services, other than living accommodations and the use of furniture and fixtures, including, but not limited to, restaurant facilities, or room attendant, bell, telephone switchboard, laundering, or concierge services, and is subject to the transient accommodations tax under chapter 237D.”

**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 4, 1992.)

## **ACT 142**

H.B. NO. 3002

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 1991-

1992 to be exceeded by \$2,521,611, or 0.089 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 for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

REFUND OF TAXES:	Amount
None.	
JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	Amount
Akuna v. State of Hawaii Civil No. 89-2481-08, First Circuit Amount of Judgment: Interest at 4% from 2/7/92:	\$409,311.48 Judgment \$400,000.00 \$ 9,311.48
Amundson v. State, et al. Civ. No. 90-3257-10, First Circuit Amount of Judgment: Interest at 4% from 8/6/91:	\$120,107.37 Judgment \$115,180.38 \$ 4,926.99
Andrade v. Hilo Hospital, et al. Civil No. 90-220, Third Circuit	\$30,000.00 Settlement
William Clough v. Tom Okuda Civ. No. 87-1199, First Circuit	\$140,000.00 Settlement
Virginia Corey v. Ann Marie D'Attilio Civ. No. 89-0092, Fifth Circuit	\$20,000.00 Settlement
Elyse Douglas v. State of Hawaii, et al. Civ. No. 90-270K, Third Circuit	\$20,000.00 Settlement
Florentina Ibana, et al. v. Lawrence Cannon, et al. Civ. No. 91-3724-10, First Circuit	\$30,000.00 Settlement
James and Heiki Fujita dba Olena Farms	\$25,000.00 Settlement
Hawaii Blind Vendor Assn. v. DHS Civ. No. 90-3744-011, First Circuit Amount of Judgment: Interest at 4% from 2/1/91:	\$76,631.15 Judgment \$75,000.00 \$ 1,631.15

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Interior Showplace, Inc. v. State of Hawaii Civil No. 91-1889-06, First Circuit	\$65,000.00 Settlement
Kaalekahi v. Kam, et al. Civ. No. 87-083, Third Circuit	\$20,000.00 Settlement
Kaholokula v. Maui Memorial Hospital Civil No. 90-0303(1), Second Circuit	\$60,000.00 Settlement
Kekuewa v. State of Hawaii Civil No. 89-3990-12, First Circuit	\$80,000.00 Settlement
Teri M. Kimura v. State of Hawaii Civ. No. 88-124, Third Circuit	\$125,000.00 Settlement
Licht v. State of Hawaii Civil No. 87-0147(2), Second Circuit	\$50,000.00 Settlement
Tereise Malepeai v. State of Hawaii Civ. No. 90-3980-12, First Circuit	\$220,603.07 Judgment
Amount of Judgment:	\$213,256.89
Interest at 4% from 10/22/91:	\$ 7,346.18
Manoharan v. Michael Civil No. 89-3000-09, First Circuit	\$15,000.00 Settlement
Albert Moniz, Jr. v. State of Hawaii, et al. Civ. No. 90-00517ACK, U.S.D.C.	\$56,009.84 Settlement
Amount of Judgment:	\$55,000.00
Interest at 4% from 10/22/91	\$ 1,009.84
Moore v. State of Hawaii Civ. No. 91-0885-03, First Circuit	\$35,000.00 Settlement
Nakahira v. Bell, et al. Civ. No. 82430, First Circuit	\$750,000.00 Settlement
Vonda Preston	\$12,530.65 Settlement
Singer v. Grove Farm, et al. Civ. No. 90-0155, Fifth Circuit	\$32,000.00 Settlement
Smith v. Elkin, et al. Civ. No. 90-15610	\$12,337.50 Attorney fees
Snyder v. Joseph, et al. Civ. No. 88-2514-08, First Circuit	\$20,000.00 Settlement
Tabios v. State of Hawaii, et al. Civ. No. 87-0211-01, First Circuit	\$50,000.00 Settlement

Tayaba, et al. v. Kautzky, et al.	\$15,000.00
Civil No. 91-1313-04, First Circuit	Settlement

Utu v. Falk	\$19,261.55
Civil No. 88-0577-HMF, U.S.D.C.	Judgment
Amount of Judgment:	\$16,000.00
Interest at 4% from 1/3/90	\$ 3,261.55

**MISCELLANEOUS CLAIMS:**

Gerald T. Endo	
Amount of Claim:	\$ 18.40

City and County of Honolulu	
Amount of Claim:	\$12,799.76

**SECTION 3.** The sums hereinabove appropriated shall be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in the several amounts hereinabove set forth upon warrants issued by the comptroller of the State: (1) upon vouchers approved by the director of taxation as to claims for refunds of taxes, and (2) upon vouchers approved by the attorney general as to all other claims.

**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, 1993, 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 4, 1992.)

**ACT 143**

H.B. NO. 3040

A Bill for an Act Relating to Hawaii Property Insurance Association.

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

**SECTION 1.** Chapter 431, Article 21, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

**“§431:21- Default in payment of assessments.** In the event any member insurer fails to pay any assessment by the association when due, the association shall report the default in writing to the commissioner no later than five days after the default and may bring a civil action in circuit court to enforce payment.”

SECTION 2. Section 431:21-103, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:21-103[]] Creation of association.** (a) There is created a non-profit unincorporated legal entity to be known as the Hawaii Property Insurance Association. All insurers included in the definition of member insurer in section 431:21-102 shall be and remain members of the [plan] association as a condition of their authority to transact the business of insurance in this State. The association shall perform its functions under a plan of operation established and approved under section 431:21-106 and shall exercise its powers through a board of directors established under section 431:21-104.

(b) Each member insurer shall participate in the writings, expenses, profits, and losses of the association in the proportion that its net direct written premiums during the preceding calendar year bear to the net direct written premiums for all member insurers for the preceding calendar year.”

SECTION 3. Section 431:21-104, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:21-104[]] Board of directors.** (a) The board of directors shall have responsibility and control over the organization, management, policies, and activities of the association. The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) Nine voting members selected by the member insurers [subject to the approval of the commissioner];
- (2) One nonvoting member appointed by the commissioner to represent insurance agents; and
- (3) Two nonvoting members appointed by the commissioner to represent the public.

(b) The commissioner shall appoint the initial members of the board of directors. [Thereafter, the commissioner shall consider whether all] All member insurers [are] shall be fairly represented [in approving selections to] on the board.

(c) Members of the board may be reimbursed from the assets of the association for reasonable expenses incurred by them as members of the board of directors.”

SECTION 4. Section 431:21-105, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:21-105[]] Powers and duties of the association.** (a) [The] In addition to any other requirements imposed by law, the association shall:

- (1) Formulate and administer a plan of operation to insure persons having an insurable interest in real or tangible personal property in the area designated by the commissioner;
- (2) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while

- processing applications and servicing policies on behalf of the association; and
- (3) Collect and maintain statistical information and other information required by the commissioner.
- (b) [The] In addition to any other powers allowed by law, the association may:
- (1) Add additional insurance coverages with the approval of the commissioner, including coverage for commercial risks up to the limits of coverage for residential risks as set forth in the plan of operation;
  - (2) Employ or retain persons as are necessary to perform the duties of the association;
  - (3) Contract with a member insurer to perform the duties of the association [subject to the approval of the commissioner];
  - (4) Sue or be sued;
  - (5) Borrow funds necessary to effectuate the purposes of this article in accord with the plan of operation;
  - (6) If approved by the commissioner, assess member insurers amounts necessary to cover extraordinary losses incurred by the association. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business;
  - (7) Devise a method to give credit to member insurers for homeowners and fire insurance policies individually underwritten on risks located in the area designated for coverage by the association;
  - (8) Negotiate and become a party to contracts as are necessary to carry out the purposes of this article; and
  - (9) Perform all other acts as are necessary or proper to effectuate the purpose of this article."

SECTION 5. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- "(c) The plan of operation shall:
- (1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;
  - (2) Establish maximum limits of liability to be placed through the association;
  - (3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;
  - (4) Establish a schedule of deductibles, if appropriate;
  - (5) Establish the commission to be paid to licensed agents;
  - (6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when

combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner;

- (7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines [for inspection] may include setting minimum conditions the property must meet before an inspection is required;
- (8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner[;] for the commissioner's information;
- (9) Establish procedures for records to be kept of all financial transactions of the association, its agents, and its board of directors;
- (10) Establish procedures by which applications will be received and serviced by the association;
- (11) Establish guidelines for the investigation and payment of claims; and
- (12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association."

SECTION 6. Section 421:21-113,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

"[[§431:21-113]] Appeals. [(a)] Any applicant or member insurer affected by a decision of the association shall have the right to appeal to the board of directors[. A decision of the board of directors may be appealed to the commissioner in writing] within thirty days after the decision. The application for appeal shall specify in what respects the person making the appeal was aggrieved and the grounds to be relied upon as a basis for the relief demanded. The [commissioner] board of directors shall hold the hearing within thirty days after the [commissioner's] board of directors' receipt of the application for appeal unless postponed by mutual consent.

(b)<sup>1</sup> Any final action or order of the [commissioner under this article] board of directors shall be subject to judicial review by the circuit court of the first judicial circuit."

SECTION 7. Section 431:21-117, Hawaii Revised Statutes, is amended to read as follows:

"[[§431:21-117]] 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 member insurer, the association or its agents or employees, the board of directors, [or] the commissioner, or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this article. Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this article 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 receives any benefits under this article, 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 association pursuant to this article. Nothing in this article shall be construed as authorizing any claim against the State whatsoever, nor shall this article be construed as authorizing any claim against the association in excess of any note, loan, liability, or other obligation incurred by the association.”

SECTION 8. Section 3 of Act 284, Session Laws of Hawaii 1991, is amended to read as follows:

“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 1991-1992, [to cover expenses incurred in the operation of the] to the department of commerce and consumer affairs to assist the Hawaii Property Insurance Association. The sum appropriated shall be expended by the [association, upon approval by the insurance commissioner,] department of commerce and consumer affairs for the purposes of this Act upon approval by the insurance commissioner of the association’s plan of operation, only for the association’s operational expenses and shall not be used to subsidize payments made on policies issued by the association under this Act. The insurance commissioner shall consider, among other things, when evaluating the association’s plan of operation whether:

- (1) Member insurers are fairly represented on the board of directors;
- (2) The procedures for performance of the association’s powers and duties as provided in this Act are reasonable and in conformity with the purposes of this Act and minimize inconvenience to policyholders;
- (3) The plan of operation is equitable to present and future members and to policyholders;
- (4) Costs are fairly and equitably allocated in conformity with this Act;
- (5) Procedures for establishing rates ensure that rates will not be excessive or inadequate;
- (6) The rate-setting procedures give consideration to prospective loss experience, expenses of administration, and other factors, including those demonstrated to be actuarially relevant to the risks involved; and
- (7) The standards in the plan of operation and the guidelines and procedures for establishing rates, inspections, underwriting standards, and investigation and payment of claims are based, in whole or in part, directly or indirectly, upon a person’s race, creed, ethnic extraction, age, sex, marital status, or handicapping conditions.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 10. This Act is intended to have retrospective operation, and upon its approval, shall take effect on July 1, 1991, except section 3, which shall take effect upon approval of this Act.

(Approved June 4, 1992.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## **ACT 144**

### **ACT 144**

H.B. NO. 3063

A Bill for an Act Relating to a Teacher Incentive Program.

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

SECTION 1. Act 234, Session Laws of Hawaii 1986, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon approval, and shall be repealed as of [June 30, 1992;] June 30, 1999; provided that any tuition paybacks which have not been completed at the time this Act is repealed shall continue to be repaid after the repeal date.”

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 4, 1992.)

### **ACT 145**

H.B. NO. 3097

A Bill for an Act Relating to Low-income Rental Housing.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, and the federal Internal Revenue Code provide tax credits to encourage the private development of low-income rental housing projects. Credits work in one of two ways: either the credits are kept by the developer/owner to offset liability; or the credits are syndicated to raise equity for the project, thereby reducing the mortgage requirements needed.

Unlike the federal tax credits, the application of the state tax credits is limited to income tax and corporate tax liabilities. This limitation excludes financial institutions that are subject to the franchise tax under chapter 241, Hawaii Revised Statutes. The franchise tax currently does not provide for a low-income housing tax credit similar to the credit under chapter 235, Hawaii Revised Statutes.

The purpose of this bill is to make operative the low-income housing tax credit as provided under section 235-110.8, Hawaii Revised Statutes, for chapter 241 effective for taxable years beginning after December 31, 1991.

SECTION 2. Chapter 241, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§241- Low-income housing; income tax credit.** The low-income housing tax credit provided under section 235-110.8 shall be operative for this chapter.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on January 1, 1993, so that this Act shall apply to the entire net income from all sources for the calendar year 1992, and for calendar years thereafter. In the case of a taxpayer operating on a fiscal year basis, the Act shall apply to the entire net income from all sources received for the fiscal year in which January 1, 1993, occurs and for fiscal years thereafter.

(Approved June 4, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 146**

H.B. NO. 3119

A Bill for an Act Relating to the Transfer of Public Safety Functions and Employees from Various Departments to the Department of Public Safety.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$250,000, or 0.0080 per cent. The reasons for exceeding the general fund expenditure ceiling is 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 2. The purpose of Act 211, Session Laws of Hawaii 1989, was to consolidate all public safety functions and employees of state government into a department of public safety in order to ensure better organization and coordination of public safety functions, allow for standardized training, and establish a "career ladder" for public safety employees. Act 211 also required the director of public safety to report to the legislature on recommendations regarding transfer of public safety functions and employees from other departments to the department of public safety. A study was conducted to identify future candidates for transfer.

The purpose of this Act is to accomplish the transfer of those public safety functions and employees that were identified in the study.

SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is amended to read as follows:

**"§26-14.6 Department of public safety.** (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the criminal injuries compensation commission are placed within the department of public safety for administrative purposes only.

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(d) Effective July 1, 1990, the functions and authority heretofore exercised by [the]:

- (1) The department of corrections relating to adult corrections and the intake service centers; [the functions and authority heretofore exercised by the]
- (2) The judiciary relating to the sheriff's office and judiciary security personnel; and [the functions and authority heretofore exercised by the]
- (3) The department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division,

shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C, with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(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.

(g) Effective July 1, 1991, the functions and authority heretofore exercised by the director of transportation and the department of transportation related to law enforcement, including those pertaining to parking at its facilities and security, shall be transferred to the department of public safety.

(h) Effective January 1, 1993, the functions and authority heretofore exercised by the attorney general and the department of the attorney general relating to executive security officers shall be transferred to the department of public safety.

(i) Effective January 1, 1993, the functions and authority heretofore exercised by the superintendent of education and the department of education relating to after hours security contracts at its facilities, including the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of public safety.

(j) Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety.

(k) Effective January 1, 1993, the functions and authority heretofore exercised by the director of human services and the department of human services relating to contractual security guard services shall be transferred to the department of public safety."

SECTION 4. Section 28-11.5, Hawaii Revised Statutes, is repealed.

SECTION 5. The director of public safety, the superintendent of education, the director of health, the director of human services, and the attorney general shall develop appropriate transition plans and attend to other administrative details to ensure that the transfer of functions and employees required by this Act shall be implemented on the dates specified and coordinated with the department of public safety and its appointed liaison.

SECTION 6. All officers and employees of the department of education, the department of health, the department of human services, and the department of the attorney general whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to state personnel laws and this Act. Support services personnel including part-time employees shall also be transferred.

No officer or employee of the State having tenure who is transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act and may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

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

Any employee who prior to this Act was exempt from civil service and may be transferred as a consequence of this Act shall retain exempt status and shall not be appointed to a civil service position because of this Act. Employees who may be transferred by this Act and who are receiving entitlements, benefits, or privileges in accordance with chapter 77, but not chapter 76, Hawaii Revised Statutes, shall continue to receive only those entitlements, benefits, or privileges received under chapter 77 after transfer.

SECTION 7. All appropriations, records, equipment, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations, and other property, both real and personal, heretofore made, used, acquired, or held by a department in the exercise of the functions and programs transferred by this Act shall be transferred to the department of public safety along with the functions or programs.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1992-1993, to carry out the purposes of this Act. The sum appropriated shall be expended by the department of public safety.

SECTION 9. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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SECTION 10. This Act shall take effect on July 1, 1992; provided that specific provisions shall take effect as otherwise specified in this Act.

(Approved June 4, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 147

H.B. NO. 3154

A Bill for an Act Relating to Tax Appeals.

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

SECTION 1. Chapter 243, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§243- Appeals.** Any person aggrieved by any assessment of the tax 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 the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 2. Chapter 247, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§247- Appeals.** Any person aggrieved by any assessment of the tax 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 the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 3. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

**“§235-114 Appeals.** Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth[.]; provided the tax so assessed shall have been paid. Appeal may be made either to the district board of review or to the tax appeal court.

If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer[, and if]. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the supreme court in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals [which shall be as nearly identical as practicable with the forms prescribed or permitted by law in the case of property tax appeals; provided that the]. The forms shall show the amount of taxes or liability upon the basis of the taxpayer’s computation of the taxpayer’s taxable income or the employer’s computation of the employer’s liability, the amount upon the basis of

the assessor's computation, the amount upon the basis of the decisions of the board of review and tax appeal court, if any, and the amount in dispute. If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the supreme court as is provided in chapter 232.

Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof[, which]. The taxpayer or employer shall also file the notice of appeal [shall be filed] with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The board or the tax appeal court may allow an individual taxpayer to file an appeal without payment of the net income tax in cases where the total tax liability does not exceed \$50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax."

SECTION 4. Section 236D-15, Hawaii Revised Statutes, is amended to read as follows:

**"[§236D-15]] Administration by department; action for collection of tax; appeal.** The department may collect the tax provided for in this chapter, including applicable interest and penalties, and shall represent this State in all matters pertaining to this chapter, either before courts or in any other manner. The department, through the attorney general, may institute proceedings for the collection of this tax and any interest and penalties on the tax.

The circuit court for any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Hawaii shall have jurisdiction to hear and determine all questions in relation to the tax arising under this chapter. If no probate or administration proceedings have been taken out in any court of this State, the circuit court for the county in which the decedent was a resident, if the decedent was a domiciliary, or, if the decedent was a nondomiciliary, any court which has sufficient jurisdiction over the property of the decedent, the transfer of which is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for, shall have jurisdiction. Any such court first acquiring jurisdiction shall retain the same to the exclusion of every other.

Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment to a court of competent jurisdiction within the time set forth in section 235-114; provided the tax so assessed shall have been paid. The distribution of taxes paid pending the appeal shall be as provided in chapter 232."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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SECTION 6. This Act shall take effect on January 1, 1993, and shall apply to all tax appeals filed after December 31, 1992.

(Approved June 4, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 148

S.B. NO. 2203

A Bill for an Act Relating to Inheritance Rights of Adoptees.

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

SECTION 1. Section 560:2-109, Hawaii Revised Statutes, is amended to read as follows:

**"§560:2-109 Meaning of child and related terms.** (a) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

- (1) An adopted person is the child of an adopting parent and not of the natural parents except that [adoption]:
  - (A) Adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent[.]; and
  - (B) Adoption of a child during such child's minority by the spouse of a natural parent of the child, by a natural grandparent, aunt, uncle, or sibling of the child or the spouse of a natural grandparent, aunt, uncle, or sibling of the child has no effect on the relationship between the child and either natural parent, for the limited purpose of interpretation or construction of a disposition in any will, trust, or other lifetime instrument, whether executed before or after the order of adoption, and for the purposes of determining the heirs at law of a natural family member of the child.
- (2) In cases not covered by paragraph (1), a person is the child of those persons specified in section 584-1.
  - (b) For the purposes of this section, if a person has been adopted more than once, the term "natural parent" includes an adopting parent by an earlier adoption.

SECTION 2. Section 578-16, Hawaii Revised Statutes, is amended to read as follows:

**"§578-16 Effect of adoption.** (a) A legally adopted individual shall be considered to be a natural child of the whole blood of the adopting parent or parents as provided in the Uniform Probate Code, relating to the descent of property[, and the].

(b) The former legal parent or parents of an adopted individual and any other former legal [relatives or next of kin] kindred shall not be considered to be

related to the individual as provided in the Uniform Probate Code[; and for all other purposes an] except as provided in this section.

(c) An adopted individual and the individual's adopting parent or parents shall sustain towards each other the legal relationship of parents and child, and shall have all the rights and be subject to all the duties of that relationship, including the rights of inheritance from and through each other and the legal kindred of the adoptive parent or parents, the same as if the individual were the natural child of the adopting parent or parents[, and all such].

(d) Except as provided in subsection (e), all legal duties and rights [as] between the individual and the individual's former legal parent or parents shall cease from the time of the adoption; provided that if the individual is adopted by a person married to a legal parent of the individual, the full reciprocal rights and duties which theretofore existed between the legal parent and the individual, and the rights of inheritance as between the individual and the legal parent and the legal relatives of the parent, as provided in chapter 560, shall continue, notwithstanding the adoption, subject only to the rights acquired by and the duties imposed upon the adoptive parents by reason of the adoption.

(e) Notwithstanding subsections (b) and (d), if an individual is adopted before that individual attains the age of majority and:

- (1) The individual is adopted by a spouse of a natural parent of the individual; or
- (2) The individual is adopted by a natural grandparent, aunt, uncle, or sibling of the individual or the spouse of a natural grandparent, aunt, uncle, or sibling;

then for the purposes of interpretation or construction of a disposition in any will, trust, or other lifetime instrument, whether executed before or after the order of adoption, and for purposes of determining heirs at law, the rights of the adopted individual and the individual's descendants with respect to the individual's natural family shall not be affected by the adoption, and they shall be included in any determination of heirs or members of any class, unless specifically excluded by name or class.

(f) An adopted individual, who by reason of subsection (e) would be a member of two or more designations or classes pursuant to a single instrument, both by relationship through a natural parent and through an adoptive parent, shall be entitled to benefit by membership in only one of these designations or classes, which shall be the larger share.

(g) For purposes of this section, if a person has been adopted more than once, the term "natural parent" includes an adopting parent by an earlier adoption.

(h) An individual legally adopted under the laws of any state or territory of the United States or under the laws of any nation shall be accorded the same rights and benefits in all respects as an individual adopted under this chapter."

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

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

(Approved June 4, 1992.)

ACT 149

S.B. NO. 2237

A Bill for an Act Relating to Bail Bond Businesses.

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

SECTION 1. The purpose of this Act is to subject the bail bondsmen licensing program, established by sections 804-61 and 804-62, Hawaii Revised Statutes, to the Hawaii Regulatory Licensing Reform Act. The legislative auditor will then be required to evaluate the bail bondsmen licensing program, submit a sunset evaluation report to the legislature assessing whether the public interest requires that the licensing sections be modified or repealed, and make recommendations for improving policies, procedures, and practices of the licensing program.

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) Sections 804-61 and 804-62"

SECTION 3. New statutory material is underscored.

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

(Approved June 4, 1992.)

ACT 150

S.B. NO. 2689

A Bill for an Act Relating to the Licensure Law for Chiropractic.

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

SECTION 1. Section 442-6, Hawaii Revised Statutes, is amended to read as follows:

**"§442-6 Examinations.** (a) The board of chiropractic examiners shall [meet as a board of examiners for the purpose of conducting examinations on the first Tuesday following the second Monday of April and October of each year, and the board shall meet otherwise regularly on the Thursday nearest the 15th day of March, May, September, and November, and at other times and places as may be found necessary for the performance of its duties.] schedule examinations at least two times each year. The office of the board shall be in Honolulu.

(b) Each applicant shall be designated by a number instead of the name, so that the applicant's identity will not be disclosed to the examiners until the papers are graded.

(c) The applicant shall be required to pass parts I and II of the National Board of Chiropractic Examiners' written examination and the written clinical competency examination in order to qualify for the state chiropractic examination. The state chiropractic examination shall be designed to ascertain the fitness and qualifications of the applicant to practice chiropractic. The board may contract with professional testing services to prepare, administer, and grade the state chiropractic examination. The state chiropractic examination may include both a practical demonstration and a written examination. A license shall be granted to any applicant who attains a numerical score of seventy-five or higher in all subjects and sections of the state chiropractic examination. Any applicant failing to make the required grade may be reexamined at the next regular examination upon payment of a reexamination fee. Any person seeking licensure under this chapter, including approval to use physiotherapy modalities, shall demonstrate to the satisfaction of the board that the person has received training in the use of physiotherapy modalities at an accredited institution and passed the physiotherapy portion of the National Board of Chiropractic Examiners' examination. [The board may require an applicant to complete a practical demonstration examination which shall include an examination of the applicant's performance in using physiotherapy treatment techniques and equipment.]

(d) No person licensed to practice chiropractic in this State shall use physiotherapy modalities without receiving approval by the board to do so.

The board shall adopt rules for granting approval for the use of physiotherapy modalities by persons holding valid, current licenses under this chapter on June 4, 1984. The board may require any licensed chiropractor to take and pass a written or practical examination before granting approval to use physiotherapy modalities.

(e) For each year of actual practice as a licensed chiropractor in another state the applicant shall be given a credit of one-half point up to twenty years maximum to be added to each score for each subject area."

SECTION 2. Section 442-7, Hawaii Revised Statutes, is amended to read as follows:

**"§442-7 Time and place of examination.** The board of chiropractic examiners shall give [public] notice of the time and place of all examinations to be held under this chapter. The notice shall be given in such manner as the board deems expedient and in ample time to allow all candidates to comply with this chapter."

SECTION 3. Section 442-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board of chiropractic examiners shall refuse to issue or may order any license issued under this chapter to be revoked, suspended, limited, restricted, or placed under probation at any time in a proceeding before the board or fine a licensee for any one or more of the following grounds:

- (1) Procuring or aiding or abetting in procuring a criminal abortion;
- (2) Employing what is popularly known as a "capper" or "steerer";
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Wilfully betraying [a professional secret;] patient confidentiality;
- (5) Making any untruthful statement in advertising one's practice or business under this chapter;

- (6) False, fraudulent, or deceptive advertising;
- (7) Advertising directly or indirectly, or in substance upon any card, sign, newspaper advertisement, or other written or printed sign of advertisement that the holder of a license or the licensee's employer or employee will treat, cure, or attempt to treat or cure any venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, lost manhood, sexual weakness, or sexual disorder or any disease of the sexual organs;
- (8) Being habitually intemperate;
- (9) Habitually using any habit-forming drug, such as opium, or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
- (10) The advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
- (11) Procuring a license through fraudulent misrepresentation or deceit;
- (12) Professional misconduct or gross carelessness or manifest incapability in the practice of chiropractic;
- (13) Violating section 453-2; and
- (14) Knowingly recording, registering, or filing, or offering for recordation, registration, or filing, with the department of commerce and consumer affairs any written statement which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information."

SECTION 4. Section 442-11, Hawaii Revised Statutes, is amended to read as follows:

**"§442-11 Biennial [registration;] renewal; fees; failure to [register.] renew.** Every person holding a license to practice chiropractic in the State shall [reregister] submit a renewal application with [the secretary of] the board of chiropractic examiners on or before December 31 of each odd-numbered year and shall pay a [reregistration] renewal fee. If the board has established continuing education requirements for [reregistration, no person holding a] renewal, the license shall not be [reregistered] renewed unless proof of compliance with the requirements is submitted [to the secretary. The secretary of the board, on or before November 30 of each odd-numbered year, shall mail to the last known address of all licensed chiropractors a notice thereof]. A renewal notice shall be mailed to the last known address of all licensed chiropractors on or before November 30 of each odd-numbered year.

The failure, neglect, or refusal of any person holding a license to practice chiropractic to [reregister] renew the license or to pay the [reregistration] renewal fee, after thirty days of delinquency, constitutes a forfeiture of the license; provided that the license shall be restored upon written application therefor together with proof of compliance with the continuing education requirements, if any, and a payment of all delinquent fees and a penalty fee, if the application and payments are made within a period of one year from the date of the inception of the [delinquency.] forfeiture. In the event, however, the [delinquency] forfeiture is permitted to continue over a period of one year, in addition to the foregoing requirements, the person [shall] may be required to submit to reexamination and successfully pass [a] the reexamination [written or oral, conducted by the board at its regular meetings.]"

SECTION 5. Section 442-12, Hawaii Revised Statutes, is amended to read

as follows:

**“§442-12 Display of license [and reregistration] certificate.** Every holder of a license shall display the holder's license certificate in a conspicuous place in the holder's principal place of business or place of employment. [Every reregistration certificate shall be displayed in connection with the original license.]”

SECTION 6. Section 442-14, Hawaii Revised Statutes, is amended to read as follows:

**“§442-14 Change of residence.** Every holder of a license who leaves to reside outside the State, shall immediately notify [the secretary of] the board of chiropractic examiners of the change in writing and the change shall be noted in the [secretary's registry book.] board records. Failure to do so constitutes a violation and [works] results in a forfeiture of the license, and it shall not be restored except upon the written application therefor and a payment to the board of a penalty fee.”

SECTION 7. Section 442-16, Hawaii Revised Statutes, is amended to read as follows:

**“§442-16 Board records.** The board shall keep for public inspection[, in a book provided for that purpose, a complete list and description of the licenses recorded. When any such license is issued, there shall be stamped upon the face thereof a memorandum of the date of issuance.] a record of all licenses issued containing: the name, license number, effective and expiration dates of the license, and status of the license of the person to whom the license to practice chiropractic is issued.”

SECTION 8. Section 442-15, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved June 4, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 151

S.B. NO. 2898

A Bill for an Act Relating to Anabolic Steroids.

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

SECTION 1. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Any anabolic steroid. The term “anabolic steroid” means any drug or hormonal substance chemically and pharmacologically related to testosterone

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(other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- [(2) Chlorotestosterone;]
- [[(3)] (2) Clostebol[;] (4-Chlortestosterone);
- [4) Dehydrochlormethyltestosterone;]
- [3) Dehydrochlormethyltestosterone;
- [5) Dihydrotestosterone;
- (6) Dromostanolone;]
- [4) Drostanolone;
- [7) (5) Ethylestrenol;
- [8) (6) Fluoxymesterone;
- [9) (7) Formebolone[;] (Formyldienolone);
- [10) (8) Mesterolone;
- [11) Methandrenone;]
- [12) Methandranone;]
- [13) (9) Methandriol;
- [14) (10) Methandrostenolone[;] (Methandienone);
- [15) (11) Methenolone;
- [16) (12) Methyltestosterone;
- [17) (13) Mibolerone;
- [18) (14) Nandrolone;
- [19) (15) Norethandrolone;
- [20) (16) Oxandrolone;
- [21) (17) Oxymesterone;
- [22) (18) Oxymetholone;
- [23) (19) Stanolone[;] (Dihydrotestosterone);
- [24) (20) Stanozolol;
- [25) (21) Testolactone;
- [26) (22) Testosterone;
- [27) Trenobolone;]
- [23) Trenbolone;
- [28) (24) Any salt, ester, or isomer of a drug or substance described or listed in this [paragraph,] subsection, if that salt, ester, or isomer promotes muscle growth."

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 4, 1992.)

## ACT 152

S.B. NO. 2382

A Bill for an Act Relating to Infectious and Communicable Diseases.

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

SECTION 1. The purpose of this Act is to authorize the department of health to establish a sterile needle and syringe exchange program to combat the spread of infectious and communicable diseases. The legislature finds that there

is a growing public health problem in the State due to the rapid spread of HIV infection through needle sharing among injection drug users (IDUs).

The department of health estimates that there are four to ten thousand IDUs in the State. The sharing of injection equipment, combined with unsafe sexual practices, is a major route of HIV transmission to the general public. In Hawaii, the HIV infection rate among injection drug using populations is as high as fifteen per cent. Injection drug use is a factor in virtually every birth of an HIV-infected baby in Hawaii. Preventing HIV infection is imperative because of the enormous social and economic costs to the State.

The needle exchange pilot program within the department of health has proven to be an effective bridge to treatment. It is an important component in the fight against AIDS in a population that is both at very high risk and traditionally hard to reach. The needle exchange program must continue in order to prevent the rampant spread of HIV infection among IDUs and their family members, as experienced in some communities on the east coast of the mainland United States.

**SECTION 2.** Chapter 325, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

#### **"PART . NEEDLE EXCHANGE PROGRAM**

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

"Department" means the department of health.

"Director" means the director of health.

"Participant" means an injection drug user who exchanges a sterile needle and syringe unit pursuant to the program.

"Program" means the sterile needle and syringe exchange program.

**§325- Sterile needle and syringe exchange program established.** The director of health may establish a sterile needle and syringe exchange program. The program shall be administered by the director or the director's designees. The director is authorized to designate private providers of service to operate the program.

**§325- Operation of the program.** (a) The program shall be operated for the purpose of:

- (1) Preventing the transmission of the human immunodeficiency virus, the hepatitis B virus, and other blood borne diseases; and
- (2) Providing injection drug users with referrals to appropriate health and social services.

(b) The program shall provide for maximum security of exchange sites and equipment, including a full accounting of the number of needles and syringes in use, the number in storage, and any other measure that may be required to control the use and dispersal of sterile needles and syringes; provided that a participant may exchange used needles and syringes at any exchange site if more than one site is available.

(c) The program shall provide for a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

(d) The program shall provide procedures for the screening of participants to prevent non-injection drug users from participating in the programs.

(e) The department shall keep records to identify and authorize persons employed by the department or its designees to have access to needles, syringes, or the program's records.

(f) The program shall include services to:

- (1) Educate the participant about the dangers of contracting HIV infection through needle-sharing practices; and
- (2) Offer substance abuse treatment referral and counseling services to all participants.

(g) The program shall compile research data on behavioral changes, enrollment in drug abuse treatment, counseling, and education programs, disease transmission, and other information that may be relevant and useful to assist in the planning and evaluation of efforts to combat the spread of blood borne diseases.

**§325- Criminal liability.** (a) Exchanges under the sterile needle and syringe exchange program shall not constitute an offense under section 329-43.5 for the participant or for the employees of the department or its designees.

(b) Nothing in this part provides immunity from prosecution to any person for violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled substances, dangerous drugs, detrimental drugs, or harmful drugs. Nothing in this part provides immunity from prosecution to any person for violation of sections 329-41, 329-42, or 712-1241 through 712-1249.6.

**§325- Program oversight committee.** (a)<sup>1</sup> The director shall appoint a sterile needle exchange program oversight committee to provide assistance and advice in the oversight of the program. The committee shall meet periodically with the director to monitor the progress and effectiveness of the program and to examine available data compiled by the program.

**§325- Reports.** The department, on or before January 1st of each year, shall submit a report to the oversight committee. The report shall include:

- (1) Information as to the number of participants served and the number of needles and syringes distributed;
- (2) A demographic profile of the participants served, including but not limited to: age, sex, ethnicity, area of residence, occupation, types of drugs used, length of drug use, and frequency of injection;
- (3) Impact of the program on needle and syringe sharing and other high risk behavior;
- (4) Data on participants regarding HIV testing, counseling, drug treatment, and other social services, including referrals for HIV testing and counseling and for drug abuse treatment;
- (5) Impact on the transmission of HIV infection among injection drug users;
- (6) Impact on behaviors that caused participants to be at risk for HIV transmission such as frequency of drug use and needle sharing;
- (7) An assessment of the cost-effectiveness of the program versus direct and indirect costs of HIV infection; and
- (8) Information on the percentage of persons served through treatment programs for injection drug users funded through the department that were attributed to needle exchange referrals.

The report shall address the strengths and weaknesses of the program, the advisability of its continuation, amendments to the law, if appropriate, and other

matters that may be helpful to the oversight committee in evaluating the program's efficacy.

**§325- Termination of the program.** The director may terminate the program at any time if the program does not serve its intended purpose, presents a risk to the public health, safety, or welfare, or is no longer necessary."

SECTION 3. For each fiscal year in which the needle exchange program is operational, the department of health shall include in its annual budget testimony or in a separate appropriation bill the estimated funding needed in the next fiscal year to provide substance abuse treatment, referral, and counseling services for all needle exchange program participants who may request the services. This estimate shall reflect the amount needed to provide additional services and shall not be construed to replace the current funding level for all other substance abuse programs nor to displace other participants in such programs.

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved June 8, 1992.)

**Note**

1. So in original.

**ACT 153**

S.B. NO. 2438

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act.

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

SECTION 1. Chapter 437-1.1, Hawaii Revised Statutes, is amended:

1. By amending the definition of "auction" to read as follows:

"Auction" means any person engaged in the business of selling only motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in paragraph (1), (2), (4), or (5) in the definition of dealer, or any person auctioning motor vehicles incidental to an auction of other assets, when the auctioneer or person acts in the respective capacity described in this section.

2. By amending the definition of "auctioneer" to read as follows:

"Auctioneer" means a person who, for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction[.], from a fixed location, and who sells motor vehicles exclusively."

SECTION 2. Chapter 437, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§437- Compliance by prior licensees.** Licensees licensed under this chapter prior to July 1, 1990, are subject to all provisions of this chapter, except that those licensees shall have until January 1, 1993, in which to submit to the

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board proof of compliance with sections 437-7(d) and 437-11(a)(1)(B), (C), and (D)."

SECTION 3. Section 437-7, Hawaii Revised Statutes, is amended to read as follows:

**"§437-7 Application for issuance or renewal of license.** (a) Application. Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided [herein.] in this chapter.

(b) A person applying for a [salesman's] salesperson's license or an auctioneer license under this section shall be granted a temporary license by the executive secretary of the board, provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met[, including compliance with section 437-21,] and the dealer or auction files an affidavit certifying that this person is employed by and under the supervision of the dealer[.] or auction. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board [acts on] approves or denies the application for a permanent license.

(c) Financial reviews or financial statements.

- (1) Applicants for the issuance of a dealer's or auction's license shall furnish the following financial review or financial [statements] statement to the board:
    - (A) Sole proprietorship. An applicant proposing to operate as a sole proprietorship shall furnish a personal financial review or financial statement and a financial review or financial statement of the proposed business.
    - (B) Partnership. An applicant proposing to operate as a partnership shall furnish a personal financial review or financial statement for each general partner and a financial review or a financial statement of the partnership.
    - (C) Corporation. A corporate applicant shall submit a corporate financial review or financial statement.
  - (2) The board shall determine and prescribe the requirement of, form, and information required[,] in financial reviews and financial statements for applicants for other licenses.
  - (3) All financial reviews and financial statements shall be certified as to accuracy by a public or certified public accountant [or verified as to accuracy by the applicant under oath].
  - (4) The purpose of the financial review and the financial statement is to provide the board with information to assist it in determining the financial capability and integrity of the applicant.
- (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. 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.
- (e) Applicants for issuance of an auction license shall provide a written statement from a federally insured financial institution verifying that the applicant has a customer trust account for the auction with that financial institution.
- [d] (f) All applicants for the issuance of a new license shall pay a fee concurrently with each application, except the application fee for a new [salesman's] salesperson's or auctioneer's license shall be a lesser amount than the fee for other licenses issued under this chapter. The application fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.
- [e] (g) Investigation and report. Upon the filing of any application, a staff member shall indorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the [chairman] chairperson of the board or executive secretary shall refer the application to a staff member for investigation and report. The report shall include:
- (1) A statement as to whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the licensee has complied with all the requirements of this chapter relative to the making and filing of the licensee's application; and
  - (2) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or the exercise of the license applied for; and
  - (3) In the case of an application for a dealer's or auction's license in addition to the foregoing:
    - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
    - (B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license[; and].
- [C] (4) In the case of an application for a dealer's license, [If] if the applicant proposes to engage in the business of selling new motor vehicles, a [written statement] copy of the dealer sales and service agreement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor

representative[, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicle in the county of licensing].

[f] (h) Notice of interview. After the filing of the report, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

[g] (i) Prior inspection of premises. No [new] dealer's or auction's license shall be issued under this chapter unless and until the board has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied that it has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

[h] (j) Limitation on license.

- (1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board indorsed on an amended map or plan.
- (2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a [salesman] salesperson or auctioneer, the license shall authorize the [salesman] salesperson or auctioneer to be a [salesman] salesperson or auctioneer only for the dealer or auctions respectively named in the application for a license or an amended license.

[i] (k) Motorcycles and motor scooters. A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor."

SECTION 4. Section 437-11, Hawaii Revised Statutes, is amended to read as follows:

**"§437-11 Additional requirements for dealer's and auction's license.**

(a) Requirements to be met before issuance of dealer's and auction's license.

- (1) The following requirements shall be met by an applicant for a dealer's license before a license may be issued by the motor vehicle industry licensing board;
  - (A) The applicant has a site which will be used[,] primarily[,] for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;
  - (B) The site has a permanent building thereon suitable for the display at any one time of at least three motor vehicles having an average base of at least ninety inches; [and]
  - (C) The site has suitable sanitation facilities thereon[.]; and
  - (D) The applicant has entered into, and provided the board with a copy of, a lease or rental agreement for the site. The lease or rental agreement shall be for a minimum term of one year.
- (2) [The foregoing requirements shall be applicable to branch locations of a dealer.] The following requirements shall be met by an appli-

cant for an auction's license before a license may be issued by the motor vehicle industry licensing board:

- (A) The applicant has a permanent site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;
- (B) The site has suitable sanitation facilities thereon; and
- (C) The applicant has entered into, and provided the board with a copy of, a lease or rental agreement for the site. The lease or rental agreement shall be for a minimum term of one year.

[b] Building requirement as to used motor vehicle dealers waived, when.

- (1) If the board finds upon investigation that the foregoing requirement of a permanent building will impose undue hardship upon used motor vehicle dealers due to scarcity of available sites, or the unwillingness of the landowner to grant leases for reasonably long terms, or permit the erection of permanent buildings suitable for display purposes as required herein, or the like, which render it impossible, economically unfeasible, or impracticable to enforce the requirement of a permanent building against used motor vehicle dealers, the board may waive the requirement as to all used motor vehicle dealers; provided that the waiver shall be made only after a public hearing is held thereon, for which notice has been published at least one week prior to the public hearing in a newspaper of general circulation in the county concerned; provided further that the waiver may continue until such time as the board finds after investigation and public hearing thereon as provided herein that such conditions have ceased to exist or diminished to the extent that the building requirement may be enforced without imposing undue hardship upon used motor vehicle dealers; and provided further that if there is such waiver in effect, the site has suitable sanitation facilities thereon or suitable sanitation facilities within a reasonable distance as determined by the board from the site.
- (2) The foregoing waiver and conditions shall be applicable to branch locations.

(c)] (b) Other related uses permissible. The site may be used for other purposes which are accessory or customarily associated with the retail sale of motor vehicles, such as maintenance operation of a repair, accessories, gasoline and oil, storage, parts, service, or paint branch or department."

SECTION 5. Section 437-18, Hawaii Revised Statutes, is amended to read as follows:

**"§437-18 Bond of broker.** (a) Each broker receiving a license shall give to the motor vehicle industry licensing board and keep in force a bond or bonds in the penal sum totaling not less than \$200,000.

(b) [All provisions contained in section 437-17 pertaining to reduction of bond, bond condition, and suit on bond for a used motor vehicle dealer shall be applicable to a broker.] More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section. If any bond is not (1) executed by a surety company authorized to do business in the State, or (2) secured by a deposit of cash with the board in lieu of surety, then sections 103-35 to 103-37 shall apply to the furnishing of the bond and the surety or sureties and the security thereof, with the substitution of the board hereunder

or the awarding officer mentioned in sections 103-35 and 103-37 as appropriate.

(c) If the applicant maintains an established place of business in a county which is used, or will be used, for the purpose of selling, displaying, or offering to negotiate for the purchase of motor vehicles, the market value of which, over and above all liens, charges, and encumbrances thereon, is equal to or greater than ninety per cent of the amount of bond required by this section, and the financial condition of the applicant is such that, in the judgment of the board, the excess over ten per cent of the bond may be waived without unduly jeopardizing the rights and interests of present and prospective claimants against the applicant, then the amount of the bond may be reduced at the discretion of the board.

(d) The bond shall be subject to the following conditions:

- (1) That the broker will faithfully and truly comply with all the valid provisions of this chapter as the same now are or may hereafter be amended, and with any rule adopted by the board pursuant to this chapter;
- (2) That the broker will not be guilty of fraud, misrepresentation, or other improper business conduct in connection with the selling, purchasing, negotiating for purchase, or otherwise dealing with motor vehicles or any other property related thereto, and will satisfy all judgments rendered against the broker based in whole or in part upon representations or warranties made in connection with any retail sale or negotiation for the purchase of a motor vehicle; and
- (3) That the broker will protect the treasurer of the county and any purchaser of any vehicle or any person acquiring any lien thereon or successor in interest of any such person against any loss on account of any defect in or undisclosed encumbrance upon the title of any motor vehicle, registered by the treasurer in reliance upon any certificate, affidavit, or other representation of the dealer, or registration or transfer of registration procured by the broker.

(e) Suit on bond. The director of commerce and consumer affairs, or any person who has been or claims to have been injured by the breach of the conditions, shall have the right of action to recover on any such bond, plus a reasonable attorney's fee incurred to secure the recovery under the bond; provided that the aggregate liability of the surety or sureties to all such persons shall in no event exceed the amount of the bond; and provided further that any award of attorney's fees shall be approved by the court and no other attorney's fees shall be permitted from the bond proceeds. Nothing in this section or chapter shall be deemed to prohibit or prevent an independent action against the broker and any other person from being joined or consolidated with an action on the bond, and the recovery of a larger amount than the amount of the bond founded upon any other cause or causes or action so joined or consolidated."

SECTION 6. Section 437-27.5, Hawaii Revised Statutes, is amended to read as follows:

**"§437-27.5 Requirements to maintain license.** A [new motor vehicle dealer, used motor vehicle dealer, motorcycle or motor scooter dealer,] broker[, and auction] shall have and maintain in full force and effect a bond as required under [sections 437-17,] section 437-18[, and 437-21.1]. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under section

[437-17,] 437-18[, or 437-21.1] is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

A licensee may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture."

**SECTION 7.** Section 437-17, Hawaii Revised Statutes, is repealed.

**SECTION 8.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 9.** This Act shall take effect upon its approval.

(Approved June 8, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 154**

S.B. NO. 2607

A Bill for an Act Relating to Hazardous Waste.

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

**SECTION 1.** 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 [342J-30] 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;  
Has complied with the requirements of section 3010(a) of RCRA, 42 United States Code §6930(a); and
- (2) 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 permit until such time as final administrative disposition of such application has been made unless the director proves that final administrative disposition of such 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 facilities shall be deemed to have interim status. This [paragraph] 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

## ACT 155

under section 3005 of RCRA, 42 United States Code §6925 or this section has been previously terminated."

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

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

(Approved June 8, 1992.)

## ACT 155

S.B. NO. 2684

A Bill for an Act Relating to Licensing of Dispensing Opticians.

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

SECTION 1. Section 458-6.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§458-6.5] License to engage in the occupation of dispensing optician; application; issuance.** (a) Before engaging in the occupation of dispensing optician, an individual must be licensed as a dispensing optician by the board.

(b) To apply for a license to engage in the occupation of dispensing optician an individual must have completed one of the following:

- (1) The equivalent of a high school education and [three] two years of work experience as an opticianry apprentice as required by the board's administrative rules;
- (2) Graduation from an opticianry course accredited by the Commission on Opticianry Accreditation; or
- (3) Previous licensure in another jurisdiction which required successful completion of the national examinations specified in subsection (c).

The applicant shall submit to the board an application for a license in a form approved by the board, which shall include the applicant's experience and signature, and an application fee.

(c) Before being licensed to engage in the occupation of dispensing optician, an individual must pass the National Opticianry Competency Examination, the National Contact Lens Registry Examination, and a practical examination. The board shall issue a license to an individual who passes all three of these examinations. If the applicant fails to pass any one of the examinations, the individual shall not be licensed. Any applicant who has previously passed both the National Opticianry Competency Examination [in another jurisdiction] and the National Contact Lens Registry Examination in another jurisdiction shall not be required to retake these examinations and shall be issued a license upon successful completion of the practical examination."

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

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

(Approved June 8, 1992.)

## ACT 156

S.B. NO. 2714

A Bill for an Act Relating to Hansen's Disease.

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

SECTION 1. The purpose of this Act is to revise chapter 326, Hawaii Revised Statutes, to make it compatible with current medical practices for Hansen's disease and the State's services and operations of the Hansen's disease facilities.

SECTION 2. Chapter 326, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§326- Patients living in the community; policy on services.** It is the policy of the State that all persons who were institutionalized for segregation by order of the department of health because of Hansen's disease and who live in the community shall be accorded adequate health care and other medical treatment and services for the remainder of their lives as provided under sections 326-1 and 326-13, as long as they reside in the State; provided that the department of health shall be the payor of last resort for medical treatment and services not related to the treatment and care of Hansen's disease.”

SECTION 3. Section 326-1, Hawaii Revised Statutes, is amended to read as follows:

**“§326-1 Establishment of [hospitals, etc.] facilities for the treatment and care of persons [affected] with Hansen's disease.** The department of health, subject to the approval of the governor, shall establish [hospitals, facilities, and places] and maintain facilities and services as [it deems] are necessary for the care and treatment of persons [affected] with Hansen's disease[.] and persons who were institutionalized for segregation by order of the department of health because of Hansen's disease.

[At every] Every such [hospital,] facility[, and place there] or service provider shall [be exercised] exercise every reasonable effort to effect a cure of [such] those persons[, and all]. All such persons shall be cared for as well as circumstances will permit, [and given such liberties as may be deemed compatible with public safety and in the light of advances in medical science and] in accordance with accepted medical practices [elsewhere]. Every patient shall be encouraged to take complete treatment so that prompt recovery can be attained [and shall be discharged as soon as possible. The. Isolation and treatment shall be compulsory only in those cases where, in the opinion of the department, [such] that treatment is necessary to [save life, prevent obvious physical suffering, or] protect the health of the public, and the department may take such measures as may be necessary to enforce this section[.], including the adoption of rules pursuant to chapter 91.]

SECTION 4. Section 326-3, Hawaii Revised Statutes, is amended to read as follows:

**“§326-3 Care in other hospitals, homes, etc.** Notwithstanding any [of the provisions of this chapter or of any other chapter] law relating to this subject matter, the department of health may make arrangements for the care and

treatment of any person within the [jurisdiction] State at any hospital, nursing home, or [convalescent home] other residential facility in the State, either public or private, and bear all expenses of the hospitalization and treatment and any other necessary expenses in the same manner as though the person were staying at any [hospital,] facility[, or place] for the care and treatment of persons [affected] with Hansen's disease established under section 326-1. Any moneys at any time appropriated for the care of patients or maintenance of [the hospital,] a facility[, or place] established under section 326-1 may be used by the department to pay any hospital, nursing home, or [convalescent home] other residential facility with which the department has made [such] those arrangements. When [such] those arrangements have been made the other provisions of this chapter relating to the examination, care, treatment, and discharge of patients shall [be applicable] apply to the institution and patient involved in the same manner as they apply to [the hospital,] a facility[, or place] established under section 326-1."

SECTION 5. Section 326-21, Hawaii Revised Statutes, is amended to read as follows:

**"§326-21 Employment of patients.** [The department of health, with the consent of a patient, and the patient's attending physician, may employ that patient to perform labor or service as may be approved by the attending physician, at] At any [hospital,] facility[, or place] for the care and treatment of persons [suffering from] with Hansen's disease[.], the department of health, with the consent of a patient, may employ that patient to perform labor or service.

When there are vacancies in positions, classified under chapters 76 and 77, [which are of such nature that the health of the public or of other nonpatient staff members will not be in danger by their being filled by individuals living with or associating closely with active patients,] at [any hospital,] a facility[, or place] exclusively for the care and treatment of persons [suffering from] with Hansen's disease, employment preference shall be given to temporary release patients and discharged patients from [any such hospital, facility, or place;] those facilities; provided that the persons so hired shall be otherwise qualified under chapters 76 and 77.

Discharged patients who have been employed prior to December 30, 1960, under chapters 76 and 77 in accordance with the second paragraph of this section shall be eligible to receive the same rights and privileges as those enjoyed by temporary release patients employed under the second paragraph of this section."

SECTION 6. Section 326-23, Hawaii Revised Statutes, is amended to read as follows:

**"§326-23 Pensions for patient employees at [hospitals, etc.] facilities.** All patient employees or patient laborers at every [hospital,] facility[, and place] maintained for the treatment and care of persons [affected] with Hansen's disease shall be entitled, upon retirement after twenty years or more service with the department of health, [at the hospital, facility, or place,] to a pension[, payable monthly,] in an amount which shall be equal to sixty-six and two-thirds per cent of the monthly wage or salary which the patient was receiving at the time of retirement, or to a pension[, payable monthly,] in an amount which shall be equal to sixty-six and two-thirds per cent of the average monthly wage or salary which the patient employee was receiving during the last twelve months of employment at the [hospital, facility, or place,] department of health, whichever is higher.

Patient employees may use service with any state department or agency not exceeding five years which has not been credited under the state retirement system in lieu of service with a [hospital,] facility[, and place] maintained for the treatment and care of persons [affected] with Hansen's disease to satisfy the requirements of the preceding paragraph; provided that the service shall be authenticated by official records of the department where service was performed.

When work is available at Kalaupapa which may be fulfilled by patient residents of the facility under section 326-21 and there are no applicants for [such] those positions from among the eligible patients, pensioned patients who are in residence at Kalaupapa may be reemployed, not to exceed nineteen hours per week, without relinquishing the pension granted to them under this section. Furthermore, notwithstanding any [provision of this chapter or of any other chapter] other law relating to this subject [matter, such], that reemployment shall not result in suspension or termination of payment of the pension granted originally or serve to increase, decrease, or alter [said] the pension in any way."

SECTION 7. Section 326-30, Hawaii Revised Statutes, is amended to read as follows:

**"§326-30 Making or taking of pictures without permission prohibited.** [Except for professional purposes, no] (a) No person shall [take photographs of] photograph, film, or videotape any patient [confined] at any [hospital,] facility[, or place] maintained by the department of health for the care and treatment of persons [affected] with Hansen's disease, without the written permission of the patient.

(b) Any person violating this section shall be fined not more than \$1,000 per incident.

SECTION 8. Section 326-40, Hawaii Revised Statutes, is amended to read as follows:

**"§326-40 Kalaupapa; policy on residency.** The legislature finds that Hawaii's Hansen's disease victims have in many ways symbolized the plight of those afflicted with this disease throughout the world. Their sufferings and social deprivations helped eventually to bring the story of the disease and an understanding of its health ravages to people everywhere. Those patients who settled in Kalaupapa remain a living memorial to a long history of tragic separation, readjustment, and endurance.

It is the policy of the State that the patient residents of Kalaupapa shall be accorded adequate health care and other services for the remainder of their lives. Furthermore, it is the policy of the State that any patient resident of Kalaupapa desiring to remain at the facility shall be permitted to do so for as long as that patient may choose, regardless of whether or not the patient has been successfully treated. A patient resident of Kalaupapa desiring to take leave may do so without loss of financial allowance or coverage of health care costs given those who remain at Kalaupapa."

SECTION 9. Section 326-6, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 326-16, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 326-20, Hawaii Revised Statutes, is repealed.

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SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 8, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 157**

S.B. NO. 2780

A Bill for an Act Relating to Travel Agencies.

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

SECTION 1. Section 468L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each travel agency shall renew its registration on or before December 31 of each odd-numbered year. [A special report prepared and signed by a licensed public accountant or certified public accountant] A notarized statement on a form designed and provided by the department verifying that the practices of the travel agency are in accordance with section 468L-5, shall be filed with the renewal. The director, by rule, may permit alternatives to the [special report] notarized statement that [provides] provide for at least the same level of verification.”

SECTION 2. Section 468L-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§468L-4] Statement required to be furnished to consumer.** A travel agency shall not receive money or other valuable consideration in payment for travel services, unless at the time of receipt of money or other valuable consideration, the travel agency furnishes to the consumer making the payment a written statement conspicuously setting forth the following information:

- (1) The name, business address, and telephone number of the travel agency;
- (2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any;
- (3) The name and address of the financial institution that maintains the travel agency trust account, and the [number] name of the trust account;
- (4) The name of the entity with which the travel agency has arranged travel services and pertinent information such as, but not limited to, the types of accommodation, dates and times of services, and all restrictions, limitations, conditions, and fee assessments that pertain to the person's right to cancel, obtain a refund, change itinerary, or make a claim for lost tickets; and
- (5) The cancellation provisions of the contract between the travel agency and the consumer, and the rights and obligations of the parties in the event of such cancellation.”

SECTION 3. Section 468L-5, Hawaii Revised Statutes, is amended to read as follows:

**"[§468L-5] Client trust accounts; maintenance of and withdrawal from such accounts.** (a) Within [three] five business days of receipt, [a travel agency] all travel agencies shall deposit all sums received from a consumer, for travel services offered by the travel agency in a trust account maintained in a federally insured financial institution located in Hawaii. A travel agency shall be deemed to have complied with this section if:

- (1) Travel services are paid for by the consumer by means of a credit charge or debit card, or by means of a centrally billed travel account, and the travel agency submits the charge data to the appropriate payment processing or card issuing company within five days of the charge; and
- (2) Any monies received from these means by the agency are handled in accordance with the provisions of this section.

(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the travel agency. The travel agency shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except:

- (1) In partial or full payment for travel services to the entity directly providing the travel services; or
- (2) To make refunds as required by this chapter.

A travel agency may make payment through another travel agency; provided that any such payment is treated as if it were a payment by a consumer.

- (c) This section shall not prevent the withdrawal from the trust account of:
- (1) The amount of the sales commission, up to a maximum of fifteen per cent;
  - (2) Any interest earned and credited to the trust account; or,
  - (3) Any remaining funds of a consumer once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided.

(d) At the time of registration, the agency shall file with the department the account number and the name of the financial institution at which the trust account is held. The agency shall notify the department of any change in the account number or location within [one] three business [day] days of the change.

(e) The director, by rule, may allow for the use of other types of funds or accounts; provided that the protection for consumers is no less than that provided by this section."

SECTION 4. Section 468L-7, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The travel agency shall provide a written disclosure of the consumer's rights under this section to the consumer no later than at the time the travel agency issues the ticket for travel services to the consumer[.]; provided that in the case of repeat customers or business accounts the disclosure need only be given once and except as otherwise provided by rule.

(c) The department may develop a form for the written disclosure of consumer rights under this chapter, and if such form is developed, all travel agencies

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who have not obtained approval from the department to use a form developed by the travel agency shall utilize the department's form in order to comply with the provisions of 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 June 8, 1992.)

## ACT 158

S.B. NO. 2861

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Section 516-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Fee simple lands" means absolute ownership of land for an indefinite duration, freely transferable and inheritable. For the purposes of this chapter, a lessee shall be deemed to own fee simple lands if such fee simple real property is held under any trust agreement or fiduciary arrangement in which another person holds legal title to the land and where the lessee, whether as trustee, co-trustee or beneficiary, holds or retains the controlling interest and right to direct the trust with regard to management or control of the trust or its assets."

SECTION 2. Section 516-33, Hawaii Revised Statutes, is amended to read as follows:

**"§516-33 Qualification for purchase.** Except as otherwise provided under section 516-28, no 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 on the lot within five years of purchase of the lot, except in hardship circumstances as determined by the corporation;
- (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

- (6) 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.

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.

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.

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 3.** New statutory material is underscored.

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

(Approved June 8, 1992.)

**ACT 159**

S.B. NO. 2882

A Bill for an Act Relating to Waikiki.

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

**SECTION 1.** Section 206X-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Developer" means any person, partnership, cooperative, firm, nonprofit or for-profit corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personal, and tangible resources, required to carry out the development of a convention center."

**SECTION 2.** Chapter 206X, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"[[]CHAPTER 206X[]]  
[WAIKIKI] CONVENTION CENTER AUTHORITY"**

SECTION 3. Sections 206X-2, 206X-3, 206X-10, and 206X-13, Hawaii Revised Statutes, are amended by substituting the terms "convention center authority", or "convention center district", or "convention center development revolving fund" for "Waikiki convention center authority", and "Waikiki convention center district", and "Waikiki convention center development revolving fund" wherever those terms appear.

SECTION 4. Section 206X-1, Hawaii Revised Statutes, is amended to read as follows:

**"[[]§206X-1[]] Findings and purpose.** Tourism has been and probably will remain the mainstay of Hawaii's economy. Although prospects for the tourism industry appear to be excellent for the foreseeable future, the legislature finds that certain steps should be taken<sup>1</sup> to ensure this continued vitality. The legislature finds and declares that the construction of a world-class convention center facility would strengthen Hawaii's economy by expanding its market size to convention-going visitors.

Conventioneers, because they spend more money per day than other visitors, are exceedingly desirable guests. An added benefit is that most conventions are normally held during the traditional tourist off-season. This influx of convention dollars during the normal tourist off-season results in greater year-round economic stability for all Hawaii.

The existing convention facilities in Hawaii are inadequate for the needs of many convention groups and, therefore, Hawaii has not been able to attract this segment of the market.

The legislature declares that the convention center facility should be [centrally-located within Waikiki] located to best address the needs of prospective conventioneers[, and that the most appropriate site is the area generally covering the International Market Place, Coral Reef Hotel, and Kuhio Mall. This site is located in the visitor hub of Waikiki, surrounded by several major hotels and in walking distance from many of the others. In this context, a convention center is presented with the capacity to act in synergism with the surrounding uses. Equally important, the area requires redevelopment. Building a convention center at this site would, thus, serve the dual purposes of providing an easily-accessible convention center in the heart of Waikiki and of reallocating Waikiki real estate to an economically more productive use]. Toward this end, a survey of potentially appropriate sites both in Waikiki; and other areas in the State needs to be undertaken, from which the legislature may select the most appropriate site.

[The legislature finds, then, that the construction of a convention center at the site and the consequent revitalization of that part of Waikiki are acutely desirable for all of Hawaii.] The legislature [further] finds that this project would best be served by the establishment of a new state corporate supervisory agency. The fundamental objective of this agency would be to supervise and regulate the development of a convention center facility [at this site].

The legislature acknowledges that private and public sector cooperation is critical to the feasibility and success of a convention facility. [It finds that the development and financing of a convention facility by the private sector are feasible and desirable so as to avoid expenditure of public funds while fulfilling the State's goals.] To this end, the legislature believes that the State should invite

convention facility development proposals from [private] developers and enter into appropriate agreements covering [the private sector's] their undertaking of the development and financing of a convention facility for the State [at no cost to the State], in consideration for land use, zoning, and other benefits for development and construction accruing to the site pursuant to the convention center development plan as adopted under this chapter."

SECTION 5. Section 206X-4, Hawaii Revised Statutes, is amended to read as follows:

"[§206X-4] **Purpose; powers.** (a) The primary purpose of the authority shall be to review for approval the proposed convention center development plan of a [private] developer and to supervise the development by a [private] developer of all development within the convention center district pursuant to the convention center development plan approved by the authority, including the development of a convention center facility which shall include[,] exhibition halls, meeting rooms, a plenary session hall, and support space[, with aggregate gross floor area of at least 625,000 square feet].

- (b) Except as otherwise limited by this chapter, the authority also may:
- (1) Sue and be sued;
  - (2) Have a seal and alter the same at pleasure;
  - (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
  - (4) Make and alter bylaws for its organization and internal management;
  - (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;
  - (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
  - (7) Review and approve the convention center development plan proposed by a [private] developer, for the [Waikiki] convention center district; inspect and approve development within the convention center district for compliance with convention center development plans and rules; and upon dedication of the convention center facility to the State, to manage, operate, and maintain the convention center facility;
  - (8) Cause a [private] developer to prepare plans, specifications, and designs[,] for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, or designs;
  - (9) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
  - (10) Contract for and accept gifts or grants in any form from any public agency, or from any other source;
  - (11) Upon the authority determining that a [private] developer, acting in good faith, is unable to develop the convention center facility in cooperation with the holders of any interest in property in the convention center district, and upon making a finding that the acquisition of such property interest is necessary for its use for the purposes

- of this chapter, may acquire the property by condemnation pursuant to chapter 101, notwithstanding any contract to the contrary; provided, however, that the valuation of any such property acquired pursuant [[to]] the exercise of the authority's power under this subsection shall be done without regard to any increase or decrease in value of the property resulting from the application of this chapter. Property so acquired by condemnation shall not be subject to chapter 171. If the convention center site is acquired partially or wholly by eminent domain action, the [private] developer shall reimburse to the State the sum of money equal to the just compensation or damages for the taking of the convention center site under the provisions of section 101-29;
- (12) Negotiate with the [private] developer for contribution by the [private] developer to defray costs relating to the relocation of persons displaced because of the development;
- (13) Ancillary to the development of the convention center facility, [the authority shall also] permit the development by the [private] developer of the convention center facility, hotels, condominiums, commercial, retail, and office space, and other improvements which would increase the utilization of the convention center facility; [and]
- (14) On behalf of the State, accept the authority to operate, manage, and maintain the convention center facility upon its dedication to the State; provided that it deems this action to be in the best interest of the State;
- (15) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part. The revenue bonds shall be issued in the name of the authority and not in the name of the State. The final maturity date of the bonds may be any date not exceeding thirty years from the date of issuance;
- (16) If SECTION 9 of this Act becomes effective, assist the Waikiki task force established thereby, whenever the task force considers convention center matters; and
- [(14)] (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter."

SECTION 6. Section 206X-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) [There is established the Waikiki convention center district which shall be located in Waikiki, Oahu, at the site covering the International Market Place, Coral Reef Hotel, and the Kuhio Mall comprised of those certain parcels of land more particularly identified as tax map key: 2-6-22: parcels 02, 38, and 43.] The authority shall conduct a survey of potentially appropriate sites both in Waikiki; and other areas in the State and a study of criteria for development within a convention center district and report to the legislature not less than twenty days prior to the convening of the regular session of 1993 with an update of its recommendations of appropriate sites and criteria for development to be approved by the legislature.

(b) The authority shall review for approval the convention center development plan of a [private] developer which [plan] shall include a convention center and other improvements proposed for development within the [Waikiki] conven-

tion center district. In its review of any proposed convention center development plan pursuant to this chapter, the authority shall apply the criteria of the convention center district rules and [the following] any criteria[:] for development within the convention center district established by the legislature.

- [1] (1) The height of any building shall not exceed 400 feet;
- (2) The aggregate floor area of condominium and hotel dwelling units as described in [subsection] paragraph<sup>2</sup> (3) below shall not exceed two million square feet;
- (3) The aggregate number of dwelling units: (i) shall not be more than 2,500 but not less than 2,000 hotel units, with not more than 550 but not less than 450 condominium units; or (ii) in the alternative, shall not be less than 2,800 hotel units, with no condominium units; or (iii), in the alternative, shall not be more than 1,200 condominium units, with no hotel units; or (iv), in the alternative, shall not be more than 1,200 but not less than 800 hotel units, with not more than 950 but not less than 800 condominium units. Provided, however, the minimum number of condominium units and hotel units described in (i), (ii), (iii),<sup>2</sup> and (iv) above may be decreased by mutual agreement between the authority and the private developer;
- (4) The aggregate floor area for commercial, retail, and office use shall not exceed 450,000 square feet;
- (5) The convention center facility, including the exhibition halls, meeting rooms, a plenary session hall, and support space, shall have not less than 625,000 square feet;
- (6) The aggregate number of parking spaces for vehicles shall not be less than 2,000 of which not less than fifty per cent of such spaces shall be located within the convention center district; and
- (7) Groundbreaking for the commencement of the development within the convention center district shall not occur before July 1, 1989.]

SECTION 7. Section 206X-6, Hawaii Revised Statutes, is amended to read as follows:

**"§206X-6 Convention center district rules.** The authority shall establish rules for the development within the convention center district under chapter 91 on health, safety, building, planning, zoning, and land use which, upon final approval by the authority of a convention center development plan, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon. The convention center development plan approved by the authority shall be made a part of, and shall have the same force and effect as, the rules aforesaid. Any development proposal within the boundaries of the Waikiki special design district and within the designated convention center district under agreement with a [private] developer shall be subject to the requirements of chapter 343 relating to environmental impact statements and shall be provided for in the rules. The environmental impact statement shall include the disclosure of the environmental effects of the proposed development, effects of the proposed development on the economic and social welfare of the community and State including the welfare of persons to be dislocated by the proposed development, effects of the economic activities arising out of the proposed development, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good

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design, pleasant amenities, health, safety, and coordinated development.

For purposes of chapters 501, 502, and 514A, the authority may certify maps and plans of lands and real property interests within the convention center district as having complied with applicable laws and ordinances relating to consolidation, subdivision of lands, and condominium property regimes, and such maps and plans shall be accepted for registration or recordation by the land court and registrar."

SECTION 8. Section 206X-7, Hawaii Revised Statutes, is amended to read as follows:

**"§206X-7 Agreement with [private] developer.** (a) The authority shall enter into an agreement with a [private] developer [holding a property interest in the lands within the convention center district] for the development and construction of the convention center and all other improvements. The agreement shall include provision for access to, or ownership of, adequate parking facilities in favor of the authority within the convention center district to accommodate the activities of the convention center facility. The development and construction of the improvements within the convention center district shall conform with the convention center development plan approved by the authority.

(b) As a condition and consideration of the right to develop the real property within the convention center district under the agreement, pursuant to this chapter, the [private] developer shall [dedicate, at no cost to the State,] negotiate with the State for the transfer of a marketable real property interest in the convention center facility to the State with warranty of title free and clear of all encumbrances, subject to declaration of condominium property regime, if any, and to such encumbrances and easements as shall be acceptable to the State. For a period [of two years from the date of the dedication,] to be negotiated between the authority and the developer the [private] developer [shall] may manage, operate, and maintain the convention center facility. All profit and loss for the [two-year] period from the management, operation, and maintenance of the convention center facility shall accrue to or be suffered by the [private] developer. The [private] developer shall submit to the authority annual reports, including financial statements, covering the operations of the convention center facility by the [private] developer during the [two-year] period. The [private] developer shall coordinate with the authority on all reservations based on requests for conventions at the convention center facility to occur on dates after the [two-year] period. The authority [shall] may thereafter manage, operate, and maintain the convention center facility.

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

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

either relocation or a settlement payment.

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

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

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

**SECTION 9.** The Hawaii Revised Statutes are amended by adding a new chapter to be appropriately designated and to read as follows:

### **"CHAPTER WAIKIKI TASK FORCE**

**§ -1 Findings and purpose.** Tourism has been and will probably remain the mainstay of Hawaii's economy. Therefore, it is imperative that the Waikiki area, located on the island of Oahu, be revitalized, revamped, and improved in accordance with a suitable master plan in order to remain a major tourist destination in the future.

Waikiki is vital to the overall image of Hawaii and its visitor industry. For these reasons, master planning efforts for Waikiki are presently being pursued. It is also for these reasons that a strategy incorporating catalysts and incentives, which could stimulate funding to implement the proposed master plan and finance the various projects deemed necessary, should be initiated and focused on as soon as possible. Over the years, Waikiki has been one of the world's foremost tourist destinations and it is in the public interest for it to remain that way.

The legislature finds an immediate need for the establishment of a task force which shall act as a public agency to research, study, explore, and assess all possible ways and means to finance and implement a Waikiki district master plan, taking into consideration the need for a world-class convention center in order to diversify and stabilize the visitor industry.

The incorporation of such a center in the master plan will thereby prevent sudden upward and downward fluctuations in the greatest private revenue generator in the State. Greater reliance on convention visitors would bring in proportionally greater income from the same number of visitors. The resulting steady growth, free from periods of uncontrolled growth and rapid decline would allow for better planning in the future.

**§ -2 Creation of the Waikiki task force.** There is established a temporary task force to be known as the Waikiki task force that shall be placed within

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the department of business, economic development, and tourism for administrative purposes and shall cease to operate after June 30, 1994. The Waikiki task force shall:

- (1) Act as a public agency;
- (2) Research, study, explore, and assess all possible ways and means to finance and implement a Waikiki district master plan;
- (3) Develop an overall strategy for implementing and financing a Waikiki district master plan, including a determination of the appropriate method or methods of financing the strategy; and
- (4) Consult the Waikiki convention center authority,<sup>2</sup> established in chapter 206X, whenever the task force considers convention center matters.

The Waikiki task force shall adopt rules pursuant to chapter 91 as necessary to effectuate the purposes of this Act.

**§ -3 Membership.** The Waikiki task force shall consist of fifteen voting members selected from the public and private sectors as follows:

- (1) Three members to be selected by the governor;
- (2) Three members to be selected by the mayor of the city and county of Honolulu;
- (3) One member of the senate to be selected by the president of the senate;
- (4) One member of the house of representatives to be selected by the speaker of the house of representatives;
- (5) One member of the Honolulu city council to be selected by the chair of the Honolulu city council;
- (6) Two residents of the Waikiki district, appointed by the governor from a list of four names, of which two are to be submitted by Waikiki neighborhood board no. 9 and two are to be submitted by the Waikiki Residents Association; and
- (7) Four persons who own land within the Waikiki district, appointed by the governor from a list of eight names, of which four are to be submitted by the Waikiki improvement association landowners council from which two are to be selected, and four are to be submitted by the Vision for Waikiki 2020, from which two are to be selected.

Notwithstanding any other provision to the contrary, the governor shall appoint within sixty days of the enactment of this Act a member to any seat for which a member has not been selected by the respective authority within forty-five days of the enactment of this Act.

The task force shall elect its chairperson by majority vote of its members.

**§ -4 Waikiki district; established, boundaries.** There is established the Waikiki district that shall be bounded by the following streets and landmarks: Atkinson drive from its intersection with Ala Moana boulevard to Kapiolani boulevard, inclusive; Kapiolani boulevard to its intersection with Kalakaua avenue, inclusive; Kalakaua avenue to the Ala Wai canal; along the mauka side of the Ala Wai canal (inclusive of all state lands) from Kalakaua avenue to the Manoa-Palolo drainage canal; the Manoa-Palolo drainage canal to Date street, inclusive; Date street to its intersection with Kapahulu avenue; Kapahulu avenue from its intersection with Date street to its intersection with Paki avenue, inclusive; Paki avenue from Kapahulu avenue to its intersection with Monsarrat avenue, inclusive; Monsarrat avenue, to its intersection with Kalakaua avenue,

inclusive; from the intersection of Monsarrat avenue and Kalakaua avenue to the shoreline; the shoreline from the extension of the eastern boundary of the intersection of Monsarrat avenue and Kalakaua avenue to the Ala Wai boat harbor, inclusive, to the Ala Wai canal drainage into the ocean, inclusive, to the Diamond Head shore of the Waikiki yacht club, to the intersection of the Ala Wai canal and the Ala Moana boulevard bridge, inclusive; Ala Moana boulevard, from the Ala Wai canal to its intersection with Atkinson drive, inclusive.

**§ -5 Special fund created.** There is created a special fund to be known as the Waikiki district special fund that shall consist of all receipts, revenues, and appropriations made for the purposes of this Act. Any of the appropriations and contributions made to the Waikiki district special fund may be used for staff salaries and other expenses, but may not be used for the implementation of the proposed master plan or its projects.

**§ -6 Report.** The Waikiki task force shall submit an update of its findings and recommendations to the legislature and the Honolulu city council no later than January 1, 1994.

**§ -7 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

**SECTION 10.** Section 3 of Act 96 of the Session Laws of Hawaii, 1988, is amended to read as follows:

"SECTION 3. Unless the [private] developer's plan for the convention center facility is approved by the authority [within three years from the initial empanelling of all of the members of the Waikiki convention center authority,] on or before June 30, 1994, this Act shall automatically expire.

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 [three year] period shall be suspended until a final nonappealable determination is made in said judicial or quasi-judicial proceeding."

**SECTION 11.** 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 \$75,000, or 0.002 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 meets the need provided for by this Act.

**SECTION 12.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for the period September 1, 1992 through June 30, 1994, to be deposited into the Waikiki district special fund for the purposes of this Act; provided that no funds shall be made available under this Act unless the private sector provides \$75,000 to be deposited into the Waikiki district special fund for the purposes of this Act; provided further that the implementation of this Act shall not take place before

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the total amounts specified in this Act have been appropriated, contributed, or committed.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

**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 Sections 9, 11, and 12 shall take effect on September 1, 1992 only if the mayor of the city and county of Honolulu has not organized a broad-based task force that has held its first meeting, is operational, and has provided a status report of its activities, and, in any event, shall be repealed on June 30, 1994; provided further that if said task force has been organized, has held its first meeting, is operational, and has provided a status report of its activities, Sections 9, 11, and 12 shall be void.

(Approved June 8, 1992.)

### **Notes**

1. Prior to amendment "now" appeared here.
2. So in original.

## **ACT 160**

S.B. NO. 2894

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 by adding a new section to be appropriately designated and to read as follows:

**"§88- Previous membership service credit for judges.** (a) Notwithstanding any other law to the contrary, any judge who retires under section 88-61(c) and continues in service as a judge shall be allowed membership in the system and entitlement to membership service credit for any eligible Class A service; provided that such membership service shall be credited in accordance with section 88-59; and provided further that when the judge retires, it shall be as if it were for the first time, and sections 88-73(1), 88-74(3), and 88-76 shall be used to determine the retirement allowance.

(b) Those judges who are entitled to membership service credit under this section may elect to cancel retirement under section 88-61(c) and, no later than July 1, 1993, begin to make additional deductions or make a lump sum payment for such service pursuant to section 88-59."

**SECTION 2.** Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

**"§88-74 Allowance on service retirement.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained the age of fifty-five, a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of the member's credited

service as a class A and B member, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that:

- (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; [and]
- (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;

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, 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 shall not exceed eighty per cent of the member's average final compensation. If the member has not attained the age of fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no such reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, or sewer worker, of which the last five or more years prior to retirement is credited service in such capacities[.];

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for the refund thereof as permitted by section 88-72, the member may accept such refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity which is the actuarial equivalent of such additional contributions with regular interest[.]; 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

## ACT 161

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 is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
- (B) For all other credited service as provided in paragraphs (1) and (2). No allowance shall exceed seventy-five per cent of such member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraph (A), and the portion of the accumulated contributions specified in that subparagraph as may be in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this section, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of such member's average final compensation."

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

**SECTION 4.** This Act shall take effect on July 1, 1992.

(Approved June 8, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 161

S.B. NO. 3004

A Bill for an Act Making an Appropriation for Removal of Hazardous Materials from Public Schools.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$50,000, or 0.000016 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 meets the need provided for by this Act.

**SECTION 2.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1992-1993, for the removal of hazardous materials from public schools in the State. Consultant services and technical assistance may be obtained by the department of education for the safe and efficient removal of hazardous materials from the schools. The department of health shall provide assistance to the department of education upon request.

SECTION 3. The sum 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, 1992.

(Approved June 8, 1992.)

**ACT 162**

S.B. NO. 3306

A Bill for an Act Relating to Infectious and Communicable Diseases.

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

SECTION 1. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication which identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records are protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent of the person or persons to whom the records pertain;
- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release [to or by] is made from a physician licensed pursuant to chapter 453 or 460 to the department of health [is necessary to protect the health and well-being of the general public; provided that release is made in such a way that no person can be identified, except as specified in paragraph (5);] to inform the sexual or needle sharing contact of an HIV seropositive patient where (A) there is reason for the physician to believe that the contact is or has been at risk of HIV transmission as a result of the index patient having engaged in conduct which is likely to transmit HIV, and (B) the index patient has first been counseled by the physician of the need for disclosure and the patient is unwilling to inform the contact directly or is unwilling to consent to the disclosure of the index patient's HIV status by the physician or the department of health; provided that the identity of the index patient is not disclosed; and provided further that there is no obligation to identify or locate any

- contact. Any determination by a physician to disclose or withhold disclosure of an index patient's sexual contacts to the department of health pursuant to this subsection which is made in good faith shall not be subject to penalties under this part or otherwise subject to civil or criminal liability for damages under the laws of the State;
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce this part and to enforce rules adopted by the department of health concerning the control and treatment of HIV infection, ARC, and AIDS[;], or to the sexual or needle sharing contacts of an HIV seropositive index patient for purposes of contact notification as provided in paragraph (4), provided that the identity of the index patient, if known, shall not be disclosed; provided that release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance with this part;
- (6) Release of a child's records is made to the department of human services for the purpose of enforcing chapters 350 and 587;
- (7) Release of a child's records is made within the department of human services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587 on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;
- (8) Release of a child's records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) in a case arising under chapters 350 and 587 to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for twenty-four hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child's natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587 solely on the basis of the HIV seropositivity of a child or the child's natural parents;
- (9) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
- (10) Release is made by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient; [or]
- (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking the release of the records[.].or

(12) Disclosure by a physician, on a confidential basis, of the identity of a person who is HIV seropositive and who also shows evidence of tuberculosis infection, to a person within the department of health as designated by the director of health for purposes of evaluating the need for or the monitoring of tuberculosis chemotherapy for the person and the person's contacts who are at risk of developing tuberculosis.

As used in this part, unless the context requires otherwise:

“Medical emergency” means any disease-related situation that threatens life or limb.

“Medical personnel” means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient’s contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director.”

SECTION 2. Section 325-102, Hawaii Revised Statutes, is amended to read as follows:

**“§325-102 Civil penalty.** Any person or institution who wilfully violates any provision of this part shall be fined not less than \$1,000 nor more than \$10,000 for each violation plus reasonable court costs and attorney’s fees as determined by the court, which penalty and costs shall be paid to the person or persons whose records were released.”

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

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

(Approved June 8, 1992.)

## ACT 163

S.B. NO. 3340

A Bill for an Act Relating to Taking of Mullet and Lobsters.

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

SECTION 1. Section 188-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is unlawful for any person to wilfully fish for, or attempt to take by any means whatsoever, from any of the waters within the jurisdiction of the State, or to sell, offer for sale, or have in possession any mullet, known as amaama, or anaeholo during the months of December, January, or February; provided that any owner or operator of a fish pond[,] may lawfully catch the young mullet[,] known as pua[,] during the closed season, for the purpose of stocking the owner’s or operator’s pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell pond raised mullet during the closed season after first procuring a license [granting privilege.] to do so.”

SECTION 2. Section 188-57, Hawaii Revised Statutes, is amended by

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amending subsection (a) to read as follows:

“(a) It is unlawful for any person to take, kill, sell, or offer for sale, or have in possession any Kona crabs taken from the waters within the jurisdiction of the State during the months of May, June, July, and August, or spiny lobster (ula), or slipper lobster (ula-papapa), taken from the waters within the jurisdiction of the State during the months of May, June, July, and August. The possession of any Kona crabs, by any person during the months of May, June, July, and August, and the possession of any spiny lobster [(ula,)] or slipper lobster [(ula-papapa,)] by any person during the months of May, June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve Kona crabs or lobsters lawfully caught during the open season by first procuring a license [granting this privilege.] to do so.”

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

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

(Approved June 8, 1992.)

## **ACT 164**

S.B. NO. 3371

A Bill for an Act Relating to Sex Offender Treatment.

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

**SECTION 1.** The legislature finds that sexual assault is a heinous crime committed by offenders with deviant behavioral patterns that cannot be controlled by incarceration alone. Studies show that the recidivism rates of sex offenders who undergo treatment are substantially lower than the rates of those who are not treated. Studies also show that it is critical that one treatment philosophy be uniformly applied by all agencies with sex offender oversight responsibilities.

The legislature also finds that, in 1989, the agencies responsible for corrections, probation, parole, mental health, and incest cases developed a master plan for an integrated treatment program for adult male felon sex offenders in this State. The master plan requires the development and implementation of clinical assessment, treatment, and intensive supervision programs to more effectively control the behavior of sex offenders.

The purpose of this Act is to continue the networking activities initiated by these agencies to ensure that the master plan is successfully implemented through a coordinated approach.

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

### **“CHAPTER STATEWIDE INTEGRATED SEX OFFENDER TREATMENT PROGRAM**

**§ -1 Sex offender treatment; statewide program established.** There

is established a statewide, integrated program for the treatment of sex offenders in the custody of the State to be implemented on a cooperative basis by the department of public safety, the judiciary, and the Hawaii paroling authority, and any other agency that may be assigned sex offender oversight responsibilities. The agencies shall:

- (1) Develop and continually update, as necessary, a comprehensive statewide master plan for the treatment of sex offenders that provides for a continuum of programs under a uniform treatment philosophy;
- (2) Develop and implement a statewide, integrated system of sex offender treatment services and programs that reflect the goals and objectives of the master plan;
- (3) Identify all offenders in their custody who would benefit from sex offender treatment;
- (4) Work cooperatively to monitor and evaluate the development and implementation of sex offender treatment programs and services;
- (5) Develop appropriate training and education programs for public and private providers of sex offender treatment, assessment, and supervision services;
- (6) Conduct research and compile relevant data on sex offenders;
- (7) Work cooperatively to develop a statewide management information system for sex offender treatment;
- (8) Make every effort to secure grant funds for research, program development, training, and public education in the area of sex assault prevention;
- (9) Network with public and private agencies that come into contact with sex offenders to keep abreast of issues that impact on, and increase community awareness regarding, the statewide sex offender treatment program;
- (10) As far as practicable, share information and pool resources to carry out responsibilities under this chapter; and
- (11) Coordinate their funding requests for sex offender treatment programs to deter competition for resources that might result in an imbalance in program development that is detrimental to the master plan treatment concept.

**§ -2 Interagency coordination.** (a) To carry out their responsibilities under section -1, the department of public safety, Hawaii paroling authority, judiciary, department of health, department of human services, and any other agency assigned sex offender oversight responsibilities by law or administrative order, shall establish, by an interagency cooperative agreement, a coordinating body to oversee the development and implementation of sex offender treatment programs in the State to ensure compliance with the intent of the master plan developed under section -1(1). The interagency cooperative agreement shall set forth the role of the coordinating body and the responsibilities of each agency that is a party to the agreement.

(b) The department of public safety shall be the lead agency for the statewide sex offender treatment program. As the lead agency, the department shall act as facilitator of the coordinating body by providing administrative support to the coordinating body."

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

(Approved June 8, 1992.)

ACT 165

S.B. NO. 3436

A Bill for an Act Relating to Osteopathy.

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

SECTION 1. Section 460-6, Hawaii Revised Statutes, is amended to read as follows:

**“§460-6 Application for license.** Each applicant for a license provided for in this chapter shall comply with the following requirements:

- (1) Make application on blank forms prepared and furnished by the board of osteopathic examiners;
- (2) Submit evidence verified on oath and satisfactory to the board that the applicant is a graduate of a school or college of osteopathy which is approved by the American Osteopathic Association; and
- (3) Submit satisfactory evidence to the board that the applicant has served an internship of at least one year in a hospital approved by the American Osteopathic Association and the American College of Osteopathic Surgeons, or in a hospital approved by the American Medical Association, or the equivalent of the requirement as determined by the board[,] if the applicant graduated prior to 1943.”

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

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

(Approved June 8, 1992.)

ACT 166

H.B. NO. 3772

A Bill for an Act Relating to State Monuments.

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

SECTION 1. The purpose of this Act is to preserve and protect a cluster of historical sites in North Kohala, on the island of Hawaii. The sites include the Mo'okini Luakini, Kamehameha birthsite, Kukuipahu Heiau and historical sites at Mahukona. This Act establishes a Kohala Historical Sites State Monument consisting of those sites. Proper facilities, including access and water, consistent with the care and preservation of the sites, should be provided for the monument. Interpretative methods compatible with the preservation of the natural atmosphere of the sites must be developed to educate residents and visitors about the monument.

Although the Mo'okini Luakini, Kamehameha birthsite and Kukuipahu Heiau are presently owned by the State, additional land surrounding these sites must be acquired by the State to preserve and protect the sites with adequate buffers. The State shall acquire land sufficient to buffer the sites to be included in the monument and to provide public access to them. The Mo'okini Heiau and the

Kamehameha birthsite will be administered by the department of land and natural resources in compliance with the terms of the deeds granting the Mo'okini Heiau site and the Kamehameha birthsite to the State.

Because the Mahukona historical sites are privately owned, they cannot be included in the monument at present. However, the Mahukona historical sites have been determined to be potentially significant for informational and cultural content and as representative examples of site types. The Legislature finds that these sites should be part of the land to be acquired by the State and be included within the monument upon acquisition.

**SECTION 2.** Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§6E- Kohala Historical Sites State Monument.** There shall be a Kohala Historical Sites State Monument as an historical site on the island of Hawaii which shall include a cluster of historical sites including, but not limited to, the Mo'okini Heiau, the Kamehameha birthsite, the Kukuipahu Heiau, and, upon acquisition by the State, the Mahukona historical sites. The monument shall be administered by the department of land and natural resources and shall consist of lands essential to the unimpaired preservation of the visual, cultural, and historical aspects of the Mo'okini Luakini, Kamehameha birthsite, Kukuipahu Heiau, and Mahukona historical sites. The monument shall be for educational and cultural purposes and there shall be public access for enjoyment of the sites which are included within the monument.

The real property to be included within the monument shall include:

- (1) Mo'okini Luakini, Kamehameha birthsite, and Kukuipahu Heiau owned by the State;
- (2) Historical sites at Mahukona and sufficient additional land surrounding all of the monument sites to preserve and protect them with adequate buffers and provide public access, including but not limited to those lands running along the coast between Huinamaka and Kalaelimukoko and those lands mauka of the Mo'okini Heiau encompassing the area formerly used for the housing of the Mo'okini priests and family gravesites, to be acquired by the State through gifts or land exchanges and to be designated by the board of land and natural resources as part of the monument upon acquisition."

**SECTION 3.** The Department of Land and Natural Resources shall submit a report to the Legislature on the actions taken and progress made toward implementing the provisions of this Act no later than twenty days before the convening of the Regular Session of 1993.

**SECTION 4.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 10, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 167**

H.B. NO. 1715

A Bill for an Act Relating to the Hawaii State University.

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

**SECTION 1.** The legislature finds that a portion of the Big Island community, including organizations and individuals affiliated with the University of Hawaii-Hilo (UH-Hilo), are concerned about the current condition, status, and overall quality of education of the UH-Hilo campus. In the effort to improve the overall condition and standing of UH-Hilo, it is both prudent and wise to take a comprehensive and balanced look at the wide range of possibilities to realize this effort.

While there are many approaches to enhance the quality of education of UH-Hilo, there are two proposals in particular that have been suggested by the students, faculty, and other individuals and organizations affiliated with UH-Hilo and the Big Island community. One proposal is to retain UH-Hilo as part of the University of Hawaii (UH) system. Advocates of this proposal suggest that increased effort be made to improve the status, condition, and quality of education of UH-Hilo within the existing UH system. Another proposal is to establish a separate board of regents and president for a new institution of higher education to be called "Hawaii State University" that incorporates UH-Hilo.

In the best interests of Hawaii's students, the legislature realizes the necessity of weighing the merits as well as the disadvantages of both proposals. The impetus and intent of these proposals is to provide the best education possible to the students of UH-Hilo, as well as to elevate the quality of higher education on the Big Island and within the State.

The purpose of this Act is to request the legislative reference bureau to conduct a study that evaluates and examines:

- (1) The effects of retaining UH-Hilo as part of the UH system and exploring alternatives to improve the current status and condition of the existing UH-Hilo; and
- (2) The feasibility and effects of establishing UH-Hilo as an independent institution that is separate from the UH system.

**SECTION 2.** The legislative reference bureau shall conduct a comprehensive study that evaluates and examines the following two tracks:

- (1) The effects of retaining UH-Hilo as part of the UH system and exploring alternatives to improve the current status and condition of the existing UH-Hilo; and
- (2) The feasibility and effects of establishing UH-Hilo as an independent institution that is separate from the UH system.

**SECTION 3.** The legislative reference bureau shall conduct a study that evaluates and examines the effects of retaining UH-Hilo as part of the UH system and exploring alternatives to improve the current status and condition of the existing UH-Hilo. The study shall include, but is not limited to:

- (1) The problems and concerns currently faced by UH-Hilo that impede or hinder efforts to improve the educational quality of its institution under the existing UH system;
- (2) The advantages and disadvantages of UH-Hilo remaining as part of the UH system;

- (3) The perceived obstacles and drawbacks of UH-Hilo existing under the current board of regents of the UH system;
- (4) A progress report of the obstacles faced to facilitate and achieve articulation among UH-Hilo, UH-Manoa, and the other institutions of the UH system;
- (5) Actions and opportunities to improve communications, coordination, and the relationship between UH-Hilo and the existing UH system;
- (6) Strategies to improve the quality of education, status, and condition of UH-Hilo within the existing UH system;
- (7) A comparison of the funds allocated to UH-Hilo versus other campuses of the UH system;
- (8) A review of issues related to whether structural changes within the existing UH system could achieve similar results as compared to creating a separate university; and
- (9) Other matters deemed relevant to this study.

SECTION 4. The legislative reference bureau shall conduct a study that evaluates and examines the feasibility and effects of establishing UH-Hilo as an independent institution that is separate from the UH system. The study shall include, but is not limited to:

- (1) Policy implications on other entities, including the community colleges, Hawaii Community College, UH-West Hawaii, UH-Manoa, and UH-West Oahu, if UH-Hilo were to become a separate university;
- (2) Implications on the development and execution of state higher education policy, including the need for separate governing boards of regents;
- (3) The need for and costs of expanding core programs, academic units, support services, and additional physical facilities to operate a separate institution;
- (4) Impact on collective bargaining for public employees;
- (5) Potential impacts upon retention and recruitment of faculty and staff;
- (6) Potential impacts upon enrollment, transfer, and articulation of course credits within the UH system;
- (7) A cost and impact analysis, and economic assessment of establishing a separate UH-Hilo;
- (8) The advantages and disadvantages of an autonomous UH-Hilo from the UH system;
- (9) A description of coordination and cooperation, if any, between an independent UH-Hilo and the UH system, to continue existing programs, resources, and activities between the two entities;
- (10) The impact on existing programs, resources, and functions under a separate UH-Hilo;
- (11) The effects on student enrollment, student admission, academic standards, and school administration and operation, under a separate UH-Hilo;
- (12) An assessment of the progress and effects on student achievement and learning of other states with dual university systems;
- (13) Recommendations for statutory amendments and other legislative actions necessary to establish a new state university at Hilo;

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- (14) Student, faculty, and the overall campus-community response to establish a separate UH-Hilo campus that is independent from the UH system; and
- (15) Other matters deemed relevant to this study.

SECTION 5. All offices, administrators, faculty, and staff of the UH system shall cooperate and support the legislative reference bureau in the conduct of this study including:

- (1) Designating contact persons authorized to speak for each entity; and
- (2) Providing data, statistics, cost and workload estimates, position statements, and any other data and information in the form requested by the legislative reference bureau in a timely manner.

SECTION 6. The legislative reference bureau shall submit a report of its findings and recommendations to the legislature twenty days prior to the convening of the 1993 regular session.

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

(Approved June 12, 1992.)

## ACT 168

H.B. NO. 2361

A Bill for an Act Relating to Restrictive Covenants.

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

SECTION 1. Section 171-63, Hawaii Revised Statutes, is amended to read as follows:

**“§171-63 Waiver of restrictions.** (a) Use. Upon application by the owner and consent therefor having been given by each holder of record having a security interest, and after a finding that the public interest will be served thereby, the board of land and natural resources may amend or waive the conditions restricting the use of land contained in any agreement of sale, deed, or patent upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. [Except for residential lots, the] The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back<sup>1</sup> to the State, or the State shall have<sup>2</sup> power of termination.

(b) Residential lots. In case of a residential lot, the board [may], subject to the consent of each holder of record having a security interest, may waive strict adherence to the use thereof for residential purposes, if the owner or lessee desires to utilize part of the land for agricultural purposes together with the owner's or lessee's residence, provided that the agricultural use is not inconsistent or contrary to local applicable health or zoning ordinances[.] and upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market

value with the restrictive condition amended or waived. The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back to the State, or the State shall have power of termination. Anything in this chapter to the contrary notwithstanding, in case of a residential lot sold in fee simple[, all]:

- (1) All restrictions relating to the use thereof shall expire ten years after the date of the issuance of the patent or deed by the State or fifteen years after the date of the sale by the State, whichever is sooner, provided that any change in use of the lot after the ten or fifteen years, as the case may be, shall be in accordance with applicable state and county [or city and county] zoning requirements[.]; and
- (2) Upon an application signed by all land owners in the subdivision, the board may waive any restrictive covenant upon the land, as long as the waiver shall not cause a violation of any state or county zoning 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 12, 1992.)

#### Notes

1. Should be underscored.
2. Prior to amendment “the” appeared here.

## ACT 169

H.B. NO. 2409

A Bill for an Act Relating to the Hawaiian Language.

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

SECTION 1. By law, there are two official languages in this State, English and Hawaiian. The orthography developed by scholars at the University of Hawai‘i includes the use of macrons and glottal stops in the spelling of the Hawaiian language. These symbols are commonly used in local publications and by the counties in street signs for streets having Hawaiian names. Despite the widespread use of macrons and glottal stops in spelling words in the Hawaiian language, there has been no official encouragement of their use. The inclusion of these symbols has a broader purpose than simply aiding the pronunciation of Hawaiian terms. Because the glottal stop is a consonant in the Hawaiian language leaving it out changes the meaning of a word. The legislature also finds that written documents that spell Hawaiian words using symbols that aid in the correct pronunciation of those words can help to preserve the Hawaiian language and the culture of the people of this State. Therefore, the purpose of this Act is to formally authorize and encourage the use of macrons and glottal stops whenever words or terms in the Hawaiian language are used in documents prepared by or for state or county agencies and officials.

## ACT 170

SECTION 2. Chapter 1, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§1- Hawaiian language; spelling.** Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 170

H.B. NO. 2455

A Bill for an Act Relating to Motor Vehicle Safety.

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

SECTION 1. Section 286-26, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Upon application for a certificate of inspection to be issued [on] for a vehicle, an inspection as prescribed by the director of transportation under subsection (g) shall be conducted on the vehicle, and if the vehicle is found to be in a safe operating condition, a certificate of inspection shall be issued upon payment of a fee to be determined by the director of transportation. The certificate shall state the effective date, the termination date, the name of the issuing insurance carrier, and the policy number of the no-fault insurance identification card for the inspected motor vehicle as specified by section 431:10C-107 or state the information contained in the proof of insurance card as specified by section 431:10G-106. A sticker, authorized by the director of transportation, shall be affixed to the vehicle at the time a certificate of inspection is issued. An inspection sticker which has been lost, stolen, or destroyed shall be replaced without reinspection by the inspection station that issued the original inspection sticker upon presentation of the vehicle’s current certificate of inspection provided that the current certificate of inspection and inspection sticker shall not have expired at the time the replacement is requested. The director of transportation shall adopt rules to determine the fee for replacement of lost, stolen, or destroyed inspection stickers.”

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

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

(Approved June 12, 1992.)

## ACT 171

H.B. NO. 2496

A Bill for an Act Relating to Discrimination in Real Property.

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

**SECTION 1.** The purpose of this Act is to conform the Real Estate Transactions Law, which prohibits discrimination in matters related to housing and real estate, with the federal Fair Housing Amendments Act of 1988. The Department of Housing and Urban Development (HUD) has published notice that Hawaii's law is no longer substantially equivalent to federal law. HUD intends to decertify Hawaii unless these amendments are enacted. Certification is necessary in order for Hawaii to receive federal funds for the investigation of housing discrimination cases. In addition, this Act makes "steering" unlawful discrimination.

**SECTION 2.** Section 515-2, Hawaii Revised Statutes, is amended as follows:

1. By adding two<sup>1</sup> new definitions to be appropriately inserted and to read as follows:

"Age" means over the age of majority or emancipated minors.

"Familial status" means the status of: a parent having legal custody of and domiciled with a minor child or children, a person who is domiciled with a minor child or children and who has written or unwritten permission from the legal parent, a person who is pregnant, or any person who is in the process of securing legal custody of a minor child or children.

"Steering" includes the practice of directing persons who seek to enter into a real estate transaction toward or away from real property in order to deprive them of the benefits of living in a discrimination-free environment."

2. By amending the definition of "handicapped status" to read as follows:

"Handicapped status" means [the state of] having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to a controlled substance or alcohol or drug abuse that [impairs a person's activities or] threatens the property or safety of others."

3. By deleting the definition of "parental status".

["Parental status" means that status of a person who has legal custody and control of a minor child, or minor children, and with whom the minor child, or minor children, maintains a place of abode.]

**SECTION 3.** 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, [parental] familial status, ancestry, handicapped status, 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 handicapped status 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 [the] a real estate transaction; as used in this chapter, the "reasonableness" of [the] 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 dog, guide dog, or signal dog;
- (B) Observe applicable laws including leash laws and pick-up laws;
- (C) Assume responsibility for damage caused by the dog; 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; [or]
- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), the causative agent of acquired immunodeficiency syndrome (AIDS)[.];
- (10) To refuse to permit, at the expense of a person with a handicapped status, 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 handicapped status 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 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 4. 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 [or a member of the lessor's family] 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 [or a member of the individual's family] resides therein.
- (b) Nothing in this chapter regarding [parental] familial status shall apply to housing for older persons as defined by 42 U.S.C. section 3607(b)(2)."

SECTION 5. Section 515-5, Hawaii Revised Statutes, is amended to read as follows:

**"§515-5 Discriminatory financial practices.** It is a discriminatory practice for a person, a representative of such person, or a real estate broker or salesperson, to whom an inquiry or application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, [or a representative of such a person:] because of race, sex, color, religion, marital status, familial status, ancestry, handicapped status, age, or HIV (human immunodeficiency virus) infection:

- (1) To discriminate against the applicant [because of race, sex, color, religion, marital status, parental status, ancestry, handicapped status, or HIV (human immunodeficiency virus) infection];
- (2) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination [as to race, sex, color, religion, marital status, parental status, ancestry, handicapped status, or HIV infection.] unless such records are required by federal law;
- (3) To discriminate in the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or
- (4) To discriminate in the selling, brokering, or appraising of residential real property."

SECTION 6. Section 515-6, Hawaii Revised Statutes, is amended to read as follows:

**"§515-6 Restrictive covenants and conditions.** (a) Every provision in an oral agreement or a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals [of a specified] because of race, sex, color, religion, marital status, [parental] familial status, ancestry, [or] handicapped status, age, or [who are infected by] HIV (human immunodeficiency virus)[,] infection, is void.

(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, sex, color, religion, marital status, [parental] familial status, ancestry, handicapped status, age, or HIV infection is void, except a limitation, on the basis of religion [or sex], on the use of real property held by a

religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(c) It is a discriminatory practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title."

SECTION 7. Section 515-7, Hawaii Revised Statutes, is amended to read as follows:

**"§515-7 Blockbusting.** It is a discriminatory practice for a person, representative of a person, real estate broker or salesperson, for the purpose of inducing a real estate transaction from which the person[:]<sup>1</sup>, representative, broker or salesperson may benefit financially, because of race, sex, color, religion, marital status, ancestry, handicapped status, age, or HIV infection:

- (1) To represent that a change has occurred or will or may occur in the composition [with respect to race, sex, color, religion, ancestry, or handicapped status] of the owners or occupants in the block, neighborhood, or area in which the real property is located, or
- (2) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located."

SECTION 8. Section 515-8, Hawaii Revised Statutes, is amended to read as follows:

**"§515-8 Religious institutions.** It is not a discriminatory practice for a religious institution or organization or a charitable or educational organization operated, supervised, or controlled by a religious institution or organization to give preference to members of the same religion [or of one sex] in a real property transaction[.], unless membership in such religion is restricted on account of race, color, or ancestry."

SECTION 9. Section 515-9, Hawaii Revised Statutes, is amended to read as follows:

**"§515-9 Enforcement.** The civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The commission has the following powers:

- (1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this chapter in accordance with the procedure established in chapter 368[.], except that investigations shall be completed within one hundred days and a final administrative disposition shall be made within one year of the date of the receipt of the complaint, unless impracticable to do so;
- (2) At any time after a complaint is filed, to require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation, and require the production of documents relevant to the complaint. Before a finding of reasonable cause, chapter 368 to the contrary notwithstanding, the commission may issue a notice of right to sue upon written request of the complainant

which must be exercised within ninety days of receipt of the notice or one year after the filing of the complaint, whichever is later. The commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;

- (3) Chapter 368 to the contrary notwithstanding, after a finding of reasonable cause, to notify the complainant, respondent, or an aggrieved person on whose behalf the complaint was filed, that an election may be made to file a civil action in lieu of an administrative hearing. The election must be made not later than twenty days after receipt by the electing party of the notice. The electing party shall be provided with a notice of right to sue which must be exercised within ninety days of receipt of that notice or one year after the filing of the complaint, whichever is later. The commission will provide legal representation to the complainant in the event of an election by any party. After the filing of a civil action, the parties may stipulate to have the matter remanded for an administrative hearing:
- [3] (4) To furnish technical assistance requested by persons subject to this chapter to further compliance with the chapter or an order issued thereunder;
- [4] (5) To make studies appropriate to effectuate the purposes and policies of this chapter and to make the results thereof available to the public;
- [5] (6) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this chapter; and
- [6] (7) In accordance with chapter 91, to adopt rules to effectuate the purposes and policies of this chapter, including rules requiring the inclusion in advertising material of notices prepared or approved by the commission."

SECTION 10. 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) [Wilfully to] 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; [or]
- (4) [Wilfully to] 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

- (6) To exercise rights granted or protected by this chapter; or  
To threaten, intimidate or interfere with persons in their enjoyment  
of a housing accommodation because of the race, sex, color, reli-  
gion, marital status, familial status, ancestry, handicapped status,  
age, or HIV infection of such persons, or of visitors or associates of  
such persons.”

SECTION 11. Section 515-18, Hawaii Revised Statutes, is amended to read as follows:

**“§515-18 Conciliation agreements.** (a) Section 368-4 to the contrary notwithstanding, any conciliation agreement which results after a finding of cause shall be subject to the approval of the commission and shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

(b) It is a discriminatory practice for a party to a conciliation agreement made under this chapter to violate the terms of the agreement.”

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

**Note**

1. So in original.

**ACT 172**

H.B. NO. 2500

A Bill for an Act Relating to Thrill Craft.

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

SECTION 1. Section 200-23, Hawaii Revised Statutes, is amended by amending the definition of “thrill craft” to read:

“Thrill craft” means any motorized vessel that falls into the category of personal watercraft, and which [is]:

- (1) Is generally less than thirteen feet in length as manufactured[, is];
- (2) Is generally capable of exceeding a speed of twenty miles per hour[, and has the capacity to carry not more than the operator and one other person while in operation.]; and
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, [and] hovercraft[.], and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.”

SECTION 2. Section 267-3, Hawaii Revised Statutes, is amended by amending the definition of “thrill craft” to read:

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““Thrill craft” means any motorized vessel that falls into the category of personal watercraft, and which [is]:

- (1) Is generally less than thirteen feet in length as manufactured[, is];
- (2) Is generally capable of exceeding a speed of twenty miles per hour[, and has the capacity to carry not more than the operator and one other person while in operation.]; and
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, [and] hovercraft[.], and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind a vessel.”

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 12, 1992.)

## ACT 173

H.B. NO. 2724

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-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If after the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading as to purchasers in any material respect, the developer shall stop all offers of sale and sales and immediately submit to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report, accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. [Sales] Offers of sale and sales shall not resume until an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.”

SECTION 2. Section 514A-43, Hawaii Revised Statutes, is amended to read as follows:

“§514A-43 Automatic expiration of public reports[.]; exceptions. (a) A public report shall expire thirteen months after the effective date of the report[, unless the]. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may be required by the commission,

a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, [issues] may issue an order extending the effective [period] date of the report.

(b) The commission may issue an order that the final public report for a two apartment condominium project shall have no expiration date, provided that the developer submits to the commission:

- (1) A written request for such an order not later than thirty calendar days prior to the next expiration date of the final public report;
- (2) Satisfactory evidence that one or both apartments are either retained by the developer, or conveyed to an irrevocable trust to benefit a spouse or family member of the developer. A family member is anyone related by blood, descent, or adoption; and
- (3) Payment of a nonrefundable fee as provided by rules adopted by the department of commerce and consumer affairs pursuant to chapter 91.

The final report shall be subject to the supplemental public report requirements as provided in section 514A-41(a).

The developer receiving an order under this subsection shall provide written notification to the commission within thirty calendar days of any subsequent sale and conveyance of either apartment to any person.”

SECTION 3. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-46 Investigatory powers.** If the commission has reason to believe that any person is violating or has violated any provision set forth in sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, 514A-134, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association, the board of directors, the managing agent, real estate broker, the real estate salesperson, the purchaser, or the developer. For the purposes of examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and to make such records accessible to the commission upon reasonable notice and demand.”

SECTION 4. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, 514A-134, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the person a complaint stating its charges in that respect containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of the complaint. The person so complained of has the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission

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requiring the person to cease and desist from the violation of the law or the rules of the commission adopted pursuant thereto, charged in the complaint. If upon the hearing the commission is of the opinion that this chapter, or the rules of the commission adopted pursuant thereto, has been or is being violated, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person complained of, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court."

SECTION 5. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-48 Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, 514A-134, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof."

SECTION 6. Section 514A-49, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-49 Penalties.** (a) Any person who in any respect violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under sections 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134 shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto also shall be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the commission."

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 12, 1992.)

**ACT 174**

H.B. NO. 2911

A Bill for an Act Making an Appropriation to Provide Low-Interest Loans for Self-Help Home Construction on the Island of Hawaii.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$350,000, or 0.011 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** The purpose of this Act is to appropriate funds for low-interest loans for self-help home construction on Hawaiian home lands on the island of Hawaii in Panaewa and Keaukaha. The funds are necessary to assist fifty-seven lessees in the second phase of this self-help home construction project on the island of Hawaii.

**SECTION 3.** 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 1992-1993, for administrative costs, a contingency fund, and low-interest loans for self-help home construction on Hawaiian home lands on the island of Hawaii in Panaewa and Keaukaha; provided that each loan under this appropriation shall not exceed \$35,000; provided further that any of these funds remaining after the department of Hawaiian home lands determines that the need for such loans in Panaewa and Keaukaha has been met, shall be made available for low-interest loans for self-help construction on Hawaiian home lands throughout the State.

**SECTION 4.** The sum appropriated shall be expended by the department of Hawaiian home lands; provided that the sum appropriated shall be disbursed by the department of Hawaiian home lands to the Hawaii county economic opportunity council for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

**ACT 175**

H.B. NO. 2959

A Bill for an Act Relating to the Marine Environment.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to

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be exceeded by \$100,000, or .0032 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** The legislature finds that massive marine algal blooms have recently been occurring in the waters off West Maui. Such blooms, oftentimes caused by nutrient subsidies from runoff of fertilizers, can damage or kill coral colonies and can cause thick deposits on beaches, resulting in severe degradation for beach users.

The first reported incident occurred in 1989. This outbreak led to a University of Hawaii study to determine whether the Kaanapali golf course or the Kaanapali sewage treatment plant was responsible for these blooms. This study could not identify any culpable source of input from the golf course or sewage treatment plant.

In 1991, a second algal bloom occurred, the extent of which far exceeded the 1989 event. This time, the suspected cause was storm runoff from agricultural and residential development that entered the ocean through newly-constructed drainage culverts. However, a study is needed to verify this theory.

Recently, a task force was formed to address this problem. Led by the department of health, this task force hopes to identify the cause of these incidents. However, funding is required to achieve any tangible results.

The purpose of this Act is to appropriate funds for the department of health to identify the cause of the recent algal blooms in the marine waters off West Maui.

**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 1992-1993, for the department of health to investigate the causes of algal blooms in the marine waters off of West Maui. The study shall focus on two predominant algal species: Cladophora spp. and Hypnea spp. The department of health shall report findings and recommendations to the legislature not later than twenty days before the beginning of the regular session of 1993.

**SECTION 4.** The sum appropriated shall be expended by the department of health for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

## **ACT 176**

H.B. NO. 3011

A Bill for an Act Relating to the Insurance Code.

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

**SECTION 1.** Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

### **"ARTICLE W BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY INSURER"**

**§431:W-101 Definitions.** For purposes of this article:

“Accredited state” means a state in which the insurance department or regulatory agency meets the minimum financial regulatory standards promulgated from time to time by the National Association of Insurance Commissioners.

“Control” has the meaning ascribed in section 431:11-102.

“Controlled insurer” means a licensed insurer which is controlled, directly or indirectly, by a producer.

“Controlling producer” means a producer who, directly or indirectly, controls an insurer.

“Licensed insurer” or “insurer” means any person, firm, association, or corporation duly licensed to transact a property or casualty insurance business in this State. The following are not licensed insurers for the purposes of this article:

- (1) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), and the Risk Retention Act, 15 U.S.C. section 3901 et seq. (1982 & Supp. 1986), and chapter 431K;
- (2) All residual market pools and joint underwriting authorities or associations; and
- (3) Captive insurers as defined in section 431:19-101.

“Producer” means general agent, subagent, agent, solicitor, insurance broker or brokers or any other person, firm, association, or corporation licensed pursuant to article 9, when, for any compensation, commission or other thing of value, the insurance broker or brokers or other person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the insurance broker or brokers, person, firm, association, or corporation.

**§431:W-102 Applicability.** This article shall apply to insurers either domiciled in this State or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of article 11, to the extent they are not in conflict with this article, shall apply to all parties within a holding company system subject to this article.

**§431:W-103 Minimum standards.** (a) The minimum standards specified in this section shall apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five per cent of the admitted assets of the controlled insurer, as reported in the controlled insurer’s quarterly statement filed as of September 30 of the prior year. However, the provisions of this section shall not apply if:

- (1) The controlling producer:
  - (A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer’s holding company system, or the controlled insurer’s parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance; and
  - (B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds;
- (2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer; and

- (3) The controlling producer is domiciled in the State and is authorized to do business only in the State and the controlled insurer is licensed and conducting business only in the State.
- (b) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:
  - (1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;
  - (2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;
  - (3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected by the controlling producer shall be remitted no later than ninety days after the effective date of the policy or policies placed with the controlled insurer under the contract;
  - (4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal savings and loan insurance corporation or similar federal agency pursuant to section 431:6-315;
  - (5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;
  - (6) The contract shall not be assigned in whole or in part by the controlling producer;
  - (7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;
  - (8) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7), examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;
  - (9) If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the controlled insurer's profits on that business,

then that compensation shall not be determined and paid until at least five years after the premiums are earned on liability insurance and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (c);

- (10) A limit on the controlling producer's production in relation to the controlled insurer's surplus and total production. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if the producer has been notified by the controlled insurer that the limit has been reached; and
- (11) The controlling producer may negotiate, but shall not bind, reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(c) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the controlled insurer's loss reserves.

(d) In addition to any other required loss reserve certification, the controlled insurer annually, on April 1 of each year, shall file with the commissioner an opinion of an independent casualty actuary (or such other independent loss reserve specialist acceptable to the commissioner) reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end (including incurred but not reported) on business placed by the controlling producer. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the controlling producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance with the controlled insurer.

**§431:W-104 Disclosure.** Prior to the effective date of the policy, the controlling producer shall deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed statement from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the controlling producer and a written commitment that the subproducer has or will notify the insured of that relationship.

**§431:W-105 Penalties.** (a) If the commissioner believes that a controlling

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producer or any other person has not complied with this article, or any applicable rule or order, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. If the commissioner finds that because of noncompliance by a controlling producer or any other person with this article or any applicable rule or order, the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the controlled insurer or policyholder for recovery of compensatory damages for the benefit of the controlled insurer or policyholder, or other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to article 15 and the receiver appointed under that order believes that the controlling producer or any other person has not complied with this article, or any applicable rule or order, and the controlled insurer suffered any loss or damage from the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the controlled insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance code.

(d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties."

**SECTION 2.** Controlled insurers and controlling producers who are not in compliance with section 1 of this Act on its effective date shall have sixty days to comply, and shall comply with this Act beginning with all policies written or renewed after the sixtieth day after the effective date of this Act.

**SECTION 3.** Chapter 431, Hawaii Revised Statutes, is amended by adding six new sections to article 11 to read as follows:

**"§431:11-A Definitions.** The following definitions shall apply for the purposes of sections 431:11-B through 431:11-F only:

"Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

"Involved insurer" means an insurer which either acquires or is acquired, is affiliated with an acquirer or person acquired, or is the result of a merger.

**§431:11-B Scope.** (a) Except as otherwise provided in subsection (b), this section and sections 431:11-C through 431:11-F apply to any acquisition in which there is a change in control of an insurer authorized to do business in this State.

(b) This section and sections 431:11-C through 431:11-F shall not apply to the following:

- (1) An acquisition subject to approval by the commissioner pursuant to section 431:11-104;
- (2) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control as defined in section 431:11-102, it is not solely for investment purposes unless the commissioner of the

- insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner;
- (3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with section 431:11-C thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section and sections 431:11-C through 431:11-F if the acquisition would otherwise be excluded by any other paragraph of this subsection;
  - (4) The acquisition of affiliated persons;
  - (5) An acquisition if, as an immediate result of the acquisition:
    - (A) In no market would the combined market share of the involved insurers exceed five per cent of the total market;
    - (B) There would be no increase in any market share; or
    - (C) In no market would:
      - (i) The combined market share of the involved insurers exceed twelve per cent of the total market; and
      - (ii) The market share increase by more than two per cent of the total market.
- For the purpose of this paragraph, a market means direct written insurance premiums in this State for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this State;
- (6) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and
  - (7) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and those findings are communicated by the domiciliary commissioner to the commissioner.

**§431:11-C Preacquisition notification; waiting period.** (a) An acquisition covered by section 431:11-B may be subject to an order pursuant to section 431:11-E unless the acquiring person or the acquired person files a preacquisition notification and the waiting period has expired. The commissioner shall treat information submitted under this subsection as confidential in the same manner as provided in section 431:11-108.

(b) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets in which the acquisition would not be exempted pursuant to section 431:11-B(b)(5). The commissioner may require such additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of section 431:11-D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience indicating that

economist's ability to render an informed opinion.

(c) The waiting period required shall begin on the date of receipt by the commissioner of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of that receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner, on a one-time basis, may require the submission of additional information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

**§431:11-D Competitive standard.** (a) The commissioner may enter an order under section 431:11-E with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to substantially lessen competition in any line of insurance in this State, or tend to create a monopoly therein, or if the insurer fails to file adequate information in compliance with section 431:11-C.

(b) In determining whether a proposed acquisition would violate the competitive standard of subsection (a), the commissioner shall consider the following:

(1) Any acquisition covered under section 431:11-B involving two or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards:

(A) If the market is highly concentrated and the involved insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
4%	4% or more
10%	2% or more
15%	1% or more; or

(B) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is seventy-five per cent or more of the market. Percentages not shown in the tables shall be interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard of subsection (a). For the purpose of this paragraph, the insurer with the largest share of the market shall be deemed to be insurer A;

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven per cent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under section 431:11-B involving two or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in subsection (a) if:

(A) There is a significant trend toward increased concentration in the market;

- (B) One of the insurers involved is one of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and
  - (C) Another involved insurer's market is two per cent or more;
- (3) For the purposes of this subsection:
- (A) The term "insurer" includes any insurer or group of insurers under common management, ownership, or control;
  - (B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners, and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premiums for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in this State, and the relevant geographical market is assumed to be this State; and
  - (C) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner; and
- (4) Even though an acquisition is not *prima facie* violative of the competitive standard under paragraph (1) or (2), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under paragraph (1) or (2), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (c) An order may not be entered under section 431:11-E(a) if:
- (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
  - (2) The acquisition will substantially increase the availability of insurance, and the public benefits of that increase exceed the public benefits which would arise from not lessening competition.

**§431:11-E Orders and penalties.** (a) If an acquisition violates the competitive standards of section 431:11-D, the commissioner may enter an order:

- (1) Requiring an involved insurer to cease and desist from doing business in this State with respect to the line or lines of insurance involved in the violation; or
- (2) Denying the application of an acquired or acquiring insurer for a license to do business in this State.

(b) Such an order shall not be entered unless there is a hearing, notice of such hearing is issued before the end of the waiting period and not less than fifteen days before the hearing, and the hearing is concluded and the order is issued

no later than sixty days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth the commissioner's findings of fact and conclusions of law.

(c) An order entered under this section shall not become final earlier than thirty days after it is issued, during which time an involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, and the time period during which the aspects of the acquisition causing a violation of the competitive standards of section 431:11-D must be remedied, and may vacate or modify the order to set forth those conditions.

(d) Any order issued pursuant to this section shall be void if the acquisition is never consummated.

(e) Any person who violates a cease and desist order of the commissioner under subsection (a) while the order is in effect, upon order of the commissioner after notice and hearing, may be subject to one or both of the following:

- (1) A fine of not more than \$10,000 for every day of violation; and
- (2) Suspension or revocation of the person's license.

(f) Any insurer or other person who fails to make any filing required by this section or sections 431:11-B and 431:11-C, and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine of not more than \$50,000.

**§431:11-F Inapplicable provisions.** Sections 431:11-110(b), 431:11-110(c), and 431:11-112 do not apply to acquisitions to which sections 431:11-A through 431:11-E apply."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

## **"ARTICLE X MANAGING GENERAL AGENTS**

**§431:X-101 Definitions.** For purposes of this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Insurer" means any person, firm, association, or corporation duly licensed in this State as an insurance company pursuant to section 431:3-201.

"Managing general agent" or "MGA" means any person, firm, association, or corporation that manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per cent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, together with one or more of the following activities related to the business produced: adjusts or pays claims in excess of an amount determined by the commissioner; or negotiates reinsurance on behalf of the insurer. Notwithstanding the preceding sentence, the following persons shall not be considered as MGAs for the purposes of this article:

- (1) An employee of the insurer;
- (2) A United States manager of the United States branch of an alien insurer;

- (3) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to article 11, and whose compensation is not based on the volume of premiums written;
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney; and
- (5) Any person, firm, association or corporation domiciled in the State and authorized to do business only in the State and acting as an MGA for an insurer licensed and conducting business only in the State.

“Underwrite” means the authority to accept or reject risk on behalf of the insurer.

**§431:X-102 Licensure.** (a) No person, firm, association, or corporation shall act as an MGA, with respect to risks located in this State for an insurer licensed in this State, unless licensed as a general agent in this State.

(b) No person, firm, association, or corporation shall act as an MGA, representing an insurer domiciled in this State with respect to risks located outside this State, unless licensed as a general agent in this State.

(c) The commissioner may require the MGA to furnish a bond in an amount acceptable to the commissioner with an insurance company acceptable to the commissioner for the protection of the insurer.

(d) The commissioner may require the MGA to maintain an errors and omissions policy in an amount acceptable to the commissioner with an insurance company acceptable to the commissioner.

**§431:X-103 Required contract provisions.** No person, firm, association, or corporation acting as an MGA shall place business with an insurer unless there is in force, a written contract between the MGA and the insurer which sets forth the responsibilities of each party and, where both the MGA and the insurer share responsibility for a particular function, specifies the division of those responsibilities, and which contains at least the following additional provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination;
- (2) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity and deposited in an account in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer by the MGA. The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the MGA will be maintained. The insurer shall have access to and the right to copy all accounts and records of the MGA related to the insurer's business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the commissioner. The records shall be retained according to section 431:9-229;

- (5) The contract may not be assigned in whole or in part by the MGA;
- (6) Appropriate underwriting guidelines including:
- (A) The maximum annual premium volume;
  - (B) The basis of the rates to be charged;
  - (C) The types of risks which may be written;
  - (D) Maximum limits of liability;
  - (E) Applicable exclusions;
  - (F) Territorial limitations;
  - (G) Policy cancellation provisions; and
  - (H) The maximum policy period.
- The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies;
- (7) If the contract permits the MGA to settle claims on behalf of the insurer:
- (A) All claims must be reported to the insurer in a timely manner;
  - (B) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
    - (i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
    - (ii) Involves a coverage dispute;
    - (iii) May exceed the MGA's claims settlement authority;
    - (iv) Is open for more than six months; or
    - (v) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;
  - (C) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the MGA shall have reasonable access to and the right to copy the files on a timely basis;
  - (D) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and
  - (E) Where electronic claims files are in existence, the contract must address the timely transmission of the data;
- (8) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business, and in any event, not until the profits have been verified pursuant to section 431:X-105; and
- (9) The MGA shall not:
- (A) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which those automatic agreements are

- in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- (B) Commit the insurer to participate in insurance or reinsurance syndicates;
- (C) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of insurance for which the agent is appointed;
- (D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
- (E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;
- (F) Permit its subagent to serve on the board of directors of the insurer;
- (G) Employ an individual who is also employed by the insurer; or
- (H) Appoint a subMGA.

**§431:X-104 Duties of insurers.** (a) An insurer shall have on file an independent financial examination of each MGA with which it has done business in a form acceptable to the commissioner.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification required by this chapter.

(c) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(e) The insurer shall notify the commissioner in writing within thirty days of entering into or terminating a contract with an MGA. Notices of appointment of an MGA shall include a statement of duties which the MGA is expected to perform on behalf of the insurer, the lines of insurance for which the MGA is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer as defined in section 431:W-101 has become an MGA. If the insurer determines that a producer has become an MGA, the insurer shall promptly notify the producer and the commissioner of the determination and the insurer and producer shall fully comply with this article within thirty days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of any of its MGAs; provided that this subsection shall not apply to relationships governed by article 11.

**§431:X-105 Examination authority.** The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined pursuant to article 2 as if it were the insurer.

**§431:X-106 Penalties and liabilities.** (a) If after a hearing conducted in accordance with section 431:2-308 and chapter 91, the commissioner finds that

any person has violated any provision of this article, the commissioner may order any or all of the following:

- (1) For each separate violation, a fine in an amount of not less than \$500 and not more than \$50,000, pursuant to section 431:3-221;
  - (2) Revocation or suspension of the agent's license; and
  - (3) The MGA to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this article by the MGA.
- (b) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.
- (c) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

**§431:X-107 Rules.** The commissioner may adopt reasonable rules under chapter 91 for the implementation and administration of this article.

**§431:X-108 Effective date.** No insurer may continue to utilize the services of an MGA on and after the effective date of this article unless that utilization is in compliance with this article."

SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

## “ARTICLE Y CREDIT FOR REINSURANCE

**§431:Y-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 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 is accredited as a reinsurer in this State. An accredited reinsurer is one which:
  - (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 is not less than \$20,000,000 and whose accreditation has not been denied by the commissioner

- (ii) 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 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 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:
- (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in section 431:Y-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 complies with the filing requirements contained in subparagraph (A), and which has continuously transacted an insurance business outside the United States for

at least three years immediately prior to making application for accreditation, and which submits to this State's authority to examine its books and records and bears the expense of the examination, and which 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 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 member'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 paragraphs (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.

**§431:Y-102 Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 431:Y-101 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if that security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

- (1) Cash;
- (2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, no later than December 31st in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit issued by issuing (or confirming) institutions meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
- (4) Any other form of security acceptable to the commissioner.

**§431:Y-103 Qualified United States financial institutions.** (a) For purposes of section 431:Y-102(3), a "qualified United States financial institution" means an institution that:

- (1) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) For purposes of those provisions of this article specifying those institutions that are eligible to act as a fiduciary of a trust, "qualified United States financial institution" means an institution that:

- (1) Is organized, or (in the case of a United States branch or agency office of a foreign banking organization) licensed, under the laws of

- the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
- (2) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

**§431:Y-104 Rules.** The commissioner may adopt rules under chapter 91 implementing this article.

**§431:Y-105 Reinsurance agreements affected.** Sections 431:Y-101 through 431:Y-104 shall apply to all cessions after the effective date of this article under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six months after the effective date of this article.”

SECTION 6. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

## **“ARTICLE Z REINSURANCE INTERMEDIARY**

**§431:Z-101 Definitions.** For purposes of this article:

“Actuary” means a person who is a member in good standing of the American Academy of Actuaries.

“Controlling person” means any individual, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

“Insurer” means any individual, firm, association, or corporation duly licensed in this State pursuant to this chapter as an insurer.

“Licensed producer” or “producer” means an agent, solicitor, broker, or reinsurance intermediary licensed pursuant to this chapter.

“Qualified United States financial institution” means an institution that:

- (1) Is organized or (in the case of a United States office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

“Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in this section.

“Reinsurance intermediary-broker” or “RB” means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation that solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

“Reinsurance intermediary-manager” or “RM” means any individual, firm, association, or corporation that has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for

the reinsurer whether known as an RM, manager, or other similar term. Notwithstanding the above, the following persons shall not be considered an RM, with respect to the reinsurer, for the purposes of this article:

- (1) An employee of the reinsurer;
- (2) A United States manager of the United States branch of an alien reinsurer;
- (3) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to article 11, and whose compensation is not based on the volume of premiums written; and
- (4) The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and who is subject to examination by the commissioner of the state in which the manager's principal business office is located.

"Reinsurer" means any person, firm, association, or corporation duly licensed in this State pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.

"To be in violation" means that the reinsurance intermediary, or insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with this article.

**§431:Z-102 Licensure.** (a) No person, firm, association, or corporation shall act as an RB in this State if the RB maintains an office either directly or as a member or employee of a firm or association or an officer, director, or employee of a corporation:

- (1) In this State, unless the RB is a licensed agent in this State; or
  - (2) In another state, unless the RB is a licensed agent in this State or another state having a law substantially similar to this law, or such RB is licensed in this State as a nonresident reinsurance intermediary.
- (b) No person, firm, association, or corporation shall act as an RM:
- (1) For a reinsurer domiciled in this State, unless the RM is a licensed producer in this State;
  - (2) In this State, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this State, unless the RM is a licensed producer in this State; or
  - (3) In another state for a nondomestic insurer, unless the RM is a licensed producer in this State or another state having a law substantially similar to this law, or the person is licensed in this State as a nonresident reinsurance intermediary.
- (c) The commissioner may require an RM subject to subsection (b) to:
- (1) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and
  - (2) Maintain an errors and omissions policy in an amount and from an insurer acceptable to the commissioner.
- (d) (1) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this article. Any such license issued to a firm or association will authorize all the members of that firm or association and any designated employees to act as reinsurance intermediaries under the license, and all those persons shall be named in the application and any supplements thereto. Any such

license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all those persons shall be named in the application and any supplements thereto.

- (2) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this article for service of process upon unauthorized insurers; and also shall furnish the commissioner with the name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.

(e) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of the license. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to disclosure pursuant to chapter 92F.

(f) Licensed attorneys at law of this State when acting in their professional capacity as such shall be exempt from this section.

**§431:Z-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;
- (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 is a qualified United States financial institution;
- (4) The RB shall comply with section 431:Z-105.
- (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 reinsurer to which business will be ceded or retroceded.

**§431:Z-104 Books and records; reinsurance intermediary brokers.** (a) For at least ten years after expiration of each contract of reinsurance transacted by the RB, the RB shall keep a complete record for each transaction showing:

- (1) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
- (2) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required for cancellation;
- (3) Reporting and settlement requirements of balances;
- (4) Rate used to compute the reinsurance premium;
- (5) Names and addresses of assuming reinsurers;
- (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RB;
- (7) Related correspondence and memoranda;
- (8) Proof of placement;
- (9) Details regarding retrocessions handled by the RB including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (10) Financial records, including but not limited to, premium and loss accounts; and
- (11) When the RB procures a reinsurance contract on behalf of a licensed ceding insurer:
  - (A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
  - (B) 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.

(b) The insurer will have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

**§431:Z-105 Duties of insurers utilizing the services of a reinsurance intermediary-broker.** (a) An insurer shall not engage the services of any person, firm, association, or corporation to act as an RB on its behalf unless the person, firm, association, or corporation is licensed as required by section 431:Z-102.

(b) An insurer may not employ an individual who is employed by an RB with which it transacts business, unless the RB is under common control with the insurer and subject to article 11.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business.

**§431:Z-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 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 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:Z-108(a), 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 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:Z-108(c);
- (11) The RM shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall at least 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.

**§431:Z-107 Prohibited acts.** The RM shall not:

- (1) Cede retrocessions on behalf of the reinsurer, except that the RM may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which those automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;
- (2) Commit the reinsurer to participate in reinsurance syndicates;
- (3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed;
- (4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay, a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one per cent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;
- (5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior

approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

- (6) Jointly employ an individual who is employed by the reinsurer unless the RM is under common control with the reinsurer subject to article 11; or
- (7) Appoint a subRM.

**§431:Z-108 Duties of reinsurers utilizing the services of a reinsurance intermediary manager.** (a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as an RM on its behalf unless the person, firm, association, or corporation is licensed as required by section 431:Z-102(b).

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

(c) If an RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

(e) Within thirty days of termination of a contract with an RM, the reinsurer shall provide written notification of the termination to the commissioner.

(f) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subagent of its RM; provided that this subsection shall not apply to relationships governed by article 11.

**§431:Z-109 Examination authority.** (a) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable by the commissioner.

(b) An RM may be examined as if it were the reinsurer.

**§431:Z-110 Penalties and liabilities.** (a) After a hearing conducted in accordance with section 431:2-308, a reinsurance intermediary, insurer, or reinsurer found by the commissioner to be in violation of any provisions of this article shall:

- (1) For each separate violation, pay a penalty in an amount not exceeding \$5,000;
- (2) Be subject to revocation or suspension of its license; and
- (3) If a violation was committed by a reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(b) The decision, determination, or order of the commissioner pursuant to subsection (a) shall be subject to judicial review pursuant to chapter 91 and section 431:2-308.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third

parties or confer any rights on those persons.

**§431:Z-111 Rules.** The commissioner may adopt reasonable rules under chapter 91 for the implementation and administration of this article.”

SECTION 7. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after the effective date of this Act unless the reinsurance intermediary and the utilization of the reinsurance intermediary are in compliance with this Act.

SECTION 8. Section 431:3-211, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-211 Alien reinsurers.** No credit shall be allowed to any insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer, other than under a contract of ocean marine insurance, covering a subject of insurance resident, located, or to be performed in this State unless the alien reinsurer:

- (1) Is authorized to transact insurance in a state of the United States; [and]
- (2) Maintains an adequate guaranty deposit in a state of the United States for the protection of its insurance obligees in the United States; [and]
- (3) Has an attorney-in-fact resident in the United States upon whom service of legal process may be made[.]; and
- (4) Files annually a copy of its annual statement.”

SECTION 9. Section 431:3-301, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-301 Annual filings with commissioner.** (a) Annually before March 16, 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 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 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[.];

## ACT 177

- (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 the proper public official as to any deposit made or held as compliance with this code.
- (b) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to file any of the documents to which subsection (a) relates."

SECTION 10. In codifying the new sections added to article 11 of chapter 431, Hawaii Revised Statutes, by section 3 of this Act, and the new articles added by sections 1, 4, 5, and 6 of this Act, the revisor of statutes shall substitute appropriate section and article numbers for the letters used in designating the new sections and articles in this Act.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 177

H.B. NO. 3030

A Bill for an Act Relating to Medicine and Surgery.

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

SECTION 1. Chapter 328, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**"§328- Out-of-state prescriptions.** (a) An out-of-state practitioner may make a written or orally-ordered prescription within the confines of the practitioner's license and in accordance with Hawaii laws and rules. The prescription may either be filled one time or refilled one time, but not both; provided that:

- (1) The prescription filled or refilled pursuant to this section shall be limited to not more than a thirty-day supply of any drug; and
  - (2) If orally-ordered, the prescription shall be personally ordered by an out-of-state practitioner and received only by a pharmacist.
- (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;

- (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.
- (d) A pharmacist who fills or refills an out-of-state prescription shall be responsible if the prescription is not written in the form prescribed by Hawaii laws and rules.
- (e) The pharmacist shall follow all labeling procedures established by the department for filling and refilling an out-of-state prescription. The label shall also appropriately identify the prescription 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.
- (f) All transferred prescriptions shall be maintained for a period of five years from the date of filling or refilling. Filled out-of-state prescriptions shall be kept in a special file for five years. The department may establish additional recordkeeping and reporting procedures for filled and refilled out-of-state prescriptions.
- (g) This section shall not apply to prescriptions for controlled substances and habit forming drugs.

**§328- Record of prescriptions.** Every licensed physician or pharmacist who compounds, sells, or delivers any prescription containing any poisonous drug, or substance deleterious to human life, to be used as medicine, shall enter upon the physician's or pharmacist's books the prescription written out in full, with the date thereof, with the physician's or pharmacist's own name appended thereto, or the name of the physician who prescribed the same, and the person to whom the same was delivered. No prescription shall be compounded, sold, or delivered unless the name of the person compounding, selling, or delivering the same, or the name of the physician prescribing the same, is appended to the prescription in full, and every prescription shall be preserved for a period of not less than five years. The books and prescriptions shall be subject at all times to the inspection of the director of health or the director's agent."

SECTION 2. Section 328-99, Hawaii Revised Statutes, is amended to read

as follows:

**"§328-99 Exceptions.** Out-of-state prescriptions filled pursuant to section [328-101] 328- shall be exempt from this part."

SECTION 3. Section 453-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any license to practice medicine and surgery may be revoked, limited, or suspended by the board of medical examiners at any time in a proceeding before the board, or may be denied, for any one or more of the following acts or conditions on the part of the holder of such license or the applicant therefor:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for one's self;
- (3) Engaging in false, fraudulent, or deceptive advertising, including, but not limited to:
  - (A) Making excessive claims of expertise in one or more medical specialty fields;
  - (B) Assuring a permanent cure for an incurable disease; or
  - (C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
- (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or [an] a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Professional misconduct, [gross negligence,] hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine or surgery;
- (8) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
- (9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association or the American Medical Association;
- (10) Violation of the conditions or limitations upon which a limited or temporary license is issued;
- (11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, uniform controlled substances act, or any rule adopted thereunder;
- (14) Failure to report to the board, in writing, any disciplinary decision

- issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or  
(15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact."

SECTION 4. Section 328-100, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 328-101, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved June 12, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 178

H.B. NO. 3034

A Bill for an Act Relating to Credit Sales.

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

SECTION 1. Section 476-19, Hawaii Revised Statutes, is amended to read as follows:

**"§476-19 Preservation of buyer's rights; assignment.** (a) No contract shall contain any provision by which a buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense.

(b) No contract shall require or entail the execution of any note or series of notes by the buyer which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller.

(c) No rights of action or defense arising out of a credit sale which the buyer has against the seller shall be cut off by assignment; provided that any recovery thereon by the buyer shall not exceed amounts paid and to be paid by the buyer on the contract and may be set-off against such amount to be paid. If the buyer has a good cause of action or defense against the seller, the seller's assignee has recourse against the seller for any losses the assignee may incur as a result thereof.

(d) When an assignee asserts the assignee's rights against a buyer, the buyer may assert any available defense against the assignee as if the assignee were the seller."

SECTION 2. New statutory material is underscored.

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

(Approved June 12, 1992.)

## ACT 179

H.B. NO. 3046

A Bill for an Act Relating to Motor Carrier Safety.

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

SECTION 1. Section 291-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person guilty of omitting any of the required acts, or committing any of the prohibited acts of this chapter, or the rules adopted shall be guilty of a violation of this chapter and [may] shall be fined not less than \$25 nor more than \$1,800; provided that any person guilty of omitting any of the required acts, or committing any of the prohibited acts of sections 291-34, 291-35, or 291-36 [may] shall be fined not more than \$600 and not less than the fine which is set forth in the following tables:

If the excess weight is:	The minimum fine for a first violation shall be:
100 to 1,500 pounds	\$125
1,501 to 2,000 pounds	130
2,001 to 2,500 pounds	140
2,501 to 3,000 pounds	160
3,001 to 3,500 pounds	180
3,501 to 4,000 pounds	200
4,001 to 4,500 pounds	225
4,501 to 5,000 pounds	250
5,001 to 5,500 pounds	275
5,501 to 6,000 pounds	300
6,001 to 6,500 pounds	330
6,501 to 7,000 pounds	360
7,001 to 7,500 pounds	390
7,501 to 8,000 pounds	420
8,001 to 8,500 pounds	455
8,501 to 9,000 pounds	490
9,001 to 9,500 pounds	525
9,501 to 10,000 pounds	560
10,001 pounds and over	580

  

If the excess dimension is:	The minimum fine shall be:
Up to 5 feet	\$ 25
Over 5 feet and up to 10 feet	50
Over 10 feet and up to 15 feet	75
Over 15 feet	100

For the purpose of the imposition of a fine or penalty herein, evidence of prior offenses shall be admissible.

For a second violation within one year of the first, the fine for excess weight shall be not less than twice the fine listed in the excess weight table above and not more than \$1,200. For a third or subsequent violation for excess weight previously cited under this section within one year, the fine shall not be less than triple the fine listed in the excess weight table above and not more than \$1,800.

For the purposes of this section "person" means the driver of the vehicle unless the driver is an employee in the scope and course of employment, in which case "person" means the employer of the driver.

All penalties imposed and collected for violations of sections 291-33 to 291-36 shall be paid into the state highway fund.

The department of transportation is authorized to institute a system where the minimum fine, based on the tables in this subsection, may be mailed in when the citation or penalty is not to be contested. This system shall include an ability for the owner of the vehicle or combination of vehicles to request the operator be held harmless and the citation be transferred to that owner of the vehicle or combination of vehicles."

SECTION 2. Section 291-39, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding any other provisions of this chapter, no enforcing officer shall issue a citation for violation of [the provisions set forth in] section 291-35 unless [the]:

- (1) The violator exceeds the applicable maximum weight by more than five per cent[, except that this subsection shall not apply to interstate highways.] when a portable axle scale is used; or
- (2) The violator exceeds the applicable maximum weight by more than two per cent when a permanently installed axle load scale is used.

This subsection shall not apply to interstate highways."

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

SECTION 4. The director of transportation shall publish in a newspaper of general circulation printed and published within the State, a notice of completion for Project BR-064-1(3) Sand Island Bascule Bridge Rehabilitation Phase II and Project 64A-01-92 Traffic Signal At Sand Island Bridge.

SECTION 5. This Act shall take effect upon publication by the director of transportation in a newspaper of general circulation printed and published within the State, a notice of completion for Project BR-064-1(3) Sand Island Bascule Bridge Rehabilitation Phase II and Project 64A-01-92 Traffic Signal At Sand Island Bridge; except that should such notice of completion not be published by April 1, 1993, this Act shall be repealed.

(Approved June 12, 1992.)

ACT 180

H.B. NO. 3062

A Bill for an Act Relating to the Protection of Natural Resources.

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

SECTION 1. Section 195-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) The department, with at least twenty days notice, shall conduct one or

more public hearings before [having] terminating state funding for a management plan approved by the board under the natural area partnership program, requesting the governor to revoke or modify an executive order that sets aside lands for the reserves system, or prior to the designation of the following types of lands into the reserves system:

- (1) State lands under the jurisdiction of the department;
- (2) State lands that are removed from other uses or modified by the governor through an executive order that sets aside land for the natural area reserves system;
- (3) Lands acquired by eminent domain pursuant to chapter 101; and
- (4) State lands proposed by the governor for inclusion into the reserves system, as provided in section 171-11.

The notice shall be published in a newspaper of general circulation in the county where the proposed natural area reserve or natural area partnership is located and also in a newspaper of general circulation in the State. The notice shall contain, but not be limited to, the time and place of the hearing, the location of the land, and the proposed changes."

SECTION 2. Section 195-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In order to qualify under this program, [the] an applicant shall be a landowner or a cooperating entity of private [lands] land of natural area reserve quality and shall agree to [the following conditions]:

- (1) Dedicate the private [lands] land in perpetuity through [a] transfer of fee title or a conservation easement to the State or a cooperating entity; provided that:
  - (A) The dedication may be revoked if state funding is terminated without the concurrence of the landowner and cooperating entity; and
  - (B) If a private landowner or cooperating entity elects to withdraw from the program, the perpetual conservation easement shall remain in effect;
- (2) Have the private [lands] land managed by the cooperating entity or qualified landowner according to a management [plans] plan prepared by the cooperating entity or landowner and approved by the board that [meet] meets the standards established by the department for the [natural area reserves] system. The management [plans] plan shall include provisions to allow public hunting wherever feasible; provided that [hunting]:
  - (A) Hunting activities shall be in compliance with applicable laws; and [provided further, that game]
  - (B) Game animals shall not be introduced to any partnership area and hunting shall be conducted as [part of the] a conservation [purposes] purpose of this program.

In-kind services such as heavy equipment and existing sources of labor may be utilized as a portion of the private contribution in implementing the management plan;

- (3) [Agree to have a] A penalty payback provision [apply] in the event [a] the landowner or cooperating entity ceases to implement the approved management plan, unless the board approves modifications to the plan or state funding [lapses;] is terminated;

- (4) [Along with the cooperating entity, submit] Submit an annual report to the board detailing the year's management accomplishments, areas needing technical advice, proposed modifications to the plan, and objectives and budget for the coming year. To facilitate the review, the department shall have the right to make inspections of the [private lands] land after [prior] notifying the landowner [notification.]; [The board may approve alteration of the management plan to adapt to current conditions. Amendments to the management plan shall be available for public review;] and
- (5) Any other conditions the department shall require by rules adopted pursuant to chapter 91."

SECTION 3. Section 195-6.6, Hawaii Revised Statutes, is amended to read as follows:

"§195-6.6 Reports. The department shall submit annually a comprehensive status report on the natural area reserves system and the natural area partnership program to include, but not be limited to:

- (1) [Description] A description of activities and accomplishments;
- (2) Compliance with chapter [42] 42D requirements;
- (3) [Analysis] An analysis of the problems and issues encountered in meeting or failing to meet the objectives [as] set forth in the management plans;
- (4) [Status] The status of public hunting opportunities;
- (5) [Financial] The financial condition of the fund, including receipts and expenditures for the fund for the previous fiscal year; and
- (6) Plans and management objectives for the next fiscal year.

The report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of each regular legislative session."

SECTION 4. Section 195F-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Payments [shall only be made with funds specifically appropriated for that purpose and] from the forest stewardship fund shall not exceed fifty per cent of the total cost of the landowner in developing and implementing an approved management plan. Total payments to any one landowner shall be determined by the board, and the reasonable value of material, goods, and services contributed toward the plan by the landowner shall be included in determining the amount of the landowner's cost. The landowner shall be required to spend private funds before reimbursements are made. In-kind services such as heavy equipment and existing sources of labor may be utilized as a portion of the landowner's contribution in implementing the management plan[,] that is consistent with this chapter."

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

SECTION 6. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

A Bill for an Act Relating to the State Foundation on 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 a new part to be appropriately designated and to read as follows:

**"PART II. FOUNDATION GRANT PROGRAM**

**§9- Qualifying standards for foundation grant applications.** An applicant for a foundation grant shall meet the following standards:

- (1) If the applicant is an organization:
  - (A) Be a for-profit organization incorporated under the laws of the State or a nonprofit organization exempt from the federal income tax by the Internal Revenue Service;
  - (B) In the case of a tax exempt nonprofit organization, the organization shall have a governing board whose members have no material conflict of interest and serve without compensation;
  - (C) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflict of interest situations; and
  - (D) Have at least one year's experience with the project or in the program or activity area for which the request for grant is being made; provided that the foundation may grant an exception where the requesting or proposing organization has demonstrated the necessary experience in the program area.
- (2) If the applicant is an individual, the applicant must be determined by the foundation to be:
  - (A) Professionally recognized in the field of culture and the arts or history and the humanities; and
  - (B) Qualified to carry out the activity or program proposed for delivery to the general public or specified members of the general public.

**(3) 9. Conditions for foundation grants.** Applicants to whom a grant has been awarded shall agree to comply with the following conditions before receiving the grant:

- (1) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State; provided that for nonprofit organizations, no two or more members of a family or kin of the first or second degree shall be employed or under contract by the organization unless specifically permitted in writing by the foundation;
- (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (3) Agree not to use public funds for purposes of entertainment or perquisites;
- (4) Comply with other requirements as the foundation may prescribe to ensure adherence to federal, state, and county laws by the grant recipient; and

- (5) Allow the foundation, the legislative bodies, and the legislative auditor full access to records, reports, files, and other related documents so that the program, management, and fiscal practices of the grant recipient may be monitored and evaluated to assure the proper and effective expenditure of public funds.

**§9- Required review of requests for foundation grants.** (a) Every request for a foundation grant shall be reviewed in accordance with this section.

(b) Every request for a foundation grant shall be submitted to the foundation on an application form provided by the foundation. Each application shall contain:

- (1) A statement of the purpose of the activity or program to be funded by the grant;
- (2) A written description of the activity or program;
- (3) Financial information regarding the activity or program;
- (4) If the applicant is an organization, personnel position salaries; and
- (5) Any other information the foundation requires.

(c) The foundation shall review each request to determine the efficiency and the effectiveness of the proposed activity or program in achieving the objectives of the foundation and its legislative mandate. The review shall be based upon an analysis of the request in terms of the objectives to be achieved, the need in the community for the particular activity or program, the quality of the proposed program or activity, the ability of the applicant to carry out the proposed program or activity, the benefits to be provided by the request in comparison to the estimated costs, and the extent to which the proposed program and activity meet the priorities established by the foundation.

(d) The foundation shall make a final decision on each request.

(e) The foundation shall inform each foundation grant applicant of the disposition of the application's request.

(f) The appeal process in the foundation's rules adopted pursuant to section 9-2 shall be available for any applicant.

**§9- Allotment.** Appropriations for foundation grants to be made under this chapter shall be subject to the allotment system generally applicable to all appropriations made by the legislature.

**§9- Contracts.** (a) The foundation shall not release the public funds approved for a foundation grant unless a contract is entered into between the foundation and the recipient of the grant. The foundation shall develop and determine, in consultation with and subject to the review and approval of the attorney general, the specific contract form to be used.

(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 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.

(c) All contracts shall be reviewed by the attorney general for conformance with this part.

**§9- Monitoring and evaluation.** (a) Every foundation grant contract shall be monitored by the foundation to ensure compliance with this part.

(b) Every foundation grant contract shall be evaluated annually to determine whether the grant attained the intended results in the manner contemplated.

(c) The foundation shall develop procedures and adopt rules under chapter 91 for monitoring and evaluating grant contracts.

**§9- Continued eligibility.** Any recipient of a foundation grant who withholds or omits any material fact or deliberately misrepresents facts to the foundation shall be in violation of this part. In addition to any other penalties provided by law, any recipient found by the foundation to have violated this part or the terms of its contract shall be prohibited from applying for any foundation grant for a period of five years from the date of termination.

**§9- Applicability and interpretation.** This part shall control all grants made by the foundation. This part shall be liberally construed so as not to hinder or impede the application, receipt, and use of federal moneys that may become available to the State and the foundation. If unanticipated federal moneys not included in the legislature's appropriation to the foundation become available, the foundation, pursuant to chapter 29, may apply for, receive, and expend the federal moneys in accordance with the terms and conditions specified in the applicable federal statutes, regulations, or financial award documents."

SECTION 2. Chapter 9, Hawaii Revised Statutes, is amended by designating sections 9-1 through 9-5, as Part I and inserting a title before section 9-1 to read:

### "PART I. GENERAL PROVISIONS"

SECTION 3. Section 9-1, Hawaii Revised Statutes, is amended by adding seven new definitions to be appropriately inserted and to read as follows:

"Foundation" means the state foundation on culture and the arts established by section 9-2.

"Grant" means an award of public funds to a recipient, based on merit and need, to stimulate and support activities of the recipient for a specified public purpose.

"Individual" means a natural person.

"Nepotism" means appointing persons to positions on a basis of their blood or marital relationship to the appointing authority, rather than on merit or ability.

"Organization" means an association formed for a common purpose.

"Perquisite" means a privilege furnished or a service rendered by an organization to an employee, officer, director, or member of that organization to reduce the individual's personal expenses.

"Recipient" means any individual or organization receiving a grant."

SECTION 4. 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 written standards and criteria by which grant contracts shall be evaluated;
- [2] (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;
- [3] (4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;
- [4] (5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;
- [5] (6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;
- [6] (7) Through its [chairman administer] 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 [such] those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of [such] any designation, [such] 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;
- [7] (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 [the provisions of] chapters 76 and 77 and select necessary additional staff subject to chapters 76 and 77, within available appropriations;
- [8] (9) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year[; provided that the second annual report thereof shall include recommendations as to the responsibility and role which the State should assume in the long-run with respect to preservation and furtherance of culture and the arts and history and the humanities in Hawaii and as to organization and administrative arrangements which should be provided for in law and otherwise]. 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;
- [9] (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;

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- [(10)] (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
- [(11)] (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.”

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

SECTION 6. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

## ACT 182

H.B. NO. 3134

A Bill for an Act Relating to Energy Emergency Response.

*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 \$250,000, or 0.0080 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. Chapter 125C, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . ENERGY EMERGENCY PLANNING

**§125C- Biennial state energy emergency preparedness plan.** (a) The department of business, economic development, and tourism shall prepare a comprehensive and integrated biennial state energy emergency preparedness plan to be implemented in the event of, or in anticipation of, a change in the State's petroleum supply or demand situation that is judged by the governor to be unmanageable by the free market. The department of business, economic development, and tourism shall prepare a biennial state energy emergency preparedness plan in every even-numbered year in accordance with the following:

- (1) The biennial state energy emergency preparedness plan shall replace the energy emergency plan developed by the energy resources coor-

dinator, who shall act as the governor's authorized representative under this chapter;

- (2) In preparing the biennial state energy emergency preparedness plan, the department shall:
    - (A) Solicit input, comment, and review from the governor's energy emergency preparedness advisory committee composed of representatives of federal, state, and county governments; private energy suppliers; consumer and other public interest groups; and the public at-large; and
    - (B) Establish other task forces and advisory groups, as may be deemed necessary, to assist in the preparation and review of the biennial state energy emergency preparedness plan;
  - (3) The biennial state energy emergency preparedness plan shall be comprehensive and encompassing, and shall integrate into its analytic and planning framework the plans of electric and gas utilities and other energy suppliers, relevant state agencies, including the department of transportation, counties, and such other entities as deemed appropriate; and
  - (4) The biennial state energy emergency preparedness plan shall include a review and update of the previous biennial state energy emergency preparedness plan and a review of the energy emergency plans prepared by the counties.
- (b) The department shall prepare an energy emergency communication plan, which shall be updated biennially and shall be consistent with the energy emergency preparedness plans prepared by the counties. The energy emergency communication plan shall be used by the State and counties to communicate and otherwise coordinate state and county actions taken in response to implementing the biennial state energy emergency preparedness plan.

**§125C- Biennial county energy emergency preparedness plans.** The mayor of each county, or the mayor's authorized representative, shall prepare a comprehensive county energy emergency preparedness plan. The plan shall be prepared in coordination with and be consistent with the biennial state energy emergency preparedness plan, and shall be implemented in coordination with the state energy emergency preparedness plan upon declaration of an energy emergency by the governor. Not later than September 30 of every even-numbered year, each county shall prepare and transmit to the director of business, economic development, and tourism the county's biennial county energy emergency preparedness plan."

SECTION 3. Section 125C-3, Hawaii Revised Statutes, is amended to read as follows:

**"§125C-3 Powers in a shortage.** When a shortage as defined in section 125C-2 exists, the governor or the governor's authorized representative, to [insure] ensure that petroleum products are made available to the public in an orderly, efficient, and safe manner, may:

- (1) Control the retail distribution and sale of petroleum products by adopting rules that may include, but are<sup>1</sup> not<sup>2</sup> limited to, the following measures:
  - (A) Restricting the sale of petroleum products to specific days of the week, hours of the day or night, odd and even-numbered calendar days, and [for] vehicles having less than a specified

- amount of gasoline in their tanks, with exceptions for certain designated geographical areas[.];
- (B) Restricting sales of petroleum products by dealers to daily allocations,<sup>3</sup> which shall be determined by dividing the monthly allocation by the number of selling days per month[.];
  - (C) Requiring dealers to post signs [to designate] designating their hours of operation and the<sup>4</sup> sell-out of daily allocation[.];
  - [D] Allowing the counties to be exempt from all or portions of a state plan and to operate petroleum product distribution plans tailored to their own specific needs where a county has not exempted itself pursuant to section 125C-11.
  - (E) (D) Instituting a statewide rationing plan[.]; and
  - [F] (E) Allowing for special handling for commercial and emergency-user vehicles.
- (2) Require that a percentage of petroleum products, not to exceed five per cent, be set aside to alleviate hardship [as set forth in section 125C-22.];
  - (3) Purchase and resell or otherwise distribute petroleum products, [a] and purchase and resell or otherwise distribute ethanol [which] that is produced within the State and [which] can be used as a substitute for petroleum products[.];
  - (4) Receive, expend, or use contributions or grants in money or property, or special contributions thereof for special purposes not inconsistent with this chapter[.];
  - (5) Borrow and expend moneys needed to exercise the powers herein granted[.];
  - (6) Contract in the name of the State for the purpose of implementing this chapter or any part [hereof.] thereof; and
  - (7) Exercise the powers herein granted to the degree and extent deemed by the governor to be necessary, including the temporary or indefinite suspension of all or part of the measures taken, as the governor deems appropriate.”

SECTION 4. Section 125C-7, Hawaii Revised Statutes, is amended to read as follows:

**“§125C-7 Petroleum products control fund.** (a) There is [hereby] established in the state treasury a revolving fund to be known as the petroleum products control fund. All fees or charges collected for services furnished or petroleum products sold, all moneys borrowed, and all contributions or grants of money received under this chapter shall be deposited in this fund; provided that the governor may establish other suitable funds in the state treasury for the deposit and separate accounting of moneys contributed or granted for special purposes under this chapter. All moneys in the petroleum products control fund are appropriated for the purposes of this chapter and shall be expended by the governor or the governor's authorized representative. The governor or the governor's authorized representative may expend and use the moneys in the petroleum products control fund to purchase petroleum products, to obtain services, equipment, materials, and supplies necessary under this chapter, and to repay moneys borrowed under this chapter.

(b) The governor's authorized representative shall submit requests to the governor to withdraw moneys from the petroleum products control fund as may

be necessary for expenditure, by or under the direction of the governor, for immediate relief in the event of a shortage, or when the governor determines a shortage to be imminent and unavoidable; provided that not more than \$500,000 shall be expended for the immediate relief of any single shortage.

(c) In expending the moneys, the governor's authorized representative may allot any portion thereof to any state or county agency, office, or employee, for relief of the conditions created by the shortage. The governor may determine whether a shortage contemplated by this section has occurred, or is imminent and unavoidable. The determination of the governor in this matter shall be conclusive.

(d) The governor's authorized representative may expend funds from the petroleum products control fund during ordinary petroleum market conditions for planning and preparation to respond to a shortage."

SECTION 5. Section 125C-11, Hawaii Revised Statutes, is repealed.

SECTION 6. 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 1992-93, of which \$130,000 shall be paid into the petroleum products control fund created in section 125C-7, Hawaii Revised Statutes, and of which \$30,000 shall be allocated to each of the counties solely for the purposes of energy emergency preparedness.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed.<sup>5</sup> New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

Notes

1. Prior to amendment "shall" appeared here.
2. Prior to amendment "be" appeared here.
3. Comma should be underscored.
4. "The" should be underscored.
5. Edited pursuant to HRS §23G-16.5.

ACT 183

H.B. NO. 3157

A Bill for an Act Relating to Individual Housing Account Deductions.

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

SECTION 1. Section 235-5.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There shall be allowed as a deduction from gross income the amount, not to exceed \$5,000, paid in cash during the taxable year by an individual taxpayer to an individual housing account established for the individual's benefit to provide funding for the purchase of the individual's first principal residence. A deduction not to exceed \$10,000 shall be allowed for a married couple filing a joint return. No deduction shall be allowed on any amounts distributed less than three hundred sixty-five days from the date on which a contribution is made to

the account. Any deduction claimed for a previous taxable year for amounts distributed less than three hundred sixty-five days from the date on which a contribution was made shall be disallowed and the amount deducted shall be included in the previous taxable year's gross income and the tax reassessed. The interest paid or accrued within the taxable year on the account shall not be included in the individual's gross income. For purposes of this section, the term "first principal residence" means a residential property purchased with the payment or distribution from the individual housing account which shall be owned and occupied as the only home by an individual who did not have any interest in, individually, or whose spouse did not have any interest in, if the individual is married, a residential property [prior thereto.] within the last five years of opening the individual housing account.

In the case of a married couple filing separate returns, the sum of the deductions allowable to each of them for the taxable year shall not exceed \$5,000, or \$10,000 for a joint return, for amounts paid in cash, excluding interest paid or accrued thereon.

The amounts paid in cash allowable as a deduction under this section to an individual for all taxable years shall not exceed \$25,000, excluding interest paid or accrued. In the case of married individuals having separate individual housing accounts, the sum of [such] the separate accounts and the deduction under this section shall not exceed \$25,000, excluding interest paid or accrued thereon.

(b) For purposes of this section, the term "individual housing account" means a trust created or organized in Hawaii for the exclusive benefit of an individual, or, in the case of a married individual, for the exclusive benefit of the individual and spouse jointly, but only if the written governing instrument creating the trust meets the following requirements:

- (1) Contributions shall not be accepted for the taxable year in excess of \$5,000 (or \$10,000 in the case of a joint return) or in excess of \$25,000 for all taxable years, exclusive of interest paid or accrued;
- (2) The trustee is a bank, a savings and loan association, or a credit union, chartered or supervised under federal or state law, whose accounts are insured by the Federal Deposit Insurance Corporation, [the Federal Savings and Loan Insurance Corporation,] the National Credit Union Administration, or any agency of this State or any federal agency established for the purpose of insuring accounts in these financial institutions. The financial institution must actively make residential real estate mortgage loans in Hawaii;
- (3) The assets of the trust shall be invested only in fully insured savings or time deposits. Funds held in the trust may be commingled for purposes of investment, but individual records shall be maintained by the trustee for each individual housing account holder which show all transactions in detail;
- (4) The entire interest of an individual or married couple for whose benefit the trust is maintained shall be distributed to the individual or couple not later than one hundred twenty months after the date on which the first contribution is made to the trust; [and]
- (5) Except as provided in subsection (g), the trustee shall not distribute the funds in the account unless it (A) verifies that the money is to be used for the purchase of a first principal residence located in Hawaii, and provides that the instrument of payment is payable to the mortgagor, construction contractor, or other vendor of the property purchased; or (B) withholds an amount equal to ten per cent of

the amount withdrawn from the account and remits this amount to the director within ten days after the date of the withdrawal. The amount so withheld shall be applied to the liability of the taxpayer under subsections (c) and (e)[.]; and

- (6) If any amounts are distributed before the expiration of three hundred sixty-five days from the date on which a contribution is made to the account, the trustee shall so notify in writing the taxpayer and the director. If the trustee makes the verification required in paragraph (5)(A), then the department shall disallow the deduction under subsection (a) and subsections (c), (e), and (f) shall not apply to that amount. If the trustee withholds an amount under paragraph (5)(B), then the department shall disallow the deduction under subsection (a) and subsection (e) shall apply, but subsection (c) shall not apply."

SECTION 2. Section 235-5.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) If the individual for whose benefit the individual housing account was established purchases a residential property in Hawaii with the distribution from the individual housing account:

- (1) Before January 1, 1990, and if the individual sells in any manner or method or by use of any instrument conveying or transferring the residential property, the gross income of the individual under this chapter for the taxable year in which the residential property is sold, conveyed, or transferred, whichever is applicable, shall include an amount equal to the amount of the distribution from the individual housing account, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the total distribution from the individual housing account.
- (2) After December 31, 1989, the individual shall report one-tenth of the total distribution from the individual housing account used to purchase the residential property as gross income in the taxable year in which the distribution is completed and in each taxable year thereafter until all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property. If the individual sells in any manner or method or by use of any instrument conveying or transferring the residential property, the gross income of the individual under this chapter for the taxable year in which the residential property is sold, conveyed, or transferred, whichever is applicable, shall include an amount equal to the amount of the distribution from the individual housing account not previously reported as gross income, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the total distribution from the individual housing account. If the individual sells the residential property in any manner as provided in this paragraph after all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property, the tax liability of the individual shall not be increased by an amount equal to ten per cent of the total distribution from the individual housing account.

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An individual who purchased a residential property in Hawaii with the distribution from an individual housing account before January 1, 1990, who is subject to paragraph (1) may elect to report as provided in paragraph (2). The election shall be made before January 1, 1991. If the individual makes the election, the individual shall report one-tenth of the total distribution from the individual housing account as gross income in the taxable year in which the election occurs and in each taxable year thereafter until all of the distribution has been included in gross income as provided by paragraph (2). If the individual making the election sells the residential property in any manner as provided in paragraph (2), then the individual shall include as income the amount of the distribution not previously reported as income and increase the individual's tax liability as provided in the second sentence of paragraph (2)[l. except when the third sentence of paragraph (2) applies.]

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

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1992.

(Approved June 12, 1992.)

## ACT 184

H.B. NO. 3158

A Bill for an Act Relating to Administration of Taxes.

*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- Application of tax to oil pollution removal equipment.** The tax imposed by this chapter shall not apply to any ocean-going vessels, barges, or other capital equipment imported into the State or sold to any nonprofit entity that is tax-exempt pursuant to Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, which assists in the implementation of the national contingency plan or area contingency plan, and which is created in response to the requirements of Title IV, Subtitle B of the Oil Pollution Act of 1990, P.L. 101-380 (33 U.S.C. §§95, 1321).”

SECTION 2. Section 237-8.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The director of taxation shall revise the general excise tax forms to provide for[:]

- (1) The] the clear and separate designation of the imposition and payment of the county general excise and use tax surcharge[; and]
- (2) The designation by the taxpayer of the county to which the county general excise and use tax surcharge payment is attributable, based on the county in which the surcharge was actually passed through to the consumer; provided that when the payment is attributable to

more than one county, the taxpayer shall designate the amount of payment attributable to each respective county].

The taxpayer shall designate the taxation district to which the county general excise and use tax surcharge is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer's periodic and annual general excise and use tax returns summarizing the amount of taxes assigned to each taxation district.

The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the tax an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the general excise tax by taxation district on the schedule required under this subsection."

SECTION 3. Section 238-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- "(d) The director of taxation shall revise the use tax forms to provide for[:
  - (1) The] the clear and separate designation of the imposition and payment of the county general excise and use tax surcharge[; and
  - (2) The designation by the taxpayer of the county to which the county general excise and use tax surcharge payment is attributable, based on the county in which the surcharge was actually passed through to the consumer; provided that when the payment is attributable to more than one county, the taxpayer shall designate the amount of payment attributable to each respective county].

The taxpayer shall designate the taxation district to which the county general excise and use tax surcharge is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer's periodic and annual general excise and use tax returns summarizing the amount of taxes assigned to each taxation district.

The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the tax an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the use tax by taxation district on the schedule required under this subsection."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1992; provided that section 1 of this Act shall be repealed on June 30, 1993.

(Approved June 12, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 185

H.B. NO. 3424

A Bill for an Act Relating to Public Records.

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

SECTION 1. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;
- (3) Government purchasing information including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll [record] records on public works contracts;
- (10) Regarding contract hires and consultants employed by agencies[;]: the contract itself, the amount of compensation, the duration of the contract, and the objectives of the contract;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency [which] that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapters 76, 77, [297 or 304],) 297, or bargaining unit (8), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency[.]; provided that this provision shall not require the creation of a roster of employees; [except] and provided further that this provision shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;

- (15) Information collected and maintained for the purpose of making information available to the general public; and
- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public."

SECTION 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 12, 1992.)

## ACT 186

H.B. NO. 3558

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. Section 201E-40, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-40 Duty to make reports.** Except as otherwise provided by law, the housing finance and development corporation shall be responsible for the following reports:

- (1) The corporation shall at least once a year file with the governor a report of its activities for the preceding year;
- (2) The corporation shall report to the state comptroller on moneys deposited in depositories other than the state treasury under section 40-81, and rules adopted thereunder; and
- (3) The corporation shall submit an annual report to the legislature on [the homes revolving fund,] all corporation program areas and funds, organized by program area, and by fund within each program area, no later than twenty days prior to the convening of each regular session, which shall provide the following information on the status of its programs and finances:
  - (A) A description of programs being developed in the current fiscal biennium, including a summary listing of such programs, the status of each program, the methods of project financing or loans, and other information deemed significant;
  - (B) A description of programs planned for development during the two ensuing fiscal bienniums, including a summary listing of such proposed programs, the methods of project financing or loans, and other information deemed significant;
  - (C) A status report of actual expenditures made [for the purposes of the homes revolving fund] in the prior completed fiscal year[,] from each fund established under this chapter, estimated expenditures anticipated for the current fiscal year, and projected expenditures for the ensuing fiscal years to be described in relation to specific [affordable housing] projects[;]developed to implement the purposes of any program or fund established under this chapter; and

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- (D) A financial audit and report conducted on [the] an annual basis by a certified public accounting firm."

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

**SECTION 3.** This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

## **ACT 187**

H.B. NO. 3801

A Bill for an Act Relating to Community Hospitals.

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

**SECTION 1.** Act 223, Session Laws of Hawaii 1990, is amended:

1. By amending section 2 to read as follows:

"**SECTION 2.** The department of health, through its director, shall formulate policies for the autonomous operation of the Maui Memorial Hospital,<sup>1</sup> [and] the Hilo Hospital, and the Kona Hospital [from July 1, 1990, to] until June 30, [1992.] 1993. The director of health shall maintain the existing level of support services provided by the Maui Memorial Hospital [and], the Hilo Hospital, and the Kona Hospital during this period.

For the purpose of this Act, the term "autonomous operation" shall mean a method of hospital management that decentralized health care decision-making and fosters local health care professional participation at the hospital level."

2. By amending section 9 to read as follows:

"**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 1991 [and],<sup>1</sup> 1992, and 1993 regular sessions and a final project completion report not less than twenty days prior to the convening of the [1993] 1994 regular session."

3. By amending section 10 to read as follows:

"**SECTION 10.** This Act shall take effect on July 1, 1990, and shall be repealed on June 30, [1992.] 1993, except section 9 which shall be repealed on January 1, [1993.] 1994."

**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 12, 1992.)

**Note**

1. Comma should be underscored.

**ACT 188**

H.B. NO. 3857

**A Bill for an Act Relating to Family Centers.***Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Act 329, Session Laws of Hawaii 1990, is amended by amending section 1 to read as follows:

“**SECTION 1.** The legislature finds that families and family structures have changed dramatically in Hawaii, and many families are suffering because of the stresses and strains of economic demands.

Hawaii has the nation’s highest proportion of women in the labor force and future projections show that by the year 2020, two-thirds of those entering the labor force will be women, of which [84] eighty-four per cent will be of child-bearing age. Additionally, nearly 29,000 single-parent households in Hawaii are headed by females, with approximately twenty-eight per cent of these below the poverty line.

The legislature finds that many of these families are at high risk of becoming fragmented and dysfunctional, and a substantial number will continue to be trapped in a cycle of poverty unless existing support systems designed to intervene and assist them in times of need are vastly improved.

Under our present system of services to families, families are required to be in trouble or dysfunctional before they can become eligible to receive services and assistance. Furthermore, once families do become eligible to receive services, they too frequently are treated with little understanding and compassion and all too often are placed in uncomfortable settings at stressful times where they are required to fill out complex forms with little assistance.

The legislature also finds that the relationship between families and their neighborhoods is an interactive process. Family members are profoundly affected by the quality of life in their neighborhoods. By the same token, the quality of life in neighborhoods is affected by the values and input of the families living there.

The legislature further finds that in order to reach out to families and successfully assist them, support services should be coordinated and provided in a community-based setting. These community-based centers should be responsive to and involved with the communities in which they are located to the extent that the communities feel a strong sense of ownership of and identification with the centers. In addition, the overall atmosphere of the facility, as well as the attitude of the staff, should project compassion, understanding, friendliness, and patience.

The purpose of this Act is to establish [a] the family [support] center demonstration project, with [a] family [support center to be located on the island of Oahu,] centers to demonstrate the effectiveness of the community-based family [support] center concept and to test different models of service delivery.”

**SECTION 2.** Act 329, Session Laws of Hawaii 1990, is amended by amending section 3 to read as follows:

“**SECTION 3.** (a) [There] Effective July 1, 1990, to June 30, 1993, there

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is established a [two-year] demonstration project, known as the family [support] 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 [a] family [support center.] 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 [support] center council for the purpose of planning and implementing the establishment and development of [a family support center.] 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.

(c) The purpose of the family [support] center demonstration project shall be to coordinate the provision of core services to families at [a] community-based [center in order] centers to develop [the] each community's capacity to identify and resolve its problems. [The] Each center shall be responsive to its community and involve its participants as equal partners in program development and execution. Accordingly, [the] each center shall be [governed] advised by a community [family support center board] liaison committee which shall be composed of community members.

[The] Each family [support] 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; [and]
- (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 [center] centers and other services will be provided by other agencies, the [center,] centers, with input from parent constituents, shall develop a service plan, using a systems management approach, for the provision of services. The staff of [the] 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 parents to appointments with other agencies; advocating on behalf of parents; reminding parents of appointments with other agencies; and providing short-term counseling to parents concerning referrals for services.

[The] Each family [support] 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, securing, and maintaining employment.

(d) After conferring with the family [support] center council, the director of [the department 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 [support center,] centers, which includes, but is not 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.

The department of human services may utilize a portion of the funds [appropriated by this Act] available to conduct evaluations of the family [support center,] centers.

(f) A training and technical assistance component shall be required for the family centers, which includes but is not 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.

SECTION 3. Act 329, Session Laws of Hawaii 1990, is amended by amending section 4 to read as follows:

“SECTION 4. The department of human services shall monitor and evaluate the demonstration project and shall submit a status report on its findings to the legislature at least twenty days prior to the convening of the regular sessions of 1991 and 1992, and a final report on its findings to the legislature at least twenty days prior to the convening of the regular session of 1993. Status and final reports shall include but not be limited to:

- (1) A descriptive summary of the operation of the family [support center,] centers, including the services provided and a copy of the service plan developed by the [center,] centers; the number of recipients of services at the [center,] centers; the allocation of funds; staffing information; and the role and responsibility of the community family [support] center [board,] liaison committees;
- (2) An assessment of the impact of the [center] centers upon the [community] communities served;
- (3) The composition and role of the family [support center,] centers;
- (4) Recommendations regarding the continuance of the family [support] center demonstration project and plans for the implementation of other project sites;
- (5) Recommendations regarding the process by which family [support] 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.”

SECTION 4. Act 329, Session Laws of Hawaii 1990, is amended by amending section 8 to read as follows:

“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.”

SECTION 5. Section 6 of Act 329, Session Laws of Hawaii 1990, is repealed.

[“SECTION 6. As part of the family support center demonstration project, two family literacy programs shall be established for the purpose of addressing the family's need for educational, vocational, and parenting training. The family literacy program shall focus on learning sessions for preschool-aged children and their parents. During these sessions, the children shall receive preschool education while their parents shall receive education focusing on parenting skills; traditional subjects, such as reading, language, and mathematics; and vocational training.”]

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

SECTION 7. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

## ACT 189

H.B. NO. 3960

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. The legislature finds that Act 132, Session Laws of Hawaii 1991 was enacted to ensure that condominium associations properly fund their maintenance replacement reserves so that owners will not be charged high unexpected fees for maintenance and repairs of condominium structures, grounds, and other common elements.

Though the purpose of Act 132 is valid and necessary, the legislature has found that some condominiums are facing possible escalation of maintenance fees from twenty-five per cent to one hundred per cent in the next year to get a "head start" on meeting the requirements of Act 132, even though Act 132 has an effective date of January 1, 1993. In delaying the effective date of Act 132, the legislature intended to provide time to assess the law and any problems thereunder prior to its effective date to avoid causing undue burdens upon condominium owners. The legislature finds that certain amendments to Act 132 are warranted to more effectively carry out the intent of the Act.

SECTION 2. Act 132, Session Laws of Hawaii 1991, is amended by amending Section 1 to read as follows:

"SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§514A- Associations of apartment owners; budgets and reserves.**

(a) The board of directors of each association of apartment owners shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include 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] replacement reserves of the association as of the date of the budget;
- (4) The estimated [cash] replacement reserves the association will require to maintain the property[;] based on a reserve study performed by the association;
- (5) A general explanation of how the estimated [cash] replacement reserves are computed; and
- (6) The amount the association must collect for the fiscal year to fund the estimated [cash] replacement reserves.

(b) The association shall assess the apartment owners to fund a minimum of fifty per cent of the estimated [cash] replacement reserves; provided that a new association created after [the effective date of this Act] January 1, 1993 need not collect estimated [cash] replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year the association

shall collect a minimum of fifty per cent of the full amount required to fund the estimated [cash] replacement<sup>1</sup> for that fiscal year reserves<sup>2</sup> except:

- (1) The commission shall adopt rules to permit an existing association to fund its estimated [cash] replacement reserves in increments [during the first five years] after [the effective date of this Act;] January 1, 1993 and prior to January 1, 2000; and
- (2) The commission shall adopt rules to permit an association to fund in increments, over [two] three years, estimated [cash] replacement reserves which have been substantially depleted by an emergency.
- (c) The association shall compute the estimated [cash] replacement<sup>2</sup> reserves by a formula which is based on the estimated life and the estimated [replacement cost] capital expenditure or major maintenance [expense of] required for each part of the property. The estimated [cash] replacement reserves shall include:

- (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) No association or apartment owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated [cash] replacement reserves for an association shall be liable if the estimate subsequently proves incorrect.

(e) The commission may request a copy of the annual operating budget of the association of apartment owners as part of the association's registration with the commission under section 514A-95.1.

(f) A board may not exceed its total adopted annual operating budget by more than twenty per cent [in a] during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(g) The requirements of this section shall override any requirements in an association's declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

- (1) Any provisions relating to the repair and maintenance of property;
- (2) Any requirements in an association's declaration, bylaws, or any other association documents which require the association to collect more than fifty per cent of reserve requirements; or
- (3) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(h) Subject to the procedures of section 514A-94 and any rules adopted by the commission, any apartment owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board which has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

[(g)] (i) The commission may adopt rules to implement this section.

[(h)] (j) As used in this section:

“Capital expenditure” means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

“Emergency situation” means any of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered; [or]
- (3) An extraordinary expense necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;<sup>3</sup> or
- (4) An extraordinary expense necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.

“Major maintenance” means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

“[Cash] Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the association is obligated to maintain.”

SECTION 2.<sup>3</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3.<sup>3</sup> This Act shall take effect on January 1, 1993.

(Approved June 12, 1992.)

#### Notes

1. Prior to amendment “reserves” appeared here.
2. Should be underscored.
3. So in original.

## ACT 190

S.B NO. 1347

A Bill for an Act Relating to Child Protective and Welfare Services.

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

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read:

### “PART . ADOPTION ASSISTANCE

**§346- Adoption assistance program established.** The department of human services shall maintain an adoption assistance program to facilitate the adoption of children with special needs.

**§346- Equal benefits.** The adoption assistance program referred to in section 346- shall provide equal benefits for children regardless of whether federal matching funds for adoption assistance are received by the State.

**§346- Rules.** The department of human services shall maintain rules describing eligibility criteria for adoption assistance and describing the types, duration, and amounts of adoption assistance benefits that may be received.

**§346- Eligibility.** Eligibility for adoption assistance shall not depend upon the amount of income or property of the adoptive family.

**§346- Effect on prior adoption assistance agreements.** Nothing in this act shall invalidate any adoption assistance agreement already entered into or benefits previously provided by the department of human services nor shall require a reduction of benefits already being provided.”

SECTION 2. Chapter 346-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“Adoption assistance” means the provision of one or more of the following to enable the adoption of children with special needs:

- (1) Monetary assistance;
- (2) Medical benefits; or
- (3) Social services.

“Child with special needs” means a child:

- (1) Who is legally free for adoption;
- (2) Whose adoption is in his or her best interests;
- (3) Who may not be adopted without adoption assistance because one or more specific factors or special circumstances identified by the department of human services in its rules are applicable to the child; and
- (4) For whom a reasonable, but unsuccessful effort has been made to find a suitable adoptive placement without providing adoption assistance, except, where it would not be in the child’s best interests.”

SECTION 3. Section 578-1, Hawaii Revised Statutes, is amended to read as follows:

**“§578-1 Who may adopt; jurisdiction; venue.** Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which [he or they] the person or persons reside or are in military service or the family court of the circuit in which the individual to be adopted resides or was born or in which a child placing organization approved by the department of human services under the provisions of section 346-17 having legal custody (as defined in section 571-2) of the child is located, for leave to adopt an individual toward whom [he or they] the person or persons do not sustain the legal relationship of parent and child and for a change of the name of the individual. When adoption is the goal of a permanent plan recommended by the department of human services and ordered pursuant to section 587-73, the department may petition for adoption on behalf of the proposed adoptive parents. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court.”

SECTION 4. Section 578-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) 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), [or] (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 [such] 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 [his] the person's written reasons for withholding consent, is found by the court to be withholding [his] 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 [said] the child's country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of [said] 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
  - (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), [or] (4), or (5) herein, upon finding that:
- (A) The petitioner is the stepfather of the child and the child has lived with [his] the child's legal mother and the petitioning stepfather for a period of at least one year; [or]

- (B) The adjudicated, presumed or concerned father has not filed a petition to adopt [such] the child, or the petition to adopt [said] the child filed by [said] the father has been denied; or
- (C) The adjudicated, presumed, or concerned father is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education."

SECTION 5. Section 587-1, Hawaii Revised Statutes, is amended to read as follows:

**"§587-1 Purpose; construction.** This chapter creates within the jurisdiction of the family court a child protective act in order to safeguard, treat, and provide [permanent planning] service and permanent plans for children who have been harmed or are threatened with harm.

The legislature finds that children deserve and require competent, responsible parenting and safe, secure, loving, and nurturing homes. The legislature finds that children who have been harmed or are threatened with harm are less likely than other children to realize their full educational, vocational, and emotional potential, and become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system, or the criminal justice system, as well as become an economic burden on the State. The legislature finds that prompt identification, reporting, investigation, services, treatment, adjudication, [treatment,] and disposition of cases involving children who [are] have been harmed or are threatened with harm are in [both] the children's, their families', and society's best interests because [such] the children are defenseless, exploitable, and vulnerable.

The policy and purpose of this chapter is to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families where practicable, and with timely and [permanent planning] appropriate service or permanent plans so they may develop and mature into responsible, self-sufficient, law-abiding citizens. [This permanent planning should effectuate placement with a child's own family when possible and should be conducted in an expeditious fashion so that where return to the child's family is not possible as provided in this chapter, such children will be promptly and permanently placed with responsible, competent, substitute parents and families, and their place in such families secured by adoption or permanent custody orders.] The service plan shall effectuate the child's remaining in the family home, when the family home can be immediately made safe with services, or the child's returning to a safe family home. The service plan should be carefully formulated with the family in a timely manner. Every reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems which put the child at substantial risk of being harmed in the family home. Each appropriate resource, public and private, family and friend, should be considered and used to maximize the legal custodian's potential for providing a safe family home for the child. Full and careful consideration should be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated. It should be recognized at each stage of the child protective proceeding that the child will always be a natural member of the child's birth family. In making each determination, all involved should consider the fact that the child's best interests may well be forever intertwined with those of the child's birth family, even where the legal custodian is determined to be either unwilling or unable to provide the child with a safe family home. Where the court has determined, by clear and convincing evidence, that

the child cannot be returned to a safe family home, the child will be permanently placed in a timely manner.

This chapter shall be liberally construed to serve the best interests of the children and the purposes set out in this chapter."

SECTION 6. Section 587-2, Hawaii Revised Statutes, is amended to read as follows:

**"§587-2 Definitions.** When used in this chapter, unless the context otherwise requires:

"[Adjudicatory] Adjudication hearing" means a hearing held pursuant to section [587-62.] 587-63.

"Authorized agency" means the department or other public or private agency, a person, organization, corporation, and benevolent society or association which is licensed or approved by the department or the court to receive children for control, care, maintenance, or placement.

"Child" means a person who is born alive and is less than eighteen years of age.

"Child protective proceeding" means any action, hearing, or other civil proceeding before the court under this chapter.

"Clear and convincing evidence" means that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. This measure falls between the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.

"Court" means one of the family courts established pursuant to the family court act.

"Criminal history record check" means an examination of an individual's criminal history record through fingerprint analysis or name inquiry into state and national criminal history record files, including, but not limited to, the files of the Hawaii criminal justice data center; provided that the information obtained shall be used exclusively for purposes under this chapter<sup>1</sup> shall be subject to applicable federal laws and regulations.

"Department" means the department of human services and its authorized representatives.

"Disposition hearing" means a hearing held pursuant to section 587-71.

[ "Emergency foster care" means a residence designated as suitable by an authorized agency or the court for the temporary care of a child pending orders of disposition.]

"Family" means each legal parent, the natural mother, the natural father, the adjudicated, presumed, or concerned natural father as defined under section 578-2, each parent's spouse, or former spouses, each sibling or person related by consanguinity or marriage, each person residing in the same dwelling unit, and any other person who or legal entity which is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care, other than an authorized agency which assumes such a legal status or relationship with the child under this chapter.

"Family home" means the home of the child's legal custodian where there is the provision of care for the child's physical and psychological health and welfare.

"Family supervision" means the legal status created pursuant to this section, section 587-21(b)(2), or by an order of court after the court has determined that the child is presently in the legal or permanent custody of a family which is

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willing and able, with the assistance of a service plan, to provide the child with a safe family home. Family supervision vests in an authorized agency the following duties and rights, subject to such restriction as the court deems to be in the best interests of the child:

- (1) To monitor and supervise the child and the child's family members who are parties, including, but not limited to, reasonable access to each of the family members who are parties, and into the child's family home; and
- (2) To have authority to place the child in [emergency foster care or] foster care and thereby automatically assume temporary foster custody or foster custody of the child. Upon [such] placement, the authorized agency shall immediately notify the court. Upon [such] notification, the court shall set the case for a temporary foster custody hearing within three working days or, if jurisdiction has been established, a disposition or a review hearing within ten working days of the child's placement, unless the court deems a later date to be in the best interests of the child.

An authorized agency shall not be liable to third persons for acts of the child solely by reason of its possessing the status of temporary family supervision or family supervision in relation to the child.

"Foster care" means a residence designated as suitable by an authorized agency or the court [for the appropriate care of a child upon orders of disposition or permanent custody.] to provide 24-hour out of family home, substitute care for the child.

"Foster custody" means the legal status created pursuant to this section, section 587-21(b)(2), or by an order of court after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home[.], even with the assistance of a service plan.

- (1) Foster custody vests in a foster custodian the following duties and rights:
  - (A) To determine where and with whom the child shall be placed in [emergency foster care or] foster care; provided that the child shall not be placed in [emergency foster care or] foster care outside the State without prior [approval] order of the court; provided further that, subsequent to the temporary foster custody hearing, unless otherwise ordered by the court, the temporary foster custodian or the foster custodian may permit the child to resume residence with the family from which the child was removed after providing prior written notice to the court and to all parties, which notice shall state that there is no objection of any party to [such a] the return; and upon the return of the child to the family, temporary foster custody, or foster custody automatically shall be revoked and the child and the child's family members who are parties shall be under the temporary family supervision or the family supervision of the former temporary foster custodian or foster custodian;
  - (B) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities;
  - (C) To monitor the provision to the child of appropriate education;
  - (D) To provide all consents which are required for the child's physical or psychological health or welfare, including, but not

- limited to, ordinary medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs; and to provide all consents for any other medical or psychological care or treatment, including, but not limited to, surgery, if [such] the care or treatment is deemed by two physicians or two psychologists, whomever is appropriate, licensed or authorized to practice in this State to be necessary for the child's physical or psychological health or welfare, and the persons who are otherwise authorized to provide [such] the consent are unable or have refused to consent to [such] the care or treatment;
- (E) To provide consent to the recording of a statement pursuant to section 587-43; and
  - (F) To provide the court with information concerning the child that the court may require at any time.
- (2) The court, in its discretion, may vest foster custody of a child in any authorized agency or subsequent authorized agencies, in the child's best interests; provided that [such] the rights and duties which are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent custodian of the child, other than as is provided in paragraph (4).
- (3) An authorized agency shall not be liable to third persons for the acts of the child solely by reason of the agency's status as temporary foster custodian or foster custodian of the child.
- (4) Unless otherwise ordered by the court, a child's family member shall retain the following rights and responsibilities after a transfer of temporary foster custody or foster custody, to the extent that [such] the family member possessed [such] the rights and responsibilities prior to the transfer of temporary foster custody or foster custody, to wit: the right of reasonable supervised or unsupervised visitation at the discretion of the authorized agency; the right to consent to adoption, to marriage, or to major medical or psychological care or treatment, except as provided in paragraph (1)(D); and the continuing responsibility for support of the child, including, but not limited to, repayment for the cost of any and all care, treatment, or any other service supplied or provided by the temporary foster custodian, the foster custodian, or the court for the child's benefit.

"Guardian ad litem" means a person appointed by the court under section 587-34 whose role is to protect and promote the needs and interests of the child or [ward.] a party.

[ "Guidelines for determining whether the child's family is willing and able to provide the child with a safe family home" means the guidelines set forth in section 587-25.]

"Harm" to a child's physical or psychological health or welfare occurs in a case where there exists evidence of injury, including, but not limited to:

- (1) Any case where the child exhibits evidence of:
  - (A) Substantial or multiple skin bruising or any other internal bleeding,
  - (B) Any injury to skin causing substantial bleeding,
  - (C) Malnutrition,
  - (D) Failure to thrive,
  - (E) Burn or burns,
  - (F) Poisoning,

- (G) Fracture of any bone,
- (H) Subdural hematoma,
- (I) Soft tissue swelling,
- (J) Extreme pain,
- (K) Extreme mental distress,
- (L) Gross degradation, or
- (M) Death, and

[such] the injury is not justifiably explained, or where the history given concerning [such] the condition or death is at variance with the degree or type of [such] the condition or death, or circumstances indicate that [such] the condition or death may not be the product of an accidental occurrence; [or]

- (2) Any case where the child has been the victim of sexual contact or conduct, including, but not limited to, rape, sodomy, molestation, sexual fondling, incest, prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation; [or]
- (3) Any case where there exists injury to the psychological capacity of a child as is evidenced by [an observable and] a substantial impairment in the child's ability to function; [or]
- (4) Any case where the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; or
- (5) Any case where the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply to a child's family who provide [such] the drugs to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240.

"Imminent harm" means that there exists reasonable cause to believe that harm to the child will occur or reoccur within the next ninety days with due consideration being given to the age of the child and to the [guidelines for determining whether the child's family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25.

"Party" means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to section 587-32(a), any other member of the child's family, or any other person who is alleged in the petition filed under this chapter or who is subsequently determined at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions which bring the child within this chapter, and who has been duly served with a summons and a copy of the petition filed under this chapter; provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section 587-32(a), except as is provided in section 587-73(b)(4).

"Permanent custody" means the legal status created under this chapter by order of the court after the court has considered the criteria set forth in section 587-73(a) or (e) and determined by clear and convincing evidence that it is in the best interests of the child to order [an appropriate] a permanent plan concerning the child.

- (1) Permanent custody divests from each legal custodian and family member who has been summoned pursuant to section 587-32(a), and vests in a permanent custodian, each of the parental and custodial

- duties and rights of a legal custodian and family member, including, but not limited to, the following:
- (A) To determine where and with whom the child shall live; provided that the child shall not be placed outside the State without prior [approval] order of the court;
  - (B) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities;
  - (C) To monitor the provision to the child of appropriate education;
  - (D) To provide all consents that are required for the child's physical or psychological health or welfare, including, but not limited to, medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs; and to provide all consents for any other medical or psychological care or treatment, including, but not limited to, surgery;
  - (E) To provide consent to adoption, change of name pursuant to section 574-5, or to marriage;
  - (F) To provide the court with information concerning the child that the court may require at any time, and to submit written reports to the court stating the then-current situation and other significant information concerning the child at intervals not to exceed one year, unless otherwise ordered by the court; and
  - (G) If the child resides without the home of the permanent custodian for a period of seven consecutive days, to submit a written report to the court stating the then-current situation of the child on or before the tenth consecutive day or the next working day after [such] the date;
- (2) Unless otherwise ordered by the court, a child's family member shall retain, to the extent that [such] the family member possessed [such] the responsibility prior to the transfer of permanent custody, the continuing responsibility for support of the child, including, but not limited to, repayment for the cost of any and all care, treatment, or any other service supplied or provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit;
- (3) A family member may be permitted visitation with the child at the discretion of the permanent custodian; provided that the exercise of such discretion may be reviewed by the court and the court may order that a family member be permitted such visitation as is in the best interests of the child;
- (4) An order of permanent custody entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, unless and until the child has been legally adopted;
- (5) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequent authorized agencies as is deemed to be in the best interests of the child;
- (6) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodian or custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child; provided that, in any event, the department shall immediately notify the court

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and the court shall set the case for a permanent plan review hearing within ten working days, unless the court deems a later date to be in the best interests of the child; and

- (7) An authorized agency shall not be liable to third party persons for the acts of the child solely by reason of the agency's status as permanent custodian of the child.

"Permanent plan" means a specific written plan prepared pursuant to section 587-27.

"Permanent plan hearing" means a hearing held pursuant to section 587-73.

"Permanent plan review hearing" means any hearing, subsequent to a court ordered permanent plan, held pursuant to section 587-73(b).

"Police officer" means a person employed by any county in this State to enforce the laws and ordinances for preserving the peace, safety, and good order of the community.

"Preponderance of evidence" means evidence which as a whole shows that the fact sought to be proved is more probable than not.

"Protective custody" means the legal status of a child whose physical custody is retained by a police officer under this chapter in order to protect such child from imminent harm.

"Reasonable cause to believe" means reasonably trustworthy evidence which would cause a reasonable person of average caution to believe.

"Review hearing" means any hearing held pursuant to section 587-72.

"Safe family home guidelines" means the guidelines set forth in section 587-25.

"Service plan" means a specific written plan prepared pursuant to section 587-26.

"Temporary family supervision" means a legal status created under this chapter pursuant to an order of the court whereby the department assumes the duties and rights of family supervision over a child and the child's family members who are parties prior to a [dispositional determination.] determination at a disposition proceeding.

"Temporary foster custody" means a legal status created under this chapter with or without order of the court whereby the department assumes the duties and rights of a foster custodian over a child.

"Temporary foster custody hearing" means a hearing held pursuant to section 587-53.

"Threatened harm" means any reasonably foreseeable substantial risk of harm to a child with due consideration being given to the age of the child and to the [guidelines for determining whether the child's family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25."

SECTION 7. Section 587-11, Hawaii Revised Statutes, is amended to read as follows:

**“§587-11 Jurisdiction.** [The] Pursuant to subsection 571-11(9), the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within the State at the time [such] the facts and circumstances occurred, are discovered, or are reported to the department, which facts and circumstances constitute the basis for the finding that the child is a child whose physical or psychological health or welfare is subject to imminent

harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family."

SECTION 8. Section 587-21, Hawaii Revised Statutes, is amended to read as follows:

**"§587-21 [Authorization for department to act.] Investigation. (a)**

Upon receiving a report that a child is subject to imminent harm, has been harmed, or is subject to threatened harm, the department shall cause such investigation to be made [in accordance with this chapter] as it deems to be appropriate. In conducting the investigation the department may [enlist the cooperation of police officers or other appropriate law enforcement authorities for phases of the investigation for which they are better equipped and the department may conduct a criminal history record check concerning an alleged perpetrator of imminent harm, harm, or threatened harm to a child.];

- (1) Enlist the cooperation of appropriate law enforcement authorities for phases of the investigation for which they are better equipped, and the law enforcement authority may conduct and provide to the department the results of a criminal history record check concerning an alleged perpetrator of imminent harm, harm, or threatened harm to a child; and

- (2) Interview a child who is the subject of an investigation without the prior approval of and without the presence of the child's family, including temporarily assuming protective custody of the child for the purpose of conducting the interview, if the action is deemed necessary and appropriate under the circumstances by the department and a police officer.

(b) Upon satisfying itself as to the course of action which should be pursued to best accord with the purpose of this chapter, the department shall:

- (1) Resolve the matter in such informal fashion, as is appropriate under the circumstances; [or]
- (2) Seek to enter into a service plan, without filing a petition in court, with such members of the child's family and such other authorized agency as the department deems to be necessary to the success of the service plan, including, but not limited to, the member or members of the child's family who have legal custody of the child. The service plan may include an agreement with the child's family to voluntarily place the child in the foster custody of the department or other authorized agency, or to place the child and the necessary members of the child's family under the family supervision of the department or other authorized agency; provided that if a service plan is not successfully completed within [one year,] six months, the department shall file a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter and the case shall be otherwise reviewed as is required by federal law; [or]
- (3) Assume temporary foster custody of the child pursuant to section 587-24(a) and file a petition with the court under this chapter within two working days, excluding Saturdays, Sundays, and holidays, after the date of the department's assumption of temporary foster custody of the child; or
- (4) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter."

SECTION 9. Section 587-24, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within two working days, excluding Saturdays, Sundays, or holidays, [from] after the date of its assumption of temporary foster custody, the department shall:

- (1) Relinquish its temporary foster custody and return the child to the child’s legal custodian [or custodians] and proceed pursuant to section 587-21(b)(1), (2), or (4);
- (2) Continue its assumption of temporary foster custody of the child with the child being voluntarily placed in foster care by the child’s legal custodian [or custodians] and proceed pursuant to section 587-21(b)(2) or (4); or
- (3) Continue its assumption of temporary foster custody of the child and proceed pursuant to section 587-21(b)(3).”

SECTION 10. Section 587-25, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

**“§587-25 [Guidelines for determining whether the child’s family is willing and able to provide the child with a safe family home.] Safe family home guidelines. (a)** The following guidelines shall be fully considered when determining whether the child’s family is willing and able to provide the child with a safe family home:

- [1] (1) The age and the physical and mental vulnerability of the child;
- (2) The date or dates upon which the child was placed out of the family home and the date or dates of any subsequent change in placement;
- (3) The magnitude of the harm suffered by the child;
- (4) The frequency of the harm suffered by the child;
- (5) Whether the child has been the victim of repeated harm after an initial report and intervention by a social agency;
- (6) Whether the child is fearful of living in or returning to the child’s family home;
- (7) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator and other appropriate family members who are parties;
- (8) Whether there is a history of abusive or assaultive conduct by the child’s family or others who have access to the child’s family home;
- (9) Whether there is a history of substance abuse by the child’s family or others who have access to the child’s family home;
- (10) Whether the nonperpetrators who reside in the child’s family home are willing and able to protect the child;
- (11) Whether the perpetrator of the harm to the child is identified;
- (12) Whether the perpetrator has admitted and acknowledged the perpetrator’s responsibility for the harm;
- (13) Whether the perpetrator has apologized to the child for the harm;
- (14) The motive of the perpetrator;
- (15) Whether the perpetrator has been removed from the child’s family home and will not return for any reason without the prior permission of the court;
- (16) The willingness and ability of the child’s family to seek out, accept, and complete counseling services, and to cooperate with and facilitate close supervision by an appropriate social agency;

- (17) The willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
  - (18) Whether the child's family demonstrates adequate parenting skills, such as providing the child and other children under their care with:
    - (A) Minimally adequate health and nutritional care;
    - (B) Stimulation, care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;
    - (C) Guidance and supervision consistent with the child's safety;
    - (D) A safe physical home environment; and
    - (E) Protection from repeated exposure to violence even though not directed at the child;
  - (19) Whether the child's family has an understanding of the child's needs and capabilities;
  - (20) Whether the child's family perceives the child as being "different";
  - (21) The child's family's psychological attachment to the child;
  - (22) Whether the child's family problems relating to the safety of the family home are sufficiently resolved;
  - (23) Whether the obstacles to getting assistance are minimal, such as whether telephone and transportation are available;
  - (24) Whether a competent person knows the child's family well enough to have sufficient contact and knowledge to recognize both immediate and pending problems;
  - (25) Whether the competent person in paragraph (24) can and will intervene and help, as well as report, when a problem is recognized;
  - (26) Whether there is available a social support system consisting of an extended family and friends; and
  - (27) Whether there are other professionals, agencies, or relatives who have provided evidence that the child's family home is safe.]
- (1) The current facts relating to the child which include:
- (A) Age and vulnerability;
  - (B) Psychological, medical and dental needs;
  - (C) Peer and family relationships and bonding abilities;
  - (D) Developmental growth and schooling;
  - (E) Current living situation;
  - (F) Fear of being in the family home; and
  - (G) Services provided the child;
- (2) The initial and any subsequent reports of harm and/or threatened harm suffered by the child;
- (3) Date(s) and reason for child's placement out of the home, description, appropriateness, and location of the placement and who has placement responsibility;
- (4) Historical facts relating to the alleged perpetrator and other appropriate family members who are parties which include:
- (A) Birthplace and family of origin;
  - (B) How they were parented;
  - (C) Marital/relationship history; and
  - (D) Prior involvement in services;
- (5) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator and other appropriate family members who are parties;

- (6) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the family home;
- (7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;
- (8) Whether the alleged perpetrator(s) has acknowledged and apologized for the harm;
- (9) Whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm and to insure that any current protective orders are enforced;
- (10) Whether there is a support system of extended family and/or friends available to the child's family;
- (11) Whether the child's family has demonstrated an understanding and utilization of the recommended/court ordered services designated to effectuate a safe home for the child;
- (12) Whether the child's family has resolved or can resolve the identified safety issues in the family home within a reasonable period of time;
- (13) Whether the child's family has demonstrated the ability to understand and adequately parent the child especially in the areas of communication, nurturing, child development, perception of the child and meeting the child's physical and emotional needs; and
- (14) Assessment (to include the demonstrated ability of the child's family to provide a safe family home for the child) and recommendation.”

SECTION 11. Section 587-26, Hawaii Revised Statutes, is amended as follows:

**“§587-26 Service plan.** (a) A service plan is a specific written plan prepared by an authorized agency and child's family and presented to such members of the child's family as the appropriate authorized agency deems to be necessary to the success of the plan, including, but not limited to, the member or members of the child's family who have legal custody, guardianship, or permanent custody of the child at the time that the service plan is being formulated or revised under this chapter.

(b) The service plan should set forth:

- (1) The steps that will be necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care under foster custody;
  - (2) The steps that will be necessary for the child to remain in a safe family home with the assistance of a service plan, if the proposed placement of the child is in a family home under family supervision; and
  - (3) The steps that will be necessary to make the family home a safe family home and to terminate the appropriate authorized agency's intervention into the family and eliminate, if possible, the necessity for the filing of a petition with the court under this chapter.
- (c) The service plan should also include, but not necessarily be limited to:
- (1) The specific, measurable, behavioral changes that must be achieved by the parties; the specific services or treatment that the parties will be provided and the specific actions the parties must take or specific responsibilities that the parties must assume; the time frames during which [such] the services will be provided and such actions must be completed and [such] responsibilities must be assumed; provided

that, services and assistance should be presented in a manner that does not confuse or overwhelm the parties.

- (2) The specific consequences that may be reasonably anticipated to result from the parties' success or failure in [complying with, performing, and completing, if possible, each and every term and condition of the service plan,] making the family home a safe family home, including, but not limited to, the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination by award of permanent custody; and
- (3) Such other terms and conditions as the appropriate authorized agency deems to be necessary to the success of the service plan.

(d) [After each term and condition of the service plan has been thoroughly explained to and is understood by each member of the child's family whom the appropriate authorized agency deems to be necessary to the success of the service plan, the service plan shall be agreed to and signed by each such family member. Thereafter, a copy of the service plan shall be provided to each family member who signed the service plan.] The service plan should include steps that are structured and presented in a manner which reflects careful consideration and balancing the priority, intensity, and quantity of the services which are needed with the family's ability to benefit from those services.

(e) After each term and condition of the service plan has been thoroughly explained to and is understood by each member of the child's family whom the appropriate authorized agency deems to be necessary to the success of the service plan, the service plan shall be agreed to and signed by each family member. Thereafter, a copy of the service plan shall be provided to each family member who signed the service plan.

[(e)] (f) If a member of a child's family whom the appropriate authorized agency deems to be necessary to the success of the service plan cannot or does not understand or agree to the terms and conditions set forth in the service plan, the authorized agency shall proceed pursuant to section 587-21(b)."

SECTION 12. Section 587-27, Hawaii Revised Statutes, is amended to read as follows:

**"§587-27 Permanent plan.** (a) Permanent plan is a specific written plan, prepared by an appropriate authorized agency, which should set forth:

- (1) A position as to whether the court should order an adoption, guardianship, or permanent custody of the child and specify:
  - (A) A reasonable period of time during which the adoption or guardianship may be finalized; provided that the identity of the proposed adoptive parent or parents shall be provided to the court in a separate report which shall be sealed and shall not be released to the parties unless the court deems such release to be in the best interests of the child; [or]
  - (B) [The reason why] If adoption is not the plan[;], a clear and convincing explanation why guardianship is preferable to adoption; or
  - (C) If adoption or guardianship is not the plan, a clear and convincing explanation why permanent custody is preferable to guardianship;
- (2) A specific written plan including:

- (A) The goal, as being: adoption, guardianship, or permanent custody [with subsequent adoption, or permanent custody until majority];
  - (B) The objectives concerning the child, including, but not limited to, stable placement, education, health, therapy, counseling, birth family[,] (including visitation, if any), culture, and adoption, guardianship, or preparation for [majority;] independent living; and
  - (C) The method or methods for achieving the goal and objectives set forth in subparagraphs (A) and (B);
- (3) All supporting exhibits and written consents or an explanation as to why [such] the exhibits or consents are not available. Upon good cause shown, the court may waive submission of any supporting exhibit or written consent; and
- (4) Any other information or materials which are necessary to the expeditious facilitation of the permanent plan.

(b) A permanent plan prepared for a permanent plan review hearing should set forth:

- (1) Progress toward and any proposed revision to the goal and the reason for the revision;
- (2) Progress toward and any proposed revision to the objectives and the reason for the revision; and
- (3) Any proposed revision to the method for achieving the goals and objectives and the reason for the revision.”

SECTION 13. Section 587-31, Hawaii Revised Statutes, is amended to read as follows:

**“§587-31 Petition.** (a) A petition invoking the jurisdiction of the court under this chapter shall be filed in the manner provided in this section:

- (1) Petitions shall be entitled “In the Interest of \_\_\_\_\_, born on \_\_\_\_\_” and shall be verified and shall set forth [with specificity]:
  - (A) [The facts] A concise statement of the basis for the allegation of the harm or threatened harm which [bring] brings the child within this chapter;
  - (B) The name, birthdate, sex, and residence address of the child;
  - (C) The names and last known residence addresses of the member or members of the child’s family required to be notified pursuant to section 587-32(a), and other persons who are to be made parties to the child protective proceedings at the time of the filing of the petition pursuant to section 587-32(a); and
  - (D) Whether the child is under the temporary foster custody of the department in [emergency] foster care, and, if so, the type and nature of the [emergency] foster care, the circumstances necessitating [such] the care, and the date the child was placed in [such] the temporary foster custody[.]; and
- (2) [When] The petition shall state when any of the facts required by this section cannot be determined[, the petition so shall state]. The petition may be based on information and belief but in [such] that case the petition shall state the basis of [such] the information and belief.

(b) [Petitions] The petition shall state that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time, their respective parental and custodial duties and rights shall be subject to termination.

(c) [The court may provide rules concerning the titles, filing, investigation, and the form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings.] The court shall review each petition under this chapter and if, in the discretion of the court, the child is in a circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody.

(d) The court may provide rules concerning the titles, filing, investigation, and the form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings."

SECTION 14. Section 587-32, Hawaii Revised Statutes, is amended to read as follows:

**"§587-32 Summons.** (a) After a petition has been filed, the court shall issue a summons requiring a child's family member or members who have legal or physical custody of the child at the time of the filing of the petition to bring the child before the court at the temporary foster custody hearing or on the return date set forth in the summons. In addition, any legal parent, the natural mother (unless the child has been the subject of an adoption), the adjudicated, presumed, or concerned natural father of the child as defined under section 578-2[,] (unless the child has been the subject of an adoption), and other persons who are to be parties to the child protective proceeding at the time of the filing of the petition also shall be summoned, in the manner provided in this section.

(b) A certified copy of the petition shall be attached to each summons.

(c) The summons shall notify the parties of their right to retain and be represented by counsel.

(d) The summons shall state: "YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED BY AWARD OF PERMANENT CUSTODY IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."

[e) The court shall review each petition under this chapter and if, in the discretion of the court, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody until further order of the court.]"

SECTION 15. Section 587-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Service of summons shall be made personally by delivery of a certified copy thereof to the person or legal entity summoned; provided that if the court is satisfied that it is impracticable to serve personally the summons provided for in the preceding section, the court may order service by registered or

certified mail addressed to the last known address, or by publication thereof, or both. Service shall be effected at least twenty-four hours prior to the time fixed in the summons for a temporary foster custody hearing or at least forty-eight hours prior to the time fixed in the summons for any other hearing under this chapter, unless [such] the party otherwise was ordered by the court to appear at [such] the hearing. Personal service of summons required under this chapter shall be made by the sheriff or other [person appointed by the court,] authorized person and a return must be made on the summons showing to whom, the date, and time service was made."

SECTION 16. Section 587-34, Hawaii Revised Statutes, is amended:

1. By amending the title to read:

**"§587-34 Guardian ad litem; court appointed counsel."**

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

"(a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceedings under this chapter[; provided that a guardian ad litem's appointment shall automatically terminate upon an award of permanent custody of the child by the court, unless otherwise ordered by the court]. The court may appoint additional counsel for the child pursuant to subsection (c) or independent counsel for any other party if [such] the party is an indigent, counsel is necessary to protect the party's interests adequately, and the interests are not represented adequately by another party who is represented by counsel."

3. By amending subsection (d) to read as follows:

"(d) [Where] When the court determines, after such hearing as the court deems to be appropriate, that a party is incapable of comprehending the legal significance of the issues or the nature of the child protective proceedings, the court may appoint a guardian ad litem to represent the interests of the party; provided that a guardian ad litem appointed pursuant to this section shall investigate and report to the court in writing at six month intervals, or as is otherwise ordered by the court, regarding the current status of the [ward's] party's disability, including, but not limited to, a recommendation as to available treatment, if any, for [such] the disability and a recommendation concerning the manner in which the court should proceed in order to best protect the interests of the [ward] party in conjunction with the court's determination as to the best interests of the child."

SECTION 17. Section 587-40, Hawaii Revised Statutes, is amended to read as follows:

**"§587-40 Reports to be submitted by the department and authorized agencies; social worker expertise.** (a) The department or other appropriate authorized agency shall make every reasonable effort to submit written reports, or a written explanation regarding why a report is not being submitted timely, to the court with copies to the parties or their counsel or guardian ad litem:

- (1) Within forty-eight hours, excluding Saturdays, Sundays, and holidays, subsequent to the hour of the filing of a petition for temporary foster custody pursuant to section 587-21(b)(3);

- (2) Upon the date of the filing of a petition pursuant to section 587-21(b)(4); and
- (3) At least fifteen days prior to the date set for each disposition, review, permanent plan, and permanent plan review hearing, until jurisdiction is terminated [or permanent custody is awarded], unless a different period of time is ordered by the court or the court orders that no report is required for a specific hearing; or
- (4) Prior to or upon the date of a hearing if the report is supplemental to a report which was submitted pursuant to paragraph (1), (2), or (3).
- (b) Report or reports pursuant to subsection (a) specifically shall:
  - (1) [Evaluate] Assess fully all relevant prior and current information concerning each of the [guidelines for determining whether the child's family is presently willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25, [including, if the family previously entered into a voluntary or court ordered service plan, the effect upon the guidelines of the parties' success or failure in complying with, performing, and completing, if possible, each and every term and condition of the service plan;] except for a report required for an uncontested review hearing or a permanent plan review hearing which need only assess relevant current information including, for a review hearing, the degree of the family's progress with services;
  - (2) In each proceeding, subsequent to adjudication, recommend as to whether the court should order:
    - (A) A service plan as set forth in section 587-26 or revision or revisions to the existing service plan, and if so, set forth the proposed service or services or revision or revisions and the pertinent number or numbers of the guidelines considered in the report or reports, made pursuant to paragraph (1), which guideline or guidelines provide the basis for recommending [such] the service or services or revision or revisions in a service plan or revised service plan; or
    - (B) [An award of permanent custody to an appropriate authorized agency;] A permanent plan or revision to an existing permanent plan and if [so,] it is an initial recommendation, set forth the basis for [such] the recommendation which shall include, but not be limited to, an evaluation of each of the criteria set forth in section 587-73(a), including the written permanent plan as set forth in section 587-27; and
  - (3) Set forth recommendations as to such other orders as are deemed to be appropriate and state the basis for recommending that [such] the orders be entered.
  - (c) A written report submitted pursuant to subsection (a) shall be admissible and may be relied upon to the extent of its probative value in any proceeding under this chapter; provided that the person or persons who prepared the report may be subject to direct and cross-examination as to any matter in the report, unless [such] the person is unavailable.
  - (d) A person employed by the department as a social worker in the area of child protective or child welfare services is qualified to testify as an expert in the area of social work and child protective or child welfare services."

SECTION 18. Section 587-41, Hawaii Revised Statutes, is amended to read as follows:

**“§587-41 Evidentiary determination; burden of proof.** (a) In a temporary foster custody hearing, a determination that there exists reasonable cause to believe that a child is subject to imminent harm may be based upon [any] relevant evidence [whatsoever], including, but not limited to, hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts from personal knowledge.

(b) In an [adjudicatory] adjudication hearing, a determination that the child has been harmed or is subject to threatened harm shall be based on a preponderance of the evidence[; and, except as otherwise provided under this chapter, only competent and relevant evidence may be admitted].

(c) In subsequent hearings, other than a permanent plan hearing, any determination shall be based on a preponderance of the evidence[; and any relevant evidence shall be admitted].

(d) In a permanent plan hearing[:]

- (1) A], a determination that a permanent [custody of a child be awarded to an appropriate authorized agency] plan shall be ordered based upon clear and convincing evidence[; and
- (2) A determination that a child should be the subject of an adoption shall be based upon a preponderance of the evidence].”

SECTION 19. Section 587-51, Hawaii Revised Statutes, is amended to read as follows:

**“§587-51 Required findings concerning notice prior to a hearing in a child protective proceeding.** (a) No hearing may commence under this chapter unless the court enters a finding that each of the parties required to be notified pursuant to section 587-32(a) has been served with a copy of the petition; provided that if a member or members of the child’s family required to be notified pursuant to section 587-32(a) have not been served, the court may proceed to hear any child protective proceeding under this chapter and enter orders concerning the parties who have been served if the court is satisfied that:

- (1) A reasonable effort has been made to effect personal service;
- (2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and
- (3) The child is represented by a guardian ad litem or counsel.

(b) If, at the return date hearing, it is established that a member or members of the child’s family required to be notified pursuant to section 587-32(a) have not been served prior to the return date, the court shall:

- (1) Ascertain and order the method of service of summons which the court deems to be appropriate based upon the available information; and
- (2) Set a continued return date; provided that:
  - (A) The court may waive the appearance of any party at the continued return date; and
  - (B) If the court orders that service of summons be made by mail or publication, the court shall set the continued return date not less than twenty-one days subsequent to the date of service evidenced by the signature on a return receipt or the date of the last publication.

(c) Upon the continued return date, the court shall:

- (1) Enter a default concerning a party who was served but failed to appear on the continued return date;

- (2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or
- (3) If a member of the child's family required to be notified pursuant to section 587-32(a) was served and appears on the continued return date and moves the court that a prior order be vacated or modified, set the oral motion to vacate prior orders for a hearing and order that the moving party proceed to file a written motion and to serve the other parties with proper written notice of the motion and hearing date.

(d) In considering a party's motion to vacate or modify prior orders, the court need not commence a trial or hearing de novo, but rather, after such further hearing as the court deems to be appropriate, may proceed to enter such orders as are in the best interests of the child.

(e) The court shall hear child protective proceedings under this chapter at a hearing separate from those for adults and without a jury. The hearing shall be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from the hearing at any time at the discretion of the court. If a party is without counsel or a guardian ad litem, the court shall inform the party of the right to be represented by counsel and to appeal.

(f) Orders orally stated by the court on the record in a proceeding under this chapter shall have full force and effect upon the date of the hearing until further order of the court; provided that all oral orders shall be reduced to writing as soon as is practicable."

SECTION 20. Section 587-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After a petition has been filed with the court under this chapter, the court, upon such hearing as the court deems to be appropriate, may make an order of protection. Such an order may include, but need not be limited to, a requirement that a party:

- (1) Stay away from the family home, a school, or any other place or location which is deemed by the court to present an opportunity for contact between the parties themselves, or with other persons, which contact would not be in the best interests of the child;
- (2) Abstain from physically or verbally contacting, threatening, or abusing any party or person; [and]
- (3) [Report any violation of an order of protection to the appropriate law enforcement authorities and other authorized agencies.] Not permit the child to be removed from a certain location;
- (4) Not to interfere with the physical, legal, foster, or permanent custody of the child; and
- (5) Report any violation of an order of protection to the appropriate law enforcement authorities and other authorized agencies."

SECTION 21. Section 587-53, Hawaii Revised Statutes, is amended to read as follows:

**“§587-53 Temporary foster custody hearing.** (a) In any case where the department has [assumed] continued to assume temporary foster custody of a child [with or without an order of the court,] pursuant to section 587-24(e)(3), the

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court shall [hold] set a temporary foster custody hearing within two working days, excluding Saturdays, Sundays, and holidays, after the filing of a petition to determine whether the best interests of the child require further protection prior to an adjudicatory determination.

(b) After reviewing a petition and the report or reports submitted pursuant to section 587-40, the court, on its own motion, may order that the child immediately be released from temporary foster custody and returned to the child's family home under [such] the terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; provided that upon [such] the return the child and the child's family members who are parties shall be under the temporary family supervision of the department prior to the temporary foster custody hearing.

(c) The temporary foster custody hearing shall be continued for a period not to exceed fifteen days, [upon the court's own motion or upon the motion of a party,] if the court determines that it would be in the best interests of the child that further investigation be conducted and information concerning whether the child should remain in temporary foster custody be provided to the court by each of the parties, prior to rendering a determination as to whether the child should remain in temporary foster custody prior to an [adjudicatory] adjudication determination.

(d) During a continuance period ordered pursuant to subsection (c) or at any other time during the pendency of a child protective proceeding, the court may further order that:

- (1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to or upon the date of the continued or next hearing;
- (2) The child's family members who are parties provide the department or other appropriate authorized agency with the names and addresses of other family and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for [such] the persons to appear in court upon the date of the continued or next hearing;
- (3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the department or other appropriate authorized agency and the child's guardian ad litem;
- (4) The parties, subject to their agreement unless jurisdiction has been established, meet with appropriate expert witnesses to discuss the alleged harm to the child;
- (5) The court and the parties view a visual recording or listen to an oral recording of the child's statement at such time and in such manner as the court deems to be appropriate;
- (6) The child and the child's family members who are parties, subject to their agreement unless jurisdiction has been established, arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;
- (7) An appropriate order of protection be entered;
- (8) A criminal history record check be conducted by the department or other appropriate authorized agency concerning a party who is an

alleged perpetrator of imminent harm, harm, or threatened harm to the child, and that the results be submitted to the court and other parties in such manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;

- (9) The department or other appropriate authorized agency prepare a written or oral supplemental report pursuant to section 587-40 and submit the report to the court, the guardian ad litem, and all parties prior to or upon the date of the continued or next hearing; or
- (10) The child's guardian ad litem visit the child's family home and foster home, be present during a supervised visitation, and prepare a written or oral report, including specific recommendations concerning services and assistance. to be submitted to the court and all parties prior to or upon the date of the continued or next hearing.

(e) The court shall consider all relevant prior and current information pertaining to the [guidelines for determining whether the child's family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, prior to rendering a determination in the temporary foster custody hearing.

(f) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that continued placement in [emergency] foster care is necessary to protect the child from imminent harm, it shall order that the child continue in the temporary foster custody of the department under [such] the terms and conditions, including, but not limited to, orders concerning services and assistance and which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; provided that prior to ordering placement or continued placement in any proceeding under this chapter[:] the court first shall give due consideration to whether:

- (1) The [court first shall give due consideration to ordering the] removal or continued removal of the alleged potential perpetrator of the imminent harm, harm, or threatened harm from the child's family home prior to continuing or placing the child out of the family home. The child's family shall have the burden of establishing that it is not in the best interests of the child that the alleged perpetrator be removed from the family's home rather than the child by order of the court[.]; and
- (2) [If siblings or psychologically bonded children are removed from their family home, the court shall order that every] Every reasonable effort [be] has been or is being made to place [them] siblings or psychologically bonded children together, unless [it] the placement is not in the best interests of the children.

(g) After a temporary foster custody hearing, if the court determines that continued placement in [emergency] foster care is not necessary to protect the child from imminent harm, it may order that the child immediately be released from temporary foster custody and returned to the child's family home with the assistance of [an interim service plan] services and under [such] the other terms and conditions, including but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child pending an [adjudicatory] adjudication or [dispositional] disposition hearing; provided that upon [such] the return, the child and the child's family members who are parties shall be under the temporary family supervision of the department prior to an [adjudicatory] adjudication or dispositional determination.

(h) Any party may move for, or the court on its own motion may order, a temporary foster custody hearing or rehearing at any time after the petition is

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filed under this chapter in order to determine whether the best interests of the child require that the child be placed in temporary foster custody prior to an [adjudicatory] adjudication or dispositional determination.”

SECTION 22. Section 587-62, Hawaii Revised Statutes, is amended to read as follows:

**“§587-62 Return date[; adjudicatory hearing].** (a) When a petition has been filed, the court shall set a return date to be held within fifteen days of (1) the filing of the petition or (2) the date a decision is orally stated by the court on the record in a temporary foster custody hearing.

(b) On the return date, the court shall preside over a pretrial conference and may order that:

- (1) During the period of time from the return date to the date of the [adjudicatory] adjudication hearing, the parties participate in and cooperate with appropriate services, actions, and recommendations pursuant to section 587-53(d);
- (2) Such further investigation and information as the court deems to be relevant to the issues to be determined at the [adjudicatory] adjudication hearing be conducted and be available for the court's consideration at the [adjudicatory] adjudication hearing; [and]
- (3) If the parties stipulate to orders of [jurisdiction] adjudication and foster custody or family supervision, the case be set for a further disposition hearing concerning an appropriate service plan, unless an appropriate written service plan is available and included as part of the stipulated orders; or
- (4) If the parties do not stipulate to orders of [jurisdiction] adjudication and foster custody or family supervision, the case be set for an [adjudicatory] adjudication hearing or, if [jurisdiction] adjudication is stipulated to, a disposition hearing as soon as is practicable; provided that if the child is to remain in [emergency] foster care subsequent to the return date, the court shall set the case for an [adjudicatory] adjudication hearing or a disposition hearing within ten working days of the return date, unless the court deems a later date for [such] the hearing to be in the best interests of the child or [such] the later date is agreed to by all parties and is approved by the court.

[c) The court shall hear child protective proceedings under this chapter at a hearing separate from those for adults and without a jury. The hearing shall be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from the hearing at any time at the discretion of the court. If a party is without counsel or a guardian ad litem, the court shall inform the party of the right to be represented by counsel and to appeal.]”

SECTION 23. Section 587-63, Hawaii Revised Statutes, is amended to read as follows:

**“§587-63 [Sustaining or dismissing petition;] Adjudication hearing; interim orders.** (a) [If facts sufficient to sustain the petition are established in accord with this chapter, the court shall enter an order finding that the child is a

child whose physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family and shall state the grounds for the finding; provided that if all parties consent, the grounds for the finding may be based upon the report or reports submitted pursuant to section 587-40 or other stipulated evidence deemed by the court to constitute an adequate basis for the court's invoking its jurisdiction, which report or reports or stipulated evidence may be admitted into evidence subject to reservation by the parties of their right to cross-examination subject to section 587-40(c).] The court shall consider the evidence which is relevant to the adjudication; provided that the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering a determination concerning adjudication.

(b) If facts sufficient to sustain the petition under this chapter are [not established, the court shall dismiss the petition and shall state the grounds for dismissal.]:

- (1) Established in accordance with this chapter, the court shall enter an order sustaining the petition and a finding that the child is a child whose physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family; provided that if the parties consent, the facts for the finding may be based upon the report or reports submitted pursuant to section 587-40 or other stipulated evidence deemed by the court to constitute an adequate basis for sustaining the petition, which report or reports or stipulated evidence may be admitted into evidence subject to reservation by the parties of their right to cross-examination subject to section 587-40(c), or
- (2) Not established, the court shall enter an order dismissing the petition and shall state the grounds for dismissal.

(c) If the court sustains the petition and does not commence immediately the disposition hearing, it shall:

- (1) Determine, based upon the facts adduced during the [adjudicatory] adjudication hearing and any other additional facts presented to it, whether a temporary foster custody order should be continued or should be entered pending an order of disposition. The court shall consider all relevant prior and current information pertaining to the [guidelines for determining whether the child's family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, and proceed pursuant to section 587-53(f) or (g) prior to rendering a determination; and
- (2) Enter such orders regarding visitation and the provision of services to the child and the child's family and the child's and family's acceptance and cooperation with such services as the court deems to be appropriate and consistent with the best interests of the child.

[(d) Orders orally stated by the court on the record in a proceeding under this chapter shall have full force and effect upon the date of the hearing until further order of the court; provided that all oral orders shall be reduced to writing as soon as convenient.]"

SECTION 24. Section 587-71, Hawaii Revised Statutes, is amended:

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

“(a) The court may consider [any information] the evidence which is relevant to disposition which is in the best interests of the child; provided that the court shall determine initially whether the child’s family home is a safe family home. The court shall consider fully all relevant prior and current information pertaining to the [guidelines for determining whether the child’s family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering such a determination.”

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

“(e) If the child’s family home is determined not to be safe, even with the assistance of a service plan pursuant to subsection (d), the court may, and if the child has been residing without the family home for a period of [two years] eighteen months shall, set the case for a show cause hearing at which the child’s family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), and:

- (1) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or
- (2) Proceed pursuant to [subsection (f).] this section.”

3. By amending subsection (k)<sup>2</sup> to read as follows:

“(k) At any stage of the child protective proceedings, the court may order that a child be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by any of them of a child as is deemed to be in the best interests of the child. For either the examination or treatment, the court may place the child in a hospital or other suitable facility.”

4. By amending subsection (m) to read as follows:

“(m) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall [make]:

- (1) Make a finding that each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination[.]; and
- (2) Set the case for a review hearing within six months.”

SECTION 25. Section 587-72, Hawaii Revised Statutes, is amended to read as follows:

“**§587-72 Review hearings.** (a) Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a service plan is ordered by the court and, thereafter, the court shall set subsequent review hearings at intervals of no longer than six months until the court’s jurisdiction has been terminated or [an order of permanent custody has been entered;] the court has ordered a permanent plan and has set the case for a permanent plan review hearing; the court may set a case for a review hearing upon the

motion of a party at any time if [such] the hearing is deemed by the court to be in the best interests of the child.

(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.

(c) Upon each review hearing the court shall consider fully all relevant prior and current information pertaining to the [guidelines for determining whether the child's family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25, including, but not limited to, the report or reports submitted pursuant to section 587-40, and:

- (1) Determine whether the child's family is presently willing and able to provide the child with a safe family home without the assistance of a service plan and, if so, the court shall terminate jurisdiction;
- (2) Determine whether the child's family is presently willing and able to provide the child with a safe family home with the assistance of a service plan and, if so, the court shall return the child or continue the placement of the child in the child's family home under the family supervision of the appropriate authorized agency; [or]
- (3) If the child's family home is determined, pursuant to subsection (c)(2), not to be safe, even with the assistance of a service plan, order that the child remain or be placed under the foster custody of the appropriate authorized agency and, the court may, and if the child has been residing without the family home for a period of [two years] eighteen months or there has been a court ordered service plan for a period of one year shall, set the case for a show cause hearing at which the child's family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), or section 587-73(e), and:
  - (A) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or
  - (B) Proceed pursuant to [paragraphs (4), (5), and (6);] this section: Determine whether the parties have complied with, performed, and completed each and every term and condition of the service plan which was previously court ordered;
- (4) Order such revisions to the existing service plan, after ensuring that the requirement of section 587-71(h) is satisfied, as the court, upon such hearing as the court deems to be appropriate, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order; and
- (5) Enter such further orders as the court deems to be in the best interests of the child.
- (d) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall [make]:
  - (1) Make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination[.]; and
  - (2) Set the case for a review hearing within six months.”

SECTION 26. Section 587-73, Hawaii Revised Statutes, is amended to read as follows:

**"§587-73 Permanent plan hearing.** (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the [guidelines for determining whether the child's family is willing and able to provide the child with a] safe family home[,] guidelines, as set forth in section 587-25, including, but not limited to, the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

- (1) The child's [family is] legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;
  - (2) It is not reasonably foreseeable that the child's [family] legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed three years from the date upon which the child was first placed under foster custody by the court;
  - (3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child; provided that the court shall presume that:
    - (A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and
    - (B) [Such] The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court; and
  - (4) If the child has reached the age of fourteen, the child is supportive of the permanent plan.
- (b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence, the court shall order:
- (1) That the existing service plan be terminated and that the prior award of foster custody be revoked;
  - (2) That permanent custody be awarded to an appropriate authorized agency;
  - (3) That an appropriate permanent plan be implemented concerning the child whereby the child will:
    - (A) Be adopted pursuant to [section 587-74;] chapter 578; provided that the court shall presume that it is in the best interests of the child to be adopted, unless the child is or will be in the [permanent custody] home of family or [persons] a person who [have] has become as family and who for good cause [are] is unwilling or unable to adopt the child but [are] is committed to and [are] is capable of being the child's guardian or permanent [custodians;] custodian; [or]
    - (B) Be placed under guardianship pursuant to chapter 560; or
    - (C) Remain in permanent custody until the child is subsequently adopted, placed under a guardianship, or reaches the age of majority, and that such status shall not be subject to

- modification or revocation except upon a showing of extraordinary circumstances to the court;
- (4) That such further orders as the court deems to be in the best interests of the child, including, but not limited to, restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings, be entered; and
  - (5) Until [the child is adopted,] adoption or guardianship is ordered, that each case be set for a permanent plan review hearing not later than one year after the date that a permanent plan is ordered by the court, or sooner if required by federal law, and thereafter, that subsequent permanent plan review hearings be set not later than each year, or sooner if required by federal law; provided that at each permanent plan review hearing, the court shall review the existing permanent plan and enter such further orders as are deemed to be in the best interests of the child.
- (c) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order that:
- (1) The permanent plan hearing be continued for a reasonable period of time not to exceed six months from the date of the continuance[;] or the case be set for a review hearing within six months;
  - (2) The existing service plan be revised as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;
  - (3) The authorized agency submit a written report pursuant to section 587-40; and
  - (4) Such further orders as the court deems to be in the best interests of the child be entered.
- (d) At the continued permanent plan hearing, the court shall proceed pursuant to subsections (a), (b), and (c) until such date as the court determines that:
- (1) There is sufficient evidence to proceed pursuant to subsection (b); or
  - (2) The child's family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, upon which determination the court may:
    - (A) Revoke the prior award of foster custody to the authorized agency and return the child to the family home; [and]
    - (B) Terminate jurisdiction; [or]
    - (C) Award family supervision to an authorized agency;
    - (D) Order such revisions to the existing service plan as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;
    - (E) Set the case for a review hearing[;] within six months; and
    - (F) Enter such further orders as the court deems to be in the best interests of the child.
- (e) The court shall order a permanent plan for the child within three years of the date upon which the child was first placed under foster custody by the court, if the child's family is not willing and able to provide the child with a safe family home, even with the assistance of a service plan."

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SECTION 27. Section 587-74, Hawaii Revised Statutes, is repealed.

SECTION 28. Statutory material to be repealed is bracketed.<sup>3</sup> New statutory material is underscored.

SECTION 29. This Act shall take effect on January 1, 1993.

(Approved June 12, 1992.)

### Notes

1. Prior to amendment "and" appeared here.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

## ACT 191

S.B. NO. 2228

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. The purpose of this Act is to update the Hawaii Rules of Evidence pursuant to some of the less controversial recommendations made in the Final Report of the Committee on Hawaii Rules of Evidence. This Act does not include the report's more substantial and controversial recommendations, which are contained in separate vehicles.

SECTION 2. Section 626-1, Hawaii Revised Statutes, is amended as follows:

1. By amending rule 412 to read:

**"Rule 412 [Rape] Sexual assault cases; relevance of victim's past behavior.** (a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of [rape or] sexual assault [under any of the provisions of chapter 707, part V of the Hawaii Penal Code], reputation or opinion evidence of the past sexual behavior of an alleged victim of such [rape or] sexual assault is not admissible[.] to prove the character of the victim in order to show action in conformity therewith.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of [rape or] sexual assault [under any of the provisions of chapter 707, part V of the Hawaii Penal Code], evidence of [a] an alleged victim's past sexual behavior other than reputation or opinion evidence is [also] not admissible[.] to prove the character of the victim in order to show action in conformity therewith, unless such evidence [other than reputation or opinion evidence] is:

- (1) Admitted in accordance with subsection (c)(1) and (2) and is constitutionally required to be admitted; or
- (2) Admitted in accordance with subsection (c) and is evidence of:
  - (A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

- (B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which [rape or] sexual assault is alleged.
- (c) (1) If the person accused of committing [rape or] sexual assault intends to offer under subsection (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.
- (2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subsection (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.
- (3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.
- (d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which [rape or] sexual assault is alleged."

2. By amending rule 503 to read:

- "Rule 503 Lawyer-client privilege.** (a) Definitions. As used in this rule:
- (1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services [from him].
- (2) A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.
- (3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

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- (4) A "representative of the lawyer" is one directed by the lawyer to assist in the rendition of professional legal services.
- (5) 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 rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between [himself] the client or [his] the client's representative and [his] the lawyer or [his] the lawyer's representative, or (2) between [his] the lawyer and the lawyer's representative, or (3) by [him] the client or [his] the client's representative or [his] the lawyer or a representative of [his] the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

(c) Who may claim the privilege. The privilege may be claimed by the client, [his] the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication shall claim the privilege on behalf of the client unless expressly released by the client.

(d) Exceptions. There is no privilege under this rule:

- (1) Furtherance of crime or fraud. If the services of the lawyer were sought [or obtained], obtained, or used to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; [or]
- (2) Prevention of crime or fraud. As to a communication reflecting the client's intent to commit a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm, or in substantial injury to the financial interests or property of another;
- (3) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; [or]
- [3)] (4) Breach of duty by lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to [his] the client or by the client to [his] the lawyer; [or]
- [4)] (5) Document attested by lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; [or]
- [5)] (6) Joint clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients[.]; or
- (7) Lawyer's professional responsibility. As to a communication the disclosure of which is required or authorized by the Hawaii rules of professional conduct for attorneys."

3. By amending rule 506 to read:

**"Rule 506 Communications to [clergymen.] clergy.** (a) Definitions. As used in this rule:

- (1) A ["clergyman"] member of the clergy is a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the [person consulting him.] communicant.
- (2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a [clergyman] member of the clergy in [his] the latter's professional character as spiritual advisor.

(c) Who may claim the privilege. The privilege may be claimed by the [person, by his guardian,<sup>1</sup> or conservator, or by his personal representative if he is deceased.] communicant or by the communicant's guardian, conservator, or personal representative. The [clergyman] member of the clergy may claim the privilege on behalf of the [person.] communicant. [His authority] Authority so to do is presumed in the absence of evidence to the contrary."

4. By amending rule 511 to read:

**"Rule 511 Waiver of privilege by voluntary disclosure.** A person upon whom these rules confer a privilege against disclosure waives the privilege if [he or his predecessor], while holder of the privilege, the person or the person's predecessor voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is a privileged communication."

5. By amending rule 602 to read:

**"Rule 602 Lack of personal knowledge.** A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that [he] the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony [of the witness himself]. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses."

6. By amending rule 608, subsection (b), to read:

"(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking [or supporting] the witness' credibility, [other than conviction of crime as provided in rule 609 and bias, interest, or motive as provided in rule 609.1, may not be proved by extrinsic evidence. They] may, [however, in the discretion of the court,] if probative of [truthfulness or untruthfulness, be inquired into on cross-examination of the witness [(1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.] and may, in the discretion of the court, be provided by extrinsic evidence. When a witness testifies to the character of another witness under paragraph (a), relevant specific instances of the

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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."

7. By amending rule 702 to read:

**"Rule 702 Testimony by experts.** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. In determining the issue of assistance to the trier of fact, the court may consider the trustworthiness and validity of the scientific technique or mode of analysis employed by the proffered expert."

8. By amending rule 802.1 to read:

**"Rule 802.1 Hearsay exception; prior statements by witnesses.** The following statements previously made by witnesses who testify at the trial or hearing are not excluded by the hearsay rule:

- (1) Inconsistent statement. The declarant is subject to cross-examination concerning the subject matter of the declarant's statement, the statement is inconsistent with the declarant's testimony, the statement is offered in compliance with rule 613(b), and the statement was:
  - (A) Given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; or
  - (B) Reduced to writing and signed or otherwise adopted or approved by the declarant; or
  - (C) Recorded in substantially verbatim fashion by stenographic, mechanical, electrical, or other means contemporaneously with the making of the statement;
- (2) Consistent statement. The declarant is subject to cross-examination concerning the subject matter of the declarant's statement, the statement is consistent with the declarant's testimony, and the statement is offered in compliance with rule 613(c);
- (3) Prior identification. The declarant is subject to cross-examination concerning the subject matter of the declarant's statement, and the statement is one of identification of a person made after perceiving [the declarant;] that person; or
- (4) Past recollection recorded. A memorandum or record concerning a matter about which the witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party."

9. By amending rule 902 to read:

**"Rule 902 Self-authentication.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

- (1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
- (2) Domestic public documents not under seal. A document purporting to bear the signature in [his] the official capacity of an officer or employee of an entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
- (3) Foreign public documents. A document purporting to be executed or attested in [his] an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.
- (4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any statute or rule prescribed by the supreme court.
- (5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.
- (6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.
- (7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
- (8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.
- (9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

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- (10) Presumptions under statutes. Any signature, document, or other matter declared by statute to be presumptively or *prima facie* genuine or authentic."

10. By amending the definition of "writings and recordings" in rule 1001 to read:

- "(1) "Writings and recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation."

SECTION 3. The revisor of statutes is directed to print, together with the Hawaii Rules of Evidence enacted by this Act, the commentary to these rules prepared by the Judiciary's Committee on Hawaii Rules of Evidence in the appropriate 1992 supplement to the Hawaii Revised Statutes; provided that if the commentary cannot be included in such supplement due to substantive defects reported to the legislature pursuant to paragraph (4) of this section, or because of the unavailability of the entire commentary, the revisor shall print the Hawaii Rules of Evidence without the commentary; provided further that if the commentary is not published in the 1992 supplement, it shall be published in the 1993 supplement.

In printing the commentary, or in connection with such printing, the revisor shall:

- (1) Print the appropriate segments or portions of the commentary under the appropriate or corresponding rule of the Hawaii Rules of Evidence;
- (2) Update the commentary by inserting, where necessary or where these citations are incomplete, the most current or the final citations to the Hawaii Reports, the Pacific Reporter (Second Series), and other regional or case law reporters which may have been cited in the commentary;
- (3) Make any corrections or changes which may be necessary and which the revisor is authorized to make under section 23G-15, Hawaii Revised Statutes; and
- (4) Report to the 1993 Regular Session of the legislature any substantive or other problems and defects in or relating to the commentary which must or should be corrected or remedied by the legislature itself, such report to include, but not be limited to specific recommendations, including specific recommended language in the form of a bill or resolution, to correct or remedy such problems or defects; provided that in preparing the report, the revisor may consult with Professor Addison Bowman of the University of Hawaii School of Law who assisted the legislature in drafting the commentary and with other appropriate persons as necessary.

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 12, 1992.)

### Note

1. So in original.

## ACT 192

S.B. NO. 2432

A Bill for an Act Relating to Pawnbrokers.

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

SECTION 1. The legislature finds that the current law governing pawnbrokers has not been amended in thirty-seven years and may even have been inadequate and out of date when first enacted. A recent federal court ruling found that a typical sale with a buy-back option and buy-back fee constituted a loan which was subject to disclosures required by the federal Truth-in-Lending Act. Viewed as a loan, this typical transaction also exceeded the interest rate allowed by the existing pawnbroker law.

The legislature also finds that the interest schedules contained in existing law are insufficient to allow pawnbrokers to cover their costs and make a reasonable profit.

In short, the current statutory framework is unworkable and places both pawnbrokers and their customers at risk; either the pawnbrokers are violating the law, or the customers must sell their possessions outright, with nothing but chance to allow them to reclaim the goods. The purpose of this Act is to create a new statutory framework which will operate to meet the needs of both parties in a pawn transaction to the end that pawnbrokers may expect a reasonable profit and customers may expect to recover their possessions pursuant to understandable ground rules.

SECTION 2. Chapter 445, part V, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

**“§445- Pawn transaction agreement; disclosure requirements. (a)**

All pawn transaction agreements shall be in writing.

(b) The pawnbroker shall provide the customer with a signed copy of the pawn transaction agreement.

(c) The pawn transaction agreement shall include:

- (1) The name, address, and telephone number of the pawnbroker;
- (2) The name, address, telephone number, and date of birth of the customer;
- (3) The type of identification presented by the customer;
- (4) The pawn transaction number;
- (5) The date on which the pawn transaction agreement is signed;
- (6) The net amount paid to, received by, or paid or payable for the account of the customer, expressed as the “amount financed”;
- (7) The dollar amount of the pawn finance charge, expressed as the “finance charge”;
- (8) The rate of the pawn finance charge as applied to the amount financed, expressed as the “annual percentage rate”;
- (9) The total amount that must be paid to redeem the pledged goods on or before the maturity date, expressed as the “total of payments”;
- (10) An identification of pledged goods, including all serial numbers and model numbers, where available, and any other identifying markings or information;
- (11) The maturity date of the pawn transaction;

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- (12) A statement to the effect that the customer is not obligated to redeem the pledged goods, and the pledged goods shall be forfeited to the pawnbroker upon the expiration of the last holding period, provided that the pledged goods may be redeemed by the customer within the holding period by making payment of the originally agreed total of payments plus an additional pawn finance charge in accordance with section 445- ; and
- (13) The date on which the holding period expires.

**§445- Pawn finance charge.** (a) Pawn finance charges shall be deemed to be earned at the time the agreement for the pawn transaction is made and shall not be subject to a refund.

(b) The maturity date of any pawn transaction may be changed to a subsequent date no more than two times by agreement between the customer and the pawnbroker upon payment of the pawn finance charge, and in that event the pawnbroker may contract for and receive another pawn finance charge computed in accordance with this part as for a new transaction.

(c) Pledged goods not redeemed by the customer on or before the date fixed as the maturity date for the transaction in the pawn agreement shall be held by the pawnbroker for at least thirty days following the maturity date, and may be redeemed by the original customer within the holding period by the payment of an additional pawn finance charge equal to one-thirtieth of the pawn finance charge stated in the pawn transaction agreement for each day following the maturity date, including the day on which the pledged goods are redeemed.

(d) Where a pawnbroker is conducting business in accordance with this part, the pawn finance charge shall not be governed by chapter 478.

**§445- Prohibited practices.** 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.

**§445- Redemption of pledged goods.** (a) Except as otherwise provided by this part, any person properly identified as the customer in a pawn transaction or as the assignee or agent thereof, and presenting a pawn transaction agreement to the pawnbroker, shall be presumed to be entitled to redeem the pledged goods described therein.

(b) If a pawn transaction agreement is lost, destroyed, or stolen, the customer may so notify the pawnbroker in writing, and receipt of such notice shall invalidate the pawn transaction agreement as an instrument to redeem the pledged goods, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn transaction agreement, the pawnbroker may require the customer to sign a written statement or affidavit concerning the loss, destruction, or theft of the pawn transaction agreement.

**§445- Pawnbroker's recourse.** (a) Unless found to be stolen, mortgaged, or otherwise encumbered, any pledged goods not redeemed within the last holding period may thereafter, at the option of the pawnbroker, be forfeited and become the property of the pawnbroker.

(b) Where the customer has pledged defective goods, the only recourse of a pawnbroker shall be against the pledged goods.

**§445- Pawnbroker liability.** Where the pawnbroker has exercised reasonable care in holding pledged goods, a pawnbroker's liability shall be limited to twice the original pawn amount or replacement in kind, at the pawnbroker's option, where the pledged goods have become lost, damaged, or stolen.

**§445- Recordkeeping.** A copy of all pawn transactions shall be kept on the pawnshop premises and open to inspection by the proper authorities for a period of one year after the maturity date.

**§445- Compliance with other applicable law.** All pawnbrokers shall comply with the requirements of chapter 486M.

**§445- Conformity with federal law.** Every pawn transaction agreement that complies with the disclosure requirements of the federal Truth in Lending Act as of the date upon which the pawn transaction agreement is signed shall be deemed to comply with the disclosure provisions of this part."

SECTION 3. Section 445-131, Hawaii Revised Statutes, is amended to read as follows:

"**§445-131** [Defined. Every person who advances for interest or for or in expectation of profit, gain, or reward any sum of money upon security of any goods or chattels whatsoever, taken by such person by way of pawn or pledge, shall be deemed and taken to be a pawnbroker within the meaning of section<sup>1</sup> 445-131 to 445-136; provided that nothing therein shall apply to loans or advances made on any goods or chattels, bonds, bills, or other security taken by merchants, bankers, commission agents, or auctioneers in the ordinary and bona fide course of mercantile or banking transactions.] **Definitions.** As used in this part:

"Holding period" means a period of time not less than thirty days after the maturity date, in which a customer has the right to redeem pledged goods by paying a pawnbroker the amount provided in the applicable pawn transaction agreement and an additional pawn finance charge.

## ACT 192

"Maturity date" means the date upon which a pawn transaction agreement expires and the holding period begins to run.

"Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month, and when computations are made for a fraction of a month, a day shall be one-thirtieth of a month.

"Pawnbroker" means a person engaged in the business of making pawn transactions, but does not include financial institutions whose deposits are federally insured and companies that are regulated or supervised by the division of financial institutions.

"Pawn finance charge" means the sum of all charges, payable directly or indirectly by the customer and imposed directly or indirectly by the pawnbroker, including charges for insurance, handling, storage, and any other charge imposed incidental to the pawn transaction.

"Pawn transaction" means the act of lending money on the security of pledged goods or the act of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

"Pledged goods" means tangible personal property, other than choses in action, securities, or printed evidences of indebtedness, that is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of the pawnbroker's business and in connection with a pawn transaction."

SECTION 4. Section 445-135, Hawaii Revised Statutes, is amended to read as follows:

**"§445-135 Acting without license; penalty.** No person shall engage in business as a pawnbroker without first obtaining a license from the treasurer. Any person who carries on the business of pawnbroker except by authority of the license provided for in [sections 445-131 to 445-134] this part shall be fined not less than \$5,000 nor more than [\$300<sup>1</sup>] \$25,000."

SECTION 5. Section 445-136, Hawaii Revised Statutes, is amended to read as follows:

**"§445-136 Breach of condition; penalty.** Every licensed pawnbroker who fails to comply with any of the [conditions mentioned in section 445-133] provisions of this part shall be fined not more than [\$300] \$2,500 for each violation and shall forfeit the pawnbroker's license."

SECTION 6. Sections 445-133 and 445-134, Hawaii Revised Statutes, are repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5

## ACT 193

S.B. NO. 2454

A Bill for an Act Relating to Drug Product Selection.

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

SECTION 1. Section 328-92, Hawaii Revised Statutes, is amended to read as follows:

**“§328-92 Drug product selection.** (a) A dispenser or the dispenser’s authorized agent shall:

- (1) Offer to the consumer substitutable and lower cost equivalent drug products from the formulary[,] adopted pursuant to section 328-96;
- (2) Inform the consumer of the retail price difference between the brand name drug product and the substitutable drug product; and
- (3) Inform the consumer [on his or her] of the consumer’s right to refuse substitution.

The dispenser shall substitute if the consumer consents, the prescriber does not prohibit substitution under subsection (b), and the price of the substitute equivalent drug product is less than the price of the prescribed drug product. The dispenser shall not substitute if the consumer refuses.

(b) In filling initial or original prescriptions, the dispenser shall not substitute an equivalent drug product if the prescriber, and only the prescriber, handwrites “do not substitute” or “brand medically necessary” on the written prescription. The dispenser shall not substitute an equivalent drug product if a prescription is ordered orally and the prescriber or authorized employee of the prescriber orally orders “do not substitute”[.] or “brand medically necessary”.

The dispenser shall note the prescriber’s instructions on the prescription record required to be maintained under section 328-100.

In refilling prior written prescriptions, the dispenser shall not substitute an equivalent drug product if the oral prescription is a refill of a prior written prescription for which selection of an equivalent drug product was not permitted; provided that if the prior written prescription permitted the selection of an equivalent drug product, [such] substitution [may be allowed. However, the dispenser] shall be permitted. The dispenser, however, shall not substitute an equivalent drug product if a refill of a prescription is ordered orally and the prescriber or authorized employee of the prescriber orally orders “do not substitute”[.]

The designation of “do not substitute” and the physician’s signature shall not be preprinted or stamped on the prescription.] or “brand medically necessary”.

(c) The dispenser shall not substitute an equivalent drug product unless its price to the purchaser is less than the price of the prescribed drug product.

(d) The dispenser shall not substitute an equivalent drug product for any prescription for an anti-epileptic drug, except upon the consent of the prescriber and the patient or the patient’s parent or guardian. This rare exception for epileptic patients is not to be construed as a policy decision to make exceptions for any other conditions.

[(d)] (e) Enforcement. Any wilful violation of this part shall be a misdemeanor. The county prosecutors and the attorney general may bring an action upon a complaint by an aggrieved person or upon their own motion in the name of the State against any person to enjoin any violation of this part.”

SECTION 2. Section 328-100, Hawaii Revised Statutes, is amended to

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read as follows:

**“[§328-100] Record of prescriptions.** Every licensed physician[, druggist, or apothecary,] or pharmacist who compounds, sells, or delivers any prescription containing any poisonous drug, or substance deleterious to human life, to be used as medicine, shall enter upon [his] the physician's or pharmacist's books the prescription written out in full, with the date thereof, [with his] the physician's or pharmacist's own name [appended thereto,] or the name of the physician who prescribed the same, [and] the person to whom the same was delivered[.], and the prescriber's instruction regarding substitution with an equivalent drug product. No [such] prescription shall be compounded, sold, or delivered, unless the name of the person compounding, selling, or delivering the same, or the name of the physician prescribing the same, [be] is appended to the prescription in full[, and every such]. Every prescription shall be preserved for a period of not less than five years[. The, and all books and prescriptions shall be subject at all times to the inspection of the director of health or [his] the director's agent.”

SECTION 3. Section 2 of this bill is amended to conform with Section 2 of S.B. No. 2453, S.D. 1, if S.B. No. 2453, S.D. 1, is enacted into law<sup>1</sup> in any form containing the substance of Section 2. The Revisor of Statutes shall conform the language to reconcile any conflict.

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

SECTION 5. This Act shall take effect on July 1, 1992; provided that Section 1 shall be repealed on July 1, 1995, and section 328-92, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 1992.

(Approved June 12, 1992.)

### Note

1. Not enacted into law.

## ACT 194

S.B. NO. 2547

A Bill for an Act Relating to Grants, Subsidies, and Purchases of Service.

*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 \$200,000, or .006425353 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. Chapter 42D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§42D. Executive coordinating council; establishment; appointment; duties.** (a) There is established in the office of state planning for administrative

purposes an executive coordinating council that shall review, and make recommendations on, matters relating to subsidies and purchases of service to the governor.

(b) The governor shall appoint members to the coordinating council from among the heads of the departments or agencies involved in purchasing services or providing subsidies pursuant to this chapter.

(c) The coordinating council shall:

- (1) Coordinate and direct planning activities to ensure that the health and human service needs of the State are addressed in the context of coordination among state agencies and the private sector;
- (2) Provide recommendations to the governor on purchase of service funding levels for agencies contemplating purchasing services pursuant to this chapter;
- (3) Consider the advice of the advisory council; and
- (4) Provide the governor with any other information the coordinating council may determine to be helpful in formulating the executive budget with respect to subsidies and purchases of service.”

### SECTION 3. Section 42D-1, Hawaii Revised Statutes, is amended:

1. By adding a new definition for “executive coordinating council” or “coordinating council” to be appropriately inserted and to read as follows:

“Executive coordinating council” or “coordinating council” means the council established in the office of state planning for administrative purposes whose members are appointed by the governor to provide policy recommendations to the governor on purchase of service funding levels for state executive branch agencies contemplating purchasing services pursuant to this chapter.”

2. By amending the definition of “agency” to read as follows:

“Agency” means the judiciary, any department, [officer,] office, board, foundation, commission, or other establishment of the state government, including the University of Hawaii.”

3. By amending the definition of “request” to read as follows:

“Request” means a [submission by an organization asking] proposal for a grant,<sup>1</sup> [or] subsidy[.], or purchase of service agreement.”

4. By deleting the definition of “agency advisory committee” or “committee”.

[““Agency advisory committee” or “committee” means the committee established pursuant to section 42D-5.”]

### SECTION 4. Section 42D-3, Hawaii Revised Statutes, is amended to read as follows:

**“[[§42D-3[]]] Conditions for grants, subsidies, and purchase of service agreements.** Organizations to which a grant, subsidy, or a purchase of service agreement has been awarded, shall agree to comply with the following conditions before receiving the grant, subsidy, or purchase of service agreement:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded in whole or in part by the State or the judiciary, as the case may be; provided that for nonprofit organizations, no two or more members of a family or kin of the first or second degree shall be employed or under contract by the organization unless specifically permitted in writing by the director of the expending agency for the appropriation; provided further that no salary or benefit increases by the organization shall be funded with public funds unless the increases are agreed to by the director of the expending agency in the contract with the organization;
- (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or physical handicap;
- (3) Agree not to use public funds for purposes of entertainment or perquisites;
- (4) Comply with any other requirement as the director may prescribe to ensure adherence by the provider or recipient with federal, state, and county laws; and
- (5) Allow the expending agency, the director, the committees of the legislative bodies and their staffs, and the legislative auditor full access to records, reports, files, and other related documents in order that the program, management, and fiscal practices of the providers or recipients may be monitored and evaluated to assure the proper and effective expenditure of public funds."

SECTION 5. Section 42D-4, Hawaii Revised Statutes, is amended to read as follows:

"[§42D-4] Advisory council; establishment; appointment, number, and term of members; duties; reports. (a) There is established within the [department of budget and finance] office of state planning for administrative purposes an advisory council [which] that shall review, and make recommendations on[,] matters relating to types of services and service delivery for grants, subsidies, and purchases of service to the [governor, the chief justice, the president of the senate, and the speaker of the house of representatives.] coordinating council.

(b) The advisory council shall be [comprised] composed of [thirteen] twelve members as follows:

- [1] Two members from each county, except the county of Kalawao; and
- [2] Five members, with each representing one of the following program areas: health, human services, employment, education, and culture and the arts.

(c) The council members shall be appointed by the governor from a list of not less than thirty nominees provided by the president of the senate and the speaker of the house of representatives.]

- (1) Three members appointed by the president of the senate;
- (2) Three members appointed by the speaker of the house of representatives;
- (3) Five members appointed by the governor; and
- (4) A member of the coordinating council as designated by the governor, ex officio.

[d] (c) In appointing the members [from each county], the governor, speaker of the house of representatives, and the president of the senate shall select

persons who represent different business and civic organizations, geographical regions of the State, community groups, [grant recipients, subsidy recipients,] consumers of services, and purchase of service providers who have an interest or expertise in the design and delivery of the following types of programs: health, human services, [culture and the arts,] employment, and education. Each appointing authority shall appoint a consumer of services purchased by the State as a council member. The members of the council shall serve without compensation but shall be reimbursed for expenses, including intrastate travel expenses, necessary for the performance of their duties.

[(e)] (d) The members [shall be] appointed by the governor shall serve for four years[, except that the terms of the members first appointed shall be for two or four years as designated by the governor at the time of appointment.] or until the governor's term expires. The members appointed by the legislature shall serve for two years. The governor shall designate a member to be the chairperson of the council. Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply insofar as it relates to the number of terms and consecutive number of years a member may serve on the council.

[(f)] (e) The [duties of the] advisory council shall [be to]:

- [(1)] Conduct comprehensive assessments of the State's resources and needs;
- [(2)] Serve as the community liaison to the governor, chief justice, president of the senate, speaker of the house of representatives, state agencies, grant recipients, subsidy recipients, and purchase of service providers;
- [(3)] Submit recommendations to the appropriate state agencies on the advisability of funding grants, subsidies, and purchase of service agreements for inclusion in the executive or judiciary budget;
- [(4)] Submit recommendations to the appropriate standing committees of the legislature on the advisability of funding grants and subsidies, not included in the executive or judiciary budget; and
- [(5)] Provide recourse for purchase of service provider grievances, by investigating, expediting, and making recommendation on complaints that involve funding, policy, or procedural decisions made by the agency. The final recommendation shall be completed and submitted to the agency director within thirty days of receipt of a written complaint from a provider.

The agency director shall receive the advisory council's recommendation and render a final ruling within ten days of receipt thereof.]

- [(1)] Advise the coordinating council on matters relating to the provision of services to be included in the purchase of service budgets of the appropriate state agencies;
- [(2)] Advise the coordinating council on matters relating to the format and content of submission of requests;
- [(3)] Provide input to the coordinating council on market or other business conditions facing organizations contracted to provide services; and
- [(4)] Provide other information as may be required by the coordinating council.

[(g)] The council shall submit reports on its findings and recommendations to the governor, the chief justice, the president of the senate, and the speaker of the house of representatives before July 1, and before January 1, of each year. The reports by the council shall include but not be limited to:

- (1) An assessment of the council's impact on identifying state resources and needs;
- (2) The composition and duties of the council;
- (3) Recommendations regarding funding allocations as expressed as a percentage of total funding for grants, subsidies, and purchase of service agreements in the program areas of health, human services, culture and the arts, employment, and education; and
- (4) Any other information the council may determine to be helpful to the executive, judicial, and legislative branches.]”

SECTION 6. Section 42D-8, Hawaii Revised Statutes, is amended to read as follows:

“[[§42D-8]] **Contracts.** (a) An appropriation for a grant, subsidy, or purchase of service shall not be released unless a contract is entered into between the appropriate agency and the recipient or provider. The agency shall determine, in consultation with and subject to the review and approval of the attorney general in the case of the State and the administrative director of the courts in the case of the judiciary, the specific contract form to be used for each grant, subsidy, or purchase of service agreement and shall execute each contract not later than sixty days from the effective date of the appropriation or as soon as practicable thereafter.

(b) Each contract shall expressly state that the recipient or provider is an independent contractor and provide that the recipient or provider shall indemnify and hold harmless the State, the appropriate contracting agency, and the appropriate officers, employees, and agents from and against all claims, damages, and costs arising out of or in connection with the acts or omissions of the recipient or provider.

[(c) All contracts shall be reviewed by the administrative director of the courts in the case of the judiciary and the attorney general in the case of the State for conformance with the public purpose and legislative intent.]”

SECTION 7. Section 42D-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§42D-9]] **Continued eligibility.** Any recipient or provider who withholds or omits any material facts or deliberately misrepresents any facts to an agency shall be in violation of this chapter. Any recipient or provider [which] that has been found by an agency to have violated this chapter or the terms of its contract shall be prohibited from requesting a grant or subsidy or submitting a proposal for a purchase of service agreement for a period of five years.”

SECTION 8. Section 42D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“[[(a)]]

Notwithstanding any provision of law to the contrary, the duration of any purchase of service agreement contract governed by this chapter may be extended for a specified period not to exceed ninety days if the following conditions are satisfied at the time of extension:

- (1) The contract is in effect;
- (2) The provider is not in default or breach of the contract;
- (3) Funds have been [appropriated] designated pursuant to the request for proposal process for a successive contract with the provider;

- (4) The terms and conditions with respect to the performance of the provider under the successive contract will be substantially the same as those of the contract;
- (5) The agency has provided the provider a letter offering to extend the contract at least sixty days prior to the end of the contract year, without other modification of its terms, except as to the amount of compensation and duration[; and number of units; and
- (6) The provider gives the agency a written acceptance of the extension.”

SECTION 9. Section 42D-21, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The chief executive and the director shall review the recommended purchase of services budgets, revise the same as necessary, determine for each agency a level of funding for each program for purchases of service, and submit to the legislature funding recommendations for purchases of service. The chief executive shall include in the executive or judiciary budget submitted to the legislature all amounts for purchases of service recommended for funding. Such requests shall be included in the appropriate program budget and shall be identified by [agency] service activity and source of funding in a supplemental budget submittal.

(c) Every recommendation for funding of purchase of service that the chief executive submits to the legislature for appropriation shall state:

- (1) The public purpose to be served;
- (2) The objective intended to be achieved;
- (3) The activities and services to be performed;
- (4) The target groups to be affected;
- (5) The means of financing;
- (6) Measures by which the effectiveness of the services purchased are to be evaluated;
- (7) The analyses and justifications for the recommended purchase of service agreements;
- (8) The amounts requested; and
- (9) An assessment to determine costs of not providing the service[; and
- (10) The intended uses of the funds, according to “cost categories” and “cost elements” as defined in section 37-62].”

SECTION 10. Section 42D-23, Hawaii Revised Statutes, is amended to read as follows:

**“[[§42D-23[]]] Required review of requests[.] for proposals.** (a) Each agency shall review each request to determine the efficiency and the effectiveness of the proposal in achieving the objectives of the program. The review shall include an analysis of the request in terms of the objectives to be achieved, the alternatives by which to achieve the objectives, and the respective costs, benefits, and effectiveness of the alternatives. When personnel service costs are requested to be funded in whole or in part, the review shall determine the reasonableness of personnel classification and compensation plans. The agency [shall] may invite the organization to discuss the request with the agency and to comment on the analysis of the agency.

**(b) An organization that has submitted a request for proposal may request to review and comment on the analysis conducted by the agency prior to the**

preparation of the agency's statement of findings and recommendations.

[(b)] (c) The agency shall prepare a statement of its findings and recommendations for each request and shall send a copy of the statement to the requesting organization according to a timetable as specified by the director.

(d) Requesting organizations not recommended for funding or not satisfied with the recommended level of funding may submit a written request to the executive coordinating council for reconsideration within ten days of receipt of the agency's statement of findings and recommendations. The coordinating council shall respond in writing to the requesting organization within ten days of receipt of the written request for reconsideration. The director shall adopt rules pursuant to chapter 91 to assist agencies in this review process."

SECTION 11. Section 42D-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Agencies [receiving] anticipating appropriations for purchases of service shall advertise for proposals in a newspaper of general circulation in each county of the State. Agreements for purchases of service shall be awarded on the basis of cost-effectiveness, quality of services, or other criteria as may be determined by the director. [An agency shall not be required to advertise requests for proposals upon submission of its certification in the form prescribed by the director that the providers are specified by federal law.] When providers are specified by federal law, and upon certification to that effect in the form prescribed by the director, an agency shall not be required to advertise requests for proposals."

SECTION 12. Section 42D-25, Hawaii Revised Statutes, is amended to read as follows:

**"[[]§42D-25[]] Monitoring and evaluation; purchase of service agreement.** (a) Every purchase of service agreement shall be monitored by the agency to ensure compliance with this chapter and the public purpose and legislative intent of the purchase of service.

(b) Each agency shall be required to establish an employee team, consisting of not less than two members, which shall formulate and implement an agency-approved monitoring plan consisting of the following components:

- (1) A comprehensive monitoring and evaluation manual that outlines the objectives, procedures, and specifications of the monitoring process;
- (2) A requirement of quarterly progress reports to be completed by each provider on standardized forms specified by the agency;
- (3) An annual on-site visit to each program funded by a purchase of service agreement;
- (4) An annual written report, to be completed within thirty days of the annual on-site visit, describing progress, compliance, and required corrective action. Providers shall receive a copy of the report and may respond in writing within thirty days of receipt thereof; and
- (5) A clear procedure for follow-up on recommendations and criticisms.

(c) Every purchase of service agreement shall be evaluated annually to determine whether the agreement has attained the intended results in the manner contemplated. Each agency shall establish criteria for program evaluation procedures by soliciting direct input from purchase of service providers and the department of budget and finance. Funding for the evaluation process shall be the

agency's responsibility and shall not be paid from funds budgeted for a purchase of service provider's operations.

[**(d)** Each agency shall assimilate both the monitoring and evaluation manual volume III and systems forms volume IV as provided to the State by SMS Research and Arthur Anderson & Co. into its monitoring and evaluation systems. The procedures and forms as described in these two volumes shall be the minimum monitoring and evaluation standards that shall be used by all agencies in the executive branch. Each agency may adopt additional requirements to the system as deemed necessary by the agency's director.]"

SECTION 13. Section 42D-31, Hawaii Revised Statutes, is amended to read as follows:

"[**§42D-31**] **Applications for grants and subsidies.** Agencies may receive from organizations for review requests for funding of grants and subsidies no later than September 1 of any year, and recommendations for funding based on such requests shall be submitted to the next regular session of the legislature. The requests shall be submitted on forms as prescribed by the director and shall contain information as prescribed by the director to ensure conformance with section 42D-32(c)."

SECTION 14. Section 42D-5, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 42D-6, Hawaii Revised Statutes, is repealed.

SECTION 16. 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 1992-93, for the purpose of coordinating a planning process to ensure that the health and human services needs of the State are addressed; provided that:

- (1) The office of state planning shall submit a report to the governor and the legislature upon the completion of the planning process;
- (2) This planning effort shall involve the private sector; and
- (3) Nothing shall prohibit the contribution of in-kind services or monetary support from the private sector in assisting in the planning efforts.

SECTION 17. 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 1992-93, for staff support in the office of state planning and for the reimbursement of expenses incurred by the members of the advisory council necessary for the performance of their duties.

SECTION 18. The sums appropriated shall be expended by the office of state planning for the purposes of this Act.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 20. This Act shall take effect on July 1, 1992, and shall be repealed on July 1, 1996; provided that sections 42D-1, 42D-2,<sup>3</sup> 42D-3, 42D-4, 42D-5, 42D-6, 42D-7(a),<sup>3</sup> 42D-8, 42D-9, 42D-12(a), 42D-21(b) and (c), 42D-23,

## ACT 195

42D-24(a), 42D-25, 42D-31, 42D-32,<sup>3</sup> 42D-33,<sup>3</sup> and 42D-34<sup>3</sup> shall be reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 12, 1992.)

### Notes

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.
3. Section not amended.

## ACT 195

S.B. NO. 2675

A Bill for an Act Relating to Medicare Supplement Insurance.

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

SECTION 1. Section 431:10A-301, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-301 Definitions.** For the purposes of this part:

“Applicant” means:

- (1) In the case of an individual medicare supplement policy [or subscriber contract], the person who seeks to contract for insurance benefits, and
- (2) In the case of a group medicare supplement policy [or subscriber contract], the proposed certificate holder.

“Certificate” means any certificate delivered or issued for delivery in this State under a group medicare supplement policy[, which certificate has been delivered or issued for delivery in this State].

“Certificate form” means the form on which the certificate is delivered or issued for delivery by the issuer.

“Issuer” includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this State medicare supplement policies or certificates.

“Medicare” means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

“Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a subscriber contract of [a nonprofit medical indemnity or hospital service association] hospital and medical service associations or health maintenance [organization] organizations, other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act (42 U.S.C. section 1395 et. seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare [by reason of age].

“Policy form” means the form on which the policy is delivered or issued for delivery by the issuer.”

SECTION 2. Section 431:10A-302, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-302 Applicability and scope.** (a) Notwithstanding anything to the contrary contained in this part, this part shall apply to:

- (1) [A medicare supplement policy issued and delivered to a person domiciled in this State;] All medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof; and
- (2) A medicare supplement policy issued and delivered to a person not domiciled in this State but pursuant to which a certificate is issued and delivered to a person domiciled in this State; and
- (3) Any certificate delivered to a person domiciled in this State which is issued pursuant to a medicare supplement policy.]
- (2) All certificates issued under group medicare supplement policies, which certificates have been delivered or issued for delivery in this State.

(b) This part shall not apply to[:

- (1) A] a policy [or contract] of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations[:<sup>1</sup>]
- (2) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association;
  - (A) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
  - (B) Has been maintained in good faith for purposes other than obtaining insurance; and
  - (C) Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members; or
- (3) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions which are inconsistent with the requirements of this part or rules adopted thereunder, or issued to employees or members as additions to franchise plans in existence on the effective date of the applicable rules].

(c) The commissioner shall have all rights and powers with respect to the group or master policy and certificate issued pursuant to the medicare supplement policy as if the group or master policy was issued and delivered to a person domiciled in this State.

(d) This part shall not apply to insurance policies or health care plans including group conversion policies, issued to medicare eligible persons that are not marketed or held to be medicare supplement policies or benefit plans.”

SECTION 3. Chapter<sup>1</sup> 431:10A-304, Hawaii Revised Statutes is amended to read as follows:

**“§431:10A-304 Standards for policy provisions.** (a) No medicare supplement [insurance] policy[, contract,] or certificate in force in the State shall contain benefits [which] that duplicate benefits provided by medicare.

(b) The commissioner shall [issue] adopt reasonable rules to establish specific standards for the provisions of medicare supplement policies and certificates. The standards shall be in addition to and in accordance with applicable laws of this State, including the provisions of part I of this article. No requirement of this chapter relating to minimum required policy benefits, other than the minimum standards contained in this part, shall apply to medicare supplement policies[.] and certificates. The standards may cover, but shall not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage;
- (4) Probationary periods;
- (5) Benefit limitations, exceptions, and reductions;
- (6) Elimination periods;
- (7) Requirements for replacement;
- (8) Recurrent conditions; and
- (9) Definition of terms.

(c) The commissioner may [issue] adopt reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by law, which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed [for coverage] to be insured under any medicare supplement policy[.] or certificate.

(d) A medicare supplement policy or certificate shall not [deny a claim] exclude or limit benefits for losses incurred more than six months after the effective date of coverage [for] because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.”

SECTION 4. Section 431:10A-305, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-305 Rules.** (a) The commissioner shall [issue] adopt reasonable rules to establish minimum standards for benefits and claims payment [under medicare supplement policies. The commissioner may also issue rules to establish standards for], marketing practices, compensation arrangements, and reporting practices for medicare supplement policies[.] and certificates.

(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 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;
- (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 5. Section 431:10A-306, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-306 Loss ratio standards.** Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall [issue] adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices. For the purposes of rules [issued] adopted under this section, medicare supplement policies and certificates issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be regarded as [individual] group policies.”

SECTION 6. Section 431:10A-307, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-307 Disclosure standards.** (a) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy or certificate shall be delivered or issued for delivery in this State unless an outline of coverage is delivered to the applicant at or prior to the time application is made.

(b) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (a). For the purposes of this section, format means style, arrangement and overall appearance, including such items as the size, color, prominence of type, and the arrangement of text and captions. The outline of coverage shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- [2] A statement of the exceptions, reductions, and limitations contained in the policy;
- [3]<sup>1</sup> (2) A statement of the renewal provisions including any reservation by the [insurer] issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholders' age; and
- [4] (3) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The commissioner may prescribe by rule a standard form and contents of an informational brochure for persons eligible for medicare [by reason of age] which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the informational brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare [by reason of age], but in no event later than the time of policy delivery.

(d) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform

prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies [and subscriber contracts] sold to persons eligible for medicare by reason of age, other than:

- (1) Medicare supplement policies;
- (2) Disability income policies;
- (3) Basic, catastrophic, or major medical expense policies; or
- (4) Single premium, nonrenewable policies.

(e) The commissioner may [further] adopt reasonable rules to govern the full and fair disclosure of information in connection with the replacement of accident and sickness insurance policies, subscriber contracts, or certificates by persons eligible for medicare [by reason of age]."

SECTION 7. Section 431:10A-308, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-308 Notice of free examination.** Medicare supplement policies [or] and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the [insurer] issuer in a timely manner."

SECTION 8. Section 431:10A-309, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-309 Filings; approval of forms.** (a) No medicare supplement policy or certificate shall be delivered or issued for delivery in this State after the date specified in rules adopted by the commissioner unless the form of such policy is approved in accordance with this section.

(b) Every [insurer] issuer providing medicare supplement insurance benefits to a resident of this State shall file with the commissioner a copy of the policy and any certificate used in this State, including copies of any riders or endorsements of applications which may be attached to or made a part of the policy. The commissioner may require a certification from the [insurer] issuer that, to the best of the certifier's knowledge and belief, the filing complies with the minimum standards established in the rules and all applicable Hawaii laws and rules.

(c) Every [entity] issuer providing medicare supplement policies or certificates in this State shall file annually its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this State. The commissioner may require the [insurer] issuer to submit a certification by a qualified actuary that the premium rates, to the best of the actuary's knowledge and belief, are in accordance with the loss ratio standards adopted by rule [under section 431:10A-306].

(d) The commissioner may disapprove any policy or certificate or withdraw approval of a previously approved policy or certificate if the commissioner finds that:

- (1) It is not in accordance with applicable laws and rules in any respect;
- (2) It is or it contains provisions which are misleading, deceptive, inconsistent, or ambiguous; or
- (3) The benefits are unreasonable in relation to the premium charge.

(e) A policy or certificate shall be deemed approved if:

- (1) It is in accordance with all applicable laws and rules;
- (2) It has not been disapproved earlier than sixty-one days after the date of filings;
- (3) It fully meets all filing requirements; and
- (4) It is received by the commissioner.

(f) The commissioner shall promptly give written notice to the [insurer] issuer of the commissioner's approval of a policy or certificate or, if a policy or certificate is disapproved or approval is withdrawn, of such disapproval or withdrawal together with the reasons for it and of the procedure by which the [insurer] issuer may request and be granted a hearing on the merits of such action.

(g) The commissioner by rule may establish requirements and procedures for medicare supplement filings."

SECTION 9. Section 431:10A-310, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-310 Filing requirements for advertising.** (a) Every [insurer, nonprofit medical indemnity or hospital service association, health maintenance organization, or other entity providing] issuer of medicare supplement insurance [or benefits] policies or certificates in this State shall file a copy of any medicare supplement advertisement intended for use in this State whether through written, radio, or television medium to the commissioner for review. The commissioner may require a certification from the entity that to the best of the certifier's knowledge and belief the advertisement complies with the provisions of this chapter and all applicable rules.

(b) If the commissioner finds the advertisement to be in violation of any provision of [the insurance code] this chapter or any rule, the commissioner shall order the [insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization] issuer to cease and desist use of the advertisement pursuant to section 431:2-201 and section 431:2-202.

(c) In conjunction with a cease and desist order issued pursuant to subsection (b), the commissioner may order the [insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization] issuer to refund to the insured the premium paid for the medicare supplement policy. Any refund of an amount paid by the insured for the medicare supplement insurance shall be paid within fifteen days to the person entitled thereto; provided that by rule the commissioner may prescribe an amount below which no refund need be made."

SECTION 10. Section 431:10A-311, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-311 Penalties.** In addition to any other applicable penalties for violations of [the insurance code] this chapter, pursuant to section 431:2-203, the commissioner may require [insurers] issuers violating any provision of this part or rules adopted pursuant to this part to cease marketing or selling any medicare supplement policy in this State which is related directly or indirectly to a violation or may require [such insurer] the issuer to take [such] actions [as are] necessary to comply with the provisions of this part, or both."

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

## **ACT 196**

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

(Approved June 12, 1992.)

### **Note**

1. So in original.

## **ACT 196**

**S.B. NO. 2678**

A Bill for an Act Relating to Wholesale Prescription Drug Distributors.

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

**SECTION 1.** The purpose of this bill is to provide statutory authority for the board of pharmacy to adopt rules that would establish requirements for licensing wholesale prescription drug distributors in order to comply with the federal Prescription Drug Marketing Act of 1987, Pub. L. 100-293 (PDMA), and for the department of health to establish requirements mandated by the PDMA relating to the storage and handling of wholesale prescription drugs and recordkeeping by wholesale prescription drug distributors.

The PDMA requires each state to have in effect by September 14, 1992, a licensing scheme for wholesale prescription drug distributors that meets the minimum requirements of the guidelines established in 21 C.F.R. part 205. Failure to do so would mean that no prescription drug wholesaler in the State could receive or distribute prescription drugs through interstate commerce.

If this were to happen, prescription drugs may be in short supply, more costly, or both.

**SECTION 2.** Chapter 328, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . WHOLESALE PRESCRIPTION DRUGS: STORAGE, HANDLING, AND RECORDKEEPING**

**§328- Objective.** The purpose of this part is to establish the minimum requirements for the storage and handling of wholesale prescription drugs and for the establishment and maintenance of prescription drug distribution records by wholesale distributors, as required by the federal Prescription Drug Marketing Act of 1987, Pub. L. 100-293, and 21 C.F.R. part 205.

#### **§328- Definitions.** As used in this part:

"Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Common Control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or otherwise.

"Department" means the department of health except when otherwise provided.

"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Manufacturer" means anyone who is engaged in manufacturing, preparing,

propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

“Prescription drug” means any human drug required by federal or state statutes, regulations, or rules to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 328-16 or to section 503(b) of the federal Food, Drug, and Cosmetic Act.

“Wholesale distribution” means the distribution of prescription drugs to persons other than a consumer or patient, but does not include:

- (1) Intracompany sales, defined as any transaction or transfer between an entity and any division, subsidiary, parent, or affiliated or related company under common ownership and control;
- (2) The purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for the entity’s own use, from the group purchasing organization or from other hospitals or health care entities that are members of the group purchasing organization;
- (3) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
- (4) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control;
- (5) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this definition the term “emergency medical reasons” includes, but is not limited to, transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five per cent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any period of twelve consecutive months;
- (6) The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, or the dispensing of a drug, pursuant to a prescription;
- (7) The distribution of drug samples by manufacturers’ representatives or distributors’ representatives; or
- (8) The sale, purchase, or trade of blood and blood components intended for transfusion.

“Wholesale distributor” means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own-label distributors; jobbers; private label distributors; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; prescription drug repackagers; physicians; dentists; veterinarians; birth control and other clinics; individuals; hospitals; nursing homes and their providers; health maintenance organizations and other health care providers; and retail and hospital pharmacies that conduct wholesale distributions. The term “wholesale distributor” shall not include any carrier for hire or person or entity hired solely to transport prescription drugs.

**§328- Rules.** (a) The department may adopt such rules as may be necessary to carry out the purposes and enforce the provisions of this part and to

implement the requirements of 21 C.F.R. part 205, including minimum requirements for the storage and handling of wholesale prescription drugs; the keeping of records regarding their receipt and distribution; written policies and procedures for wholesale prescription drug distributors; and the salvaging and reprocessing of prescription drugs. All rules adopted under this part shall meet or exceed the requirements of the wholesale prescription drug distributor guidelines contained in 21 C.F.R. part 205, and in case of conflict between any rule adopted under this part and the provisions of 21 C.F.R. part 205, the more stringent provision shall prevail.

(b) The director may, without regard to chapter 91, adopt standards regarding conditions and temperatures for the storage of prescription drugs by reference to the provisions of an official compendium such as the United States Pharmacopeia/National Formulary (USP/NF), as updated from time to time.

**§328- Notice.** Before any violation of this part is reported for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present the person's views before the department either orally or in writing, in person or by an attorney, with regard to the contemplated proceeding.

**§328- Inspection.** Wholesale distributors shall permit agents of the department, agents of the department of commerce and consumer affairs, and authorized federal, state, or local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records, written operating procedures, and lists of responsible persons, at reasonable times and in a reasonable manner, to the extent authorized by law.

**§328- Penalty; exceptions.** (a) Any person who violates this part or rules adopted under this part shall be fined not more than \$500, or imprisoned not more than one year, or both.

(b) No person shall be subject to the penalties of subsection (a) of this section for having violated this part or rules adopted under this part if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the individual from whom the person received the article in good faith, to the effect that the article is not adulterated or misbranded within the meaning of part I of this chapter.

**§328- Administrative penalties.** (a) Any person who violates this part or any rule adopted by the department pursuant to this part shall be fined not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action.

(b) In addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this part, the director may impose by order the administrative penalty specified in this section. Factors to be considered in imposing the administrative penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. For any judicial proceeding to recover the administrative penalty imposed, the director need only show that notice was given, a hearing was held, or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and the penalty remains unpaid.

**§328- Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of

this part or any rule adopted under this part. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure.

**§328- Minimum requirements for the storage and handling of prescription drugs.** Wholesale distributors of prescription drugs and their officers, agents, representatives, and employees shall ensure that the following requirements are met:

- (1) Facilities. All facilities at which prescription drugs are stored, warehoused, handled, held, offered for sale or distribution, marketed, or displayed shall:
  - (A) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
  - (B) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
  - (C) Have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate containers or sealed secondary containers that have been opened;
  - (D) Be maintained in a clean and orderly condition; and
  - (E) Be free from infestation by insects, rodents, birds, and vermin of any kind.
- (2) Security.
  - (A) All facilities used for wholesale distribution, storage, or warehousing of prescription drugs shall be secure from unauthorized entry.
    - (i) Access from outside the premises shall be kept to a minimum and shall be well controlled.
    - (ii) The outside perimeter of the premises shall be well lighted.
    - (iii) Entry into areas where prescription drugs are held shall be limited to authorized personnel.
  - (B) All facilities shall be equipped with an alarm system to detect entry after hours.
  - (C) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
- (3) Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with the requirements, if any, in the labeling of the drugs, or in accordance with the standards regarding conditions and temperatures for the storage of prescription drugs adopted under the new part in section 2 of this Act.<sup>1</sup>
  - (A) If no storage requirements are established for a prescription drug, the drug may be held at controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.
  - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be used to document the proper storage of prescription drugs.

- (4) Examination of materials.
  - (A) Upon receipt, each outside shipping container of prescription drugs shall be examined visually to confirm the identity of the drugs and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
  - (B) Each outgoing shipment of prescription drugs shall be inspected carefully to confirm the identity of the drugs and to ensure that no prescription drugs are delivered that have been damaged in storage or held under improper conditions.
  - (C) The recordkeeping requirements in section 8 of this Act<sup>1</sup> shall be followed for all incoming and outgoing prescription drugs.
- (5) Returned, damaged, outdated, deteriorated, misbranded, and adulterated prescription drugs.
  - (A) Prescription drugs that are damaged, outdated, deteriorated, misbranded, or adulterated shall be physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion are possible, until they are destroyed or returned to the supplier.
  - (B) Any prescription drugs whose immediate or sealed outer or sealed secondary containers are found upon arrival to have been opened or used shall be identified as such, and shall be physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion are possible, until they are destroyed or returned to the supplier.
  - (C) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be either destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.
  - (D) The recordkeeping requirements in section 8 of this Act<sup>1</sup> shall be followed for all outdated, damaged, deteriorated, misbranded, adulterated or returned prescription drugs.

**§328. Recordkeeping.** (a) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records shall include the following information:

- (1) The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;
- (2) The identity and quantity of the drugs received and distributed or disposed of; and

- (3) The dates of receipt and distribution or other disposition of the drugs.
- (b) Inventories and records shall be made available for inspection and photocopying by the department or any authorized federal, state, or local law enforcement officials for a period of five years following disposition of the drugs.
- (c) Records described in this section that are kept at the inspection site or that can be retrieved immediately by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by the department or any authorized official of a federal, state, or local law enforcement agency.

**§328- Written policies and procedures.** Wholesale distributors shall establish, maintain, and follow written policies and procedures for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Wholesale distributors shall include in their written policies and procedures the following:

- (1) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate.
- (2) A procedure for handling recalls and withdrawals of prescription drugs. The procedure shall be adequate to deal with recalls and withdrawals caused by:
  - (A) Any action initiated at the request of the department, the Food and Drug Administration, or any other federal, state, or local law enforcement or other government agency;
  - (B) Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or
  - (C) Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.
- (3) A procedure to ensure that the distributor prepares for, protects against, and handles properly any crisis that affects security or operation of any facility in the event of ~~strike~~, fire, flood, or other natural disaster, or in other emergencies.
- (4) A procedure to ensure that all outdated prescription drugs are segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall require written documentation of the disposition of outdated prescription drugs, which documentation shall be maintained for five years after disposition of the outdated drugs.

**§328- Responsible persons.** Wholesale distributors shall establish and maintain current lists of officers, directors, managers, and other persons in charge of the wholesale distribution, storage, and handling of prescription drugs, including a description of each person's duties and a summary of each person's qualifications.

**§328- Salvaging and reprocessing.** Wholesale distributors shall be subject to the provisions of 21 C.F.R., parts 207, 210, and 211, regarding salvaging and reprocessing of prescription drugs.”

## ACT 196

SECTION 3. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§461- Wholesale prescription drug distributor license.** It shall be unlawful for any person to operate, maintain, open, change location, or establish any wholesale prescription drug distribution business within the State without first having obtained a license from the board.”

SECTION 4. Section 461-4.5, Hawaii Revised Statutes, is amended to read as follows:

**“[ ]§461-4.5[ ] Powers and duties.** (a) The board shall:

- (1) Adopt, amend, and repeal rules pursuant to chapter 91, as it deems proper for the purposes of this chapter[;], Pub. L. 100-293 and 21 C.F.R. part 205;
- (2) Examine, license, reinstate, and renew the licenses of qualified applicants[;] for registered pharmacists and wholesale prescription drug distributors, and issue and renew permits to operate pharmacies;
- (3) Inspect, or may designate a duly authorized representative to inspect, any pharmacy or premises in the State where drugs are packed, packaged, compounded, sold, offered for sale, exposed for sale, stored, warehoused, or kept for sale or distribution to ensure compliance with this chapter and rules [established by the board;] adopted under this chapter; and
- (4) Fine, suspend, or revoke any license or permit for any cause prescribed by this chapter, or for any violation of the rules[;] adopted under this chapter, and refuse to grant or renew any license or permit for any cause which would be ground for revocation or suspension of a license or permit.

(b) Nothing in this chapter shall modify or limit any powers of the department of health of this State.”

SECTION 5. Section 461-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every applicant for a license as a pharmacist shall pass the National Association of Boards of Pharmacy Licensure Examination (NABPLEX) with a score of not less than seventy-five, the Federal Drug Law Examination (FDLE) with a score of not less than seventy-five, and the state jurisprudence examination with a score of not less than seventy-five.”

SECTION 6. Section 461-16, Hawaii Revised Statutes, is amended to read as follows:

**“§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).

(b) Permits issued under sections 461-14 and 461-15 and licenses issued under section 461- 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."

**SECTION 7.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 8.** This Act shall take effect upon its approval.

(Approved June 12, 1992.)

#### Notes

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

## ACT 197

S.B. NO. 2729

A Bill for an Act Relating to Recordation.

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

**SECTION 1.** Section 490:9-407, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Upon request of any person, the filing officer shall issue [his] a certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be [\$1 plus 50 cents for each financing statement and for each statement of assignment reported therein.] as specified in section 502-25 or by rules adopted by the department of land and natural resources, pursuant to chapter 91. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a [uniform fee of 50 cents per page.] fee as specified in section 502-25 or by rules adopted by the department of land and natural resources, pursuant to chapter 91."

**SECTION 2.** Section 501-83.5, Hawaii Revised Statutes, is amended to read as follows:

"[§501-83.5] **Outstanding owner's duplicate certificates.** No owner's duplicate certificates of title shall be issued after June 14, 1988, whether the deed or other instrument upon which such would have been based was recorded before or after June 14, 1988. Whenever a duplicate has been issued and is still outstanding, [the assistant registrar shall require that the same be presented with any deed or other voluntary instrument to be filed or recorded affecting the land described therein. The assistant registrar shall thereupon cancel such owner's duplicate. The foregoing requirements for presenting such owner's duplicate certificate shall not apply if there shall be or has been presented to the assistant registrar a sworn statement by the registered owner of the subject land that such owner's duplicate has been lost or destroyed. The assistant registrar shall keep a record of such

canceled owner's duplicate certificates and of such affidavits.] it shall be deemed to have been surrendered and notwithstanding any other provision herein, the assistant registrar shall accept for filing any deed or other voluntary instruments without requiring the presentation of the outstanding duplicate certificate. [All references in this chapter to the holder, receiver or taker of a certificate of title, or similar references, shall refer to the party registered as the owner in the certificate of title on file in the office of the assistant registrar. In case of a variance between the outstanding owner's duplicate certificate and the original certificate the original shall prevail.]"

SECTION 3. Section 501-105, Hawaii Revised Statutes, is amended to read as follows:

**"§501-105 Grantee's [residence,] address, etc., to be stated.** Every deed or other voluntary instrument presented for [registration] recording shall contain or have indorsed upon it the full name or names, if more than one, and the address of the grantee or other person acquiring or claiming an interest under the instrument and every deed shall also contain or have indorsed upon it a statement that the grantee is married or unmarried, and if married, the statement shall give the name in full of the husband or wife. All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land in pursuance of this chapter may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the State.

Any deed conveying one or more but not all lots or all interests in a lot appurtenant to apartments in a condominium property regime in a certificate shall contain full memoranda relating to easements, rights-of-way, and all other liens and encumbrances affecting the particular lot, lots, interest appurtenant to an apartment, or interests appurtenant to apartments conveyed. If the deed affects all of the land or interests appurtenant to apartments in a certificate of title, encumbrances may be referred to by reference.

SECTION 4. Section 501-108, Hawaii Revised Statutes, is amended to read as follows:

**"§501-108 Conveyance of fee; procedure.** An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that the assistant registrar shall not accept for registration any deed, mortgage, lease, or other voluntary instrument, unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration.

The assistant registrar shall note upon all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number in the spaces provided therefor wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped "canceled." The deed of conveyance shall be filed or recorded and indorsed with the number and place of registration of the certificate of title of the land conveyed.

On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. [Each instrument] If an instrument consists of more than one page, it shall be stapled once in the upper left corner [and]. No instrument shall [not] have a cover or backer attached. The assistant registrar shall be permitted to remove any rivets affixed to any instrument.

All names of all natural persons signing in their individual capacity in the instrument shall be typewritten, stamped, or printed by some other mechanical or electrical printing method beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary's certificate of acknowledgment. The provisions of this paragraph shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

The assistant registrar [shall] may refuse to file or record any instrument that will not reproduce legibly under photographic or electrostatic methods, or that is of a size larger than eight and one-half inches by fourteen inches, or that contains a schedule, inventory sheet, or map in excess of that size."

SECTION 5. 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 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 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, and transmitting to registrar, when filed with assistant registrar, \$3.
- (2) For every plan filed, \$1.
- (3) For indexing any instrument recorded while application for registration is pending, [25 cents.] \$1.
- (4) For examining title, \$10 and two-tenths of one per cent of the assessed value of the land and improvements on the basis of the last assessment for taxation, or the value of the same as determined under section 501-211 when the land was not separately assessed.
- (5) For verifying and checking map on the ground, for lots of one acre or less, \$25; an addition of \$1 an acre or fraction thereof for all area over one acre and up to one hundred acres; an addition of 50 cents an acre or fraction thereof for all area over one hundred acres and up to five hundred acres; an addition of 50 cents an acre or fraction thereof for all area over five hundred acres and up to one thousand acres; an addition of 25 cents an acre or fraction thereof for all area over one thousand acres.
- (6) For checking survey and map as to form and mathematical correctness but not on the ground, \$3 an hour.
- (7) For approving subdivision of registered land, and for checking same as to form and mathematical correctness but not on the ground, \$3 an hour.

- (8) For all services by a sheriff or other police officer under this chapter, the same fees as are now provided by law for like services.
- (9) For each instrument affecting a title not reported in applicant's filed abstract of title, \$2.
- (10) For filing an amended application, \$1.
- (11) For each notice by publication, 25 cents.
- (12) For entering any general default, \$1.
- (13) For filing any answer, \$1, to be paid by the party filing the same.
- (14) For every subpoena, \$1.
- (15) For swearing each witness, 10 cents.
- (16) For entering any discontinuance, \$1.
- (17) For filing notice of appeal, \$30.
- (18) For entry of order dismissing application, or decree of registration, and sending memorandum to assistant registrar, \$1.
- (19) For copy of decree of registration, \$1.
- (20) For entry of original certificate of title, or for making and entering a new certificate of title, \$25 if contained within four pages. For each additional page or fraction thereof, \$1.
- (21) For a certified copy of any certificate of title, \$2 if contained within one page. For each additional page or fraction thereof, \$1.
- (22) For the registration 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, [\$10] \$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, [\$3.] \$20.
- (25) For [registration] recording of an order for a suggestion of death, fact of marriage, divorce, subdivision, or notice of issue of an order in bankruptcy, [\$10.] \$20.
- (26) For filing [or recording] any petition after original registration, \$1[.]; an addition of 25 cents for each exhibit attached.
- (27) For filing [or recording] any order after original registration, [\$1.] \$5.
- (28) In all cases not expressly provided for by law the fees of all public officers for any official duty or service under this chapter shall be at a rate established by the court.
- (29) For any application made by or in the name of the State, or any political subdivision thereof, any proceedings had upon such application or any dealing with registered land by the State, or any political subdivision thereof, as owner, no fees shall be charged.
- (30) For a daily copy of the magnetic tapes containing computerized data of the daily entry record, \$100 per month.
- (31) For inquiring into computerized data of the land court automated title system, \$100 per month[.] plus hookup and per minute charges."

SECTION 6. Section 502-12, Hawaii Revised Statutes, is amended to read as follows:

**"§502-12 Indexes.** The registrar shall keep indexes for public inspection in such form and manner as is prescribed by the board of land and natural resources. [The master index shall be programmed in such manner as to permit the location of all recorded agreement of sale documents by an alphabetical listing of each party to such agreements of sale.]"

SECTION 7. Section 502-25, Hawaii Revised Statutes, is amended to read as follows:

**"§502-25 Fees.** (a) Unless otherwise provided by rules [established] 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, [\$10;] \$20;
- (2) For taking any acknowledgment preparatory to registry[, \$1] 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, [\$10] \$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."

SECTION 8. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

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

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of [individual signatories] all natural persons signing in their individual capacity shall be typewritten, stamped, or printed by some other mechanical or electrical printing method beneath all signatures.

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

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

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

SECTION 9. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 10. Section 502-41, Hawaii Revised Statutes, is amended to read as follows:

**"§502-41 Certificate of acknowledgment; natural persons, corporations.** Except as otherwise provided by sections 502-50 to 502-52, to entitle any conveyance or other instrument to be recorded there shall be endorsed, subjoined, or attached thereto an acknowledgment in the form provided or authorized in any of sections 502-42, 502-43, or 502-45, or in substantially the following form:

(Begin in all cases by a caption specifying the state or territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On this ..... day of ....., 19....., before me personally appeared A.B. (or A.B. and C.D.), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or she) (or they) executed the same as his (or her) (or their) free act and deed.

2. In the case of natural persons acting by attorney:

On this ..... day of ....., 19....., before me personally appeared A.B., to me known to be the person who executed the foregoing instrument in behalf of C.D. and acknowledged that he (or she) executed the same as the free act and deed of said C.D.

3. In the case of corporations or [joint stock associations:] partnerships:

On this ..... day of ....., 19....., before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that he (or she) is the president (or other officer, partner, or agent of the corporation, or [association] partnership) of (describing the corporation or [association] partnership) [and that the seal affixed to the instrument is the corporate seal of the corporation (or association)], and that the instrument was signed [and sealed] in behalf of the corporation (or [association] partnership) by authority of its board of directors (partners or trustees), and A.B. acknowledged the instrument to be the free act and deed of the corporation (or [association] partnership).

[In case the corporation or association has no corporate seal, omit "the seal affixed to the instrument is the corporate seal of the corporation (or association), and that" and add, at the end of the affidavit clause, "and that the corporation (or association) has no corporate seal."]

4. In the case of a corporation [or joint stock company] acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On this ..... day of ....., 19....., before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed) did say that he (or she) is the attorney in fact of C.D. (here name the corporation) duly appointed under power of attorney dated the ..... day of ....., 19....., recorded in book ..... at page .....[;]/as document no. .....; and that the foregoing instrument was executed in the name and behalf of said C.D. by A.B. as its attorney in fact; and A.B. acknowledged the instrument to be the free act and deed of C.D.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect."

5. In the case of a corporation [or joint stock company] acknowledging by another corporation [or joint stock company] as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

On this ..... day of ....., 19....., before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed) did say that he (or she) is the president (or other officer or agent of the corporation [or joint stock company] acting as attorney) of C.D. (here name the corporation [or joint stock company] acting as attorney) and that C.D. is the attorney in fact of E.F. (here name the corporation [or joint stock company] in whose behalf the attorney is acting) duly appointed under power of attorney dated the ..... day of ....., 19....., recorded in book ....., at page .....[;]/as document no. ....; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that [the seal affixed to the foregoing instrument is the corporate seal of C.D., and] the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

[In case the corporation acting as attorney has no corporate seal, or no seal within the State, omit the words "the seal affixed to the foregoing instrument is the corporate seal of C.D." and insert in lieu thereof, "C.D. has no corporate seal," or "C.D. has no corporate seal within the State of Hawaii."] In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words "which power of attorney is now in full force and effect."

6. The following form may be used in lieu of any of the foregoing forms:

On this ..... day of ....., 19....., before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

In all cases add signature and title of the officer taking the acknowledgment."

SECTION 11. Section 502-43, Hawaii Revised Statutes, is amended to read as follows:

**"§502-43 Form when person unknown.** When the person offering the acknowledgment is unknown to the officer taking the acknowledgment, the certificate may be substantially in the following form, to-wit:

State of Hawaii ..... ss.  
County of .....

On this ..... day of .....19....., personally appeared before me A.B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C.D., a credible witness for that purpose, to me known and by me duly sworn, and he[,] (or she), A.B., acknowledged that he (or she) executed the same freely and voluntarily for the uses and purposes therein set forth."

SECTION 12. Section 502-63, Hawaii Revised Statutes, is amended to read as follows:

**“§502-63 Not recorded unless initialed.** No instrument acknowledged in the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by the officer or officers taking the acknowledgment or acknowledgments to the same[.] in the State of Hawaii.

No instrument acknowledged outside of the State of Hawaii in which there are interlineations, erasures, or changes shall be recorded by the registrar, unless the same are duly initialed by either:

- (1) The parties to such instrument; or
- (2) The officer or officers taking the acknowledgment or acknowledgments to the same.”

SECTION 13. Section 514A-12, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, there shall be recorded within thirty days from the date of completion of the building or buildings as “date of completion” is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer [in a separate file for each property,] as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated “apartment ownership,” with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.”

SECTION 14. Section 502-64, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

## ACT 198

SECTION 16. This Act shall take effect sixty days after its approval.

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 198

S.B. NO. 2771

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 408-14, Hawaii Revised Statutes, is amended by amending subsection (a)<sup>1</sup> to read as follows:

**“§408-14 [Specific powers.] Powers; capital; reserves.** (a) [Every financial services loan company, in] In addition to the powers exercisable by or conferred upon [it] licensees under or by the general corporation [law] laws of the State, or by [any other provision of] this chapter, [shall possess and may exercise] every licensee has the following powers:

- (1) To borrow money [upon] on its own secured or unsecured notes;
- (2) To lend money [upon] on individual credit or [upon] on the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or [upon] on any combination of such credit and security, and to contract for [such] interest, discount, or other consideration as [is] permitted by this chapter, and to sell or broker[,] loans or contracts, in whole or in part, to other lenders, and to charge or retain a fee for the originating, selling, brokering, or servicing of [such] the loans or contracts;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action;
- (4) To establish branches [within] in the State, the Territory of Guam, and the Commonwealth of the Northern Marianas with the prior written approval of the commissioner;
- (5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans [entered into] for the purchases;
- (6) [To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of thrift accounts, and to receive amounts invested therein in installments or otherwise, with or without allowance of interest on the investments; provided no company may issue the certificates or receive those amounts in thrift accounts unless the thrift account obligations are insured by the federal deposit insurance corporation, to the extent provided by law, and the company is a corporation organized and operating in good standing under the laws of this State. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or rules.] To

- receive deposits from customers and issue documents evidencing the accounts, provided that the company is a depository licensee. For purposes of this section "depository licensee" means a financial services loan company licensed by the commissioner whose deposits are insured by the Federal Deposit Insurance Corporation. The licensee must have received the written approval of the commissioner to accept deposits and be a corporation operating in good standing under the laws of this State. The accounts may include, but are not limited to, savings accounts, money market deposit accounts as that term is defined in Regulation D, C.F.R. Section 204.2(d)(2), pass-book accounts, time deposits, certificates of deposit, time certificates of deposits, investment certificates, and individual retirement accounts. Nothing [herein] in this section shall [be construed to] authorize any [financial services loan company] licensee to [receive] have demand deposits [or to create any liability due on demand; and];
- (7) To become the legal or beneficial owner of tangible personal property and other tangible property [for the purpose of leasing such] to lease the property, to obtain an assignment of a lessor's interest in a lease of [such] the property, and to incur obligations incidental to [its] the licensee's position as the legal or beneficial owner and the lessor of the [leased] property[.]
- (8) To sell fixed rate annuities only if the licensee has deposits insured by the Federal Deposit Insurance Corporation and the written approvals of the commissioner and the insurance commissioner are obtained. The sale must be made by a general agent, subagent or solicitor licensed pursuant to chapter 431. In approving any request pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest;
- (9) To sell 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, and to collect in cash the premium(s) for such insurance. The approval of the commissioner must be obtained prior to the sale of these insurance products. In approving any request pursuant to this subsection, the commissioner may impose such conditions and restrictions that are in the public interest;
- (10) To sell auto club memberships and home and automobile security plans, whether or not connected with a loan, provided that the purchase of any such service or product must be voluntary and not required as a condition of a loan, and to collect in cash the payment(s) for such services or products. The approval of the commissioner must be obtained prior to the sale of these products. In approving any request pursuant to this subsection, the commissioner may impose such conditions and restrictions that are in the public interest; and
- (11) To issue letters of credit only if the licensee has deposits insured by the Federal Deposit Insurance Corporation and the written approval of the commissioner is obtained. In approving any request pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest. In addition, any licensee

## ACT 199

issuing stand-by letters of credit shall include those obligations in calculating applicable lending limits.”

SECTION 2. Section 408-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Cash reserves shall be limited to cash on hand, cash in banks [and on hand, bank or savings and loan certificates of deposit], cash in other federally insured financial institutions including, but not limited to, financial services loan companies with deposits insured by the Federal Deposit Insurance Corporation, direct United States, [State,] state, or county government securities, and [pass-book deposits in banks or savings and loans.] cash in United States branches of non-United States banks, with the written approval of the commissioner. The cash reserve shall at all times [equal not less than] be at least fifty per cent of the reserve [that is] required by this section.”

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 12, 1992.)

### Note

1. So in original.

## ACT 199

S.B. NO. 2777

A Bill for an Act Relating to Travel Agencies.

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

SECTION 1. Section 468L-1, Hawaii Revised Statutes, is amended by amending the definition of “travel services” to read:

““Travel services” includes transportation by air, sea; or rail; related ground transportation; hotel accommodations; or package tours[; or specialized air, land, or sea tour excursions and activities], whether offered on a wholesale or retail basis. This chapter shall not apply to any hotel as defined under section 486K-1, or air carrier as defined by the Federal Aviation Act of 1958 (49 USCS Appx §1301), as amended, for travel services for which they do not accept:

- (1) Consumer monies for services other than their own; or
- (2) Commissions or any other form of consideration.”

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 12, 1992.)

**ACT 200**

S.B. NO. 2883

A Bill for an Act Relating to Child Abuse.

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

SECTION 1. Section 350-4, Hawaii Revised Statutes, is repealed.

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

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

(Approved June 12, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 201**

S.B. NO. 2896

A Bill for an Act Relating to Substance Abuse Tests.

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

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

**“§ - Substance abuse testing of inmates.** (a) When an inmate under the custody of the department of public safety is subjected to substance abuse testing, the inmate shall be afforded the option of a confirmatory test by a licensed, certified laboratory as provided in chapter 329B. The cost of a confirmatory test shall be paid for by the State; provided that in those instances where a positive test result is confirmed, the inmate shall be charged with the cost of the confirmatory test.

(b) All specimens shall be sealed and coded in the presence of the inmate and the inmate shall sign an approved form acknowledging that the specimen has been sealed and coded in the inmate's presence. The director of the department of public safety shall establish a chain-of-custody procedure that includes a tracking form documenting the handling and storage of the specimen from collection to final disposition of the specimen.

(c) Positive test results of substance abuse testing and the availability of a confirmatory test shall be provided to the inmate in writing.

(d) A positive test result from a substance abuse test that fails to meet the requirements of this section shall not be reported or recorded.”

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 and] 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.”

## ACT 202

SECTION 3. The department of public safety shall submit a report on the implementation of this Act to the legislature at least twenty days prior to the convening of the 1993 regular session.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 202

S.B. NO. 2922

A Bill for an Act Relating to Uniformity of Professional and Vocational Licensing Laws.

*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- Review of examinations.** The department, in its discretion, may allow an applicant to review the most recent examination failed by the applicant, provided that under no circumstances shall the licensing authority or the department allow an examination to be copied.”

SECTION 2. Section 373-3, Hawaii Revised Statutes, is amended to read as follows:

**“§373-3 Fees; biennial renewal; restoration.** No applicant shall be examined under this chapter until the appropriate fees have been paid. [The director shall establish the amount for application, examination, license, restoration, and renewal fees by rules adopted pursuant to chapter 91. All fees shall be deposited with the director of finance to the credit of the general fund.]

Every person holding a license under this chapter shall register with the director and pay a biennial fee on or before June 30 of each even-numbered year. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after the expiration upon filing of an application and payment of a restoration fee.”

SECTION 3. Section 373-14, Hawaii Revised Statutes, is amended to read as follows:

**“§373-14 Revocation and cancellation.** [Any license may be revoked or canceled for cause at any time by the director] In addition to any other actions authorized by law, after affording all interested parties reasonable opportunity for a fair hearing[. Cause], the director may revoke or cancel any license for cause. In addition to any other grounds for disciplinary action authorized by law, cause means violation of this chapter or rule [or regulation] of the director.”

SECTION 4. Section 373-14.3, Hawaii Revised Statutes, is amended to read as follows:

**“[§]§373-14.3[] Hearings.** [In every case where it is proposed to refuse to grant a license or to revoke or suspend a license, the person concerned shall be given notice and hearing in conformity with chapter 91. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing.]

In all proceedings, the director or hearings officer duly appointed by the director shall have the same powers respecting administering oaths, compelling the attendance of witnesses, producing documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order or subpoena issued by the director or hearings officer, or the refusal of any witness to testify to any matter regarding which [such] the witness may be questioned lawfully, any circuit judge, on application by the director or hearings officer, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 5. Section 373-19, Hawaii Revised Statutes, is amended to read as follows:

**“§373-19 [Rules.] Powers and duties.** [The] In addition to any other powers and duties authorized by law, the director may [make,] adopt, amend, or repeal such rules as the director may deem proper to fully effectuate this chapter.”

SECTION 6. Section 436B-1, Hawaii Revised Statutes, is amended to read as follows:

**“[§]§436B-1[] Short title.** This chapter shall be known as and may be cited as the [Uniform] Professional and Vocational Licensing Act.”

SECTION 7. Section 436B-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“Reinstate” or “reinstatement” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously suspended by the licensing authority.”

2. By amending the definition of “restore” or “restoration” to read:

“Restore” or “restoration” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously forfeited [or suspended] by the licensing authority.”

SECTION 8. Section 436B-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The majority of the members to which the board is entitled shall constitute a quorum. The concurrence of a majority of the [quorum] members to which the board is entitled shall be necessary to make any action taken by the

board valid. Each board shall conduct its meetings in accordance with chapters 91 and 92.”

SECTION 9. Section 436B-7, Hawaii Revised Statutes, is amended to read as follows:

“[[§436B-7]] **Powers and duties of licensing authority.** In addition to any other powers and duties authorized by law, each licensing authority may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal non-binding interpretations, and conduct contested case proceedings pursuant to chapter 91;
- (2) Grant, deny, forfeit, renew, reinstate, or restore licenses, including the issuance of conditional licenses;
- (3) Revoke, suspend, or otherwise limit the license of any licensee for any violation of the provisions in this chapter, the licensing laws, or any rule or order of the licensing authority;
- (4) Develop requirements for licensure[; through the applicable licensing law or rules];
- (5) Investigate and conduct hearings regarding any violation of this chapter, the licensing laws, and any rule or order of the licensing authority;
- (6) Monitor the scope of practice of the profession or vocation regulated by the licensing authority;
- (7) Prepare, administer, and grade examinations, provided that the licensing authority may contract with a testing agency to provide [such] those services, and the licensing authority may also reserve the right to modify, amend, change or regrade the examination;
- (8) Create fact-finding committees which may make recommendations to the licensing authority for its deliberations;
- (9) Contract with qualified persons, including investigators, who may be exempt from [the provisions of] chapters 76 and 77 and who shall assist the licensing authority in exercising its powers and duties; and
- (10) Subpoena witnesses[,] and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the licensing authority’s power and duties, including the authority to conduct contested case proceedings under chapter 91.”

SECTION 10. Section 436B-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A licensing authority may delegate to the executive secretary, or other designee, any of its powers or duties as it deems reasonable and proper. The delegation of powers and duties by the licensing authority shall be made in accordance with the procedures set forth in section 436B-6(c). However, the licensing authority shall not delegate its discretionary functions resulting in a final decision, including but not limited to the following:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including the revocation, suspension, or imposition of conditions or fines; provided that summary suspensions may be delegated; and

- (3) Granting, denying, or otherwise conditioning license applications, unless the granting, denying, or conditioning of a license does not require the exercise of the licensing authority's expertise and discretion."

SECTION 11. Section 436B-9, Hawaii Revised Statutes, is amended to read as follows:

**"[§436B-9] Action on applications.** (a) Unless otherwise provided by law, each licensing authority shall take the following actions within one year after the filing of a complete application for licensure:

- (1) If it deems appropriate, conduct an investigation of the applicant; and
- (2) Notify the applicant in writing by mail of the decision regarding the application for licensure. If the application has been denied, written notice of the decision shall state specifically [state] the reason for denying the application and shall inform the applicant of the right to a hearing under chapter 91.

**(b) An application may be considered to be abandoned if it is not completed and the required documents and other information are not submitted to the department within one year from the date first filed. The licensing authority shall not be required to act on any abandoned application, and the application may be returned or destroyed by the licensing authority or its delegate.”**

SECTION 12. Section 436B-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§436B-10] Application for licensure.** Application for a license shall be made under oath on a form to be furnished by the licensing authority. The form may require the applicant to provide the following:

- (1) The applicant's [full] legal name;
- (2) A statement that the applicant is beyond the age of majority;
- (3) The applicant's current residence, business, and mailing addresses;
- (4) The applicant's social security number;
- (5) The applicant's employment during the ten years immediately preceding the date of the filing of the application, with names and addresses of each employer;
- (6) The applicant's educational background;
- (7) (5) The date and place of any conviction of a penal crime directly related to the profession or vocation in which the applicant is applying for licensure, unless the conviction has been expunged or annulled, or is otherwise precluded from consideration by section 831-3.1;
- (8) (6) A current photograph of the applicant; and
- (9) (7) Any other information the licensing authority may require to investigate the applicant's qualifications for licensure.”

SECTION 13. Section 436B-11, Hawaii Revised Statutes, is amended to read as follows:

**"[§436B-11] License requirements.** In addition to any other requirements provided by law, the licensing authority may also require the applicant to provide the following:

## ACT 202

- (1) A complete application with every applicable fee;
- (2) Attestation that the applicant is beyond the age of majority prior to the date of the application; in the case of a partnership applicant, each general partner shall attest that each partner is beyond the age of majority;
- (3) Proof that the applicant is competent, trustworthy, fair, and has financial integrity;
- (4) Proof that the applicant has satisfied all applicable business registration requirements prior to applying for licensure; and
- (5) Proof that the applicant is a United States citizen, United States national, or an alien authorized to work in the United States.”

SECTION 14. Section 436B-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§436B-15]]~~<sup>1</sup> **Fees and expenses.** No applicant or licensee shall be granted a license pursuant to the licensing laws unless the appropriate fees have been paid. Unless otherwise provided by law, the director shall establish the amount for all fees and expenses by rules adopted pursuant to chapter 91. The fees to be established by the director may include but not be limited to an application fee, filing fee, license fee, renewal fee, examination fee, and other reasonable and necessary fees related to the department's administrative costs. Unless otherwise provided by law, the fees shall be deposited [in] with the director of finance to the credit of the general fund of the State.”

SECTION 15. Section 436B-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§436B-17]]~~ **Filing of current addresses.** Each licensee shall file with the licensing authority the licensee's current mailing, business, and residence address. It shall be the licensee's duty to provide written notice to the licensing authority of any change of address[.] within thirty days of the change. Failure of the licensee to provide [such] the notice shall absolve the licensing authority, executive secretary, or any designee from any duty to provide notice of any matter required by law to be provided the licensee.”

SECTION 16. Section 436B-19, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§436B-19]]~~ **Grounds for refusal to renew, reinstate or restore and for revocation, suspension, [renewal, restoration,] denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, [refuse to renew or restore,] or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;

- (4) Practicing the licensed profession or vocation while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation;
- (8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (9) Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation;
- (10) Violating any condition or limitation upon which [the] a conditional or temporary license was issued;
- (11) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;
- (13) Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws [and] or this section;
- (14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation;
- (15) Failure to report in writing to the licensing authority any disciplinary decision issued against the licensee or the applicant in another jurisdiction[; within thirty days of the disciplinary decision];
- (16) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required; or
- (17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.”

SECTION 17. Section 436B-20, Hawaii Revised Statutes, is amended to read as follows:

**“[[§436B-20[] Restoration of suspended] Suspended license.** No license shall be suspended by the licensing authority for a period exceeding two years. A person whose license has been suspended may apply for [restoration] 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 [restoration] reinstatement shall be accompanied by all applicable fees, including but not limited to [restoration] reinstatement fees, any compliance resolution fund fees, and any recovery fund assessments.”

SECTION 18. Section 436B-22, Hawaii Revised Statutes, is amended to read as follows:

**“[[§436B-22[] Relinquishment no bar to jurisdiction.** The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license by a licensee shall not bar jurisdiction by the licensing authority to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the licensee's

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license[.] or fine the licensee.”

SECTION 19. Section 436B-23, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§436B-23]]~~ **Summary suspension.** Notwithstanding any law to the contrary, the licensing authority or its delegate may cause the immediate suspension or restriction of a license, subject to subsequent notice and hearing or other adequate procedures, upon a specific determination [by the licensing authority] that the failure to take such an action may result in: (1) an immediate and unreasonable threat to personal safety; or (2) fraud or misrepresentation upon consumers, and that, for the protection of the public from the possible consequences of practices, the licensee's license should be immediately suspended or restricted.

The licensing authority or its delegate may order the summary suspension of the license for a period not to exceed twenty days. The order of suspension shall be served upon the licensee at the same time as the notice of hearing for disciplinary action, and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended beyond twenty days except upon request of the licensee for a reasonable continuance to adequately prepare the licensee's defense. Any attempt by the licensee to continue the licensed activity while the license has been summarily suspended shall of itself be sufficient to warrant a permanent revocation of the license and shall subject the licensee to all penalties prescribed by this chapter, the applicable licensing laws, or any rule or order of the licensing authority.”

SECTION 20. Section 436B-24, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§436B-24]]~~ **Hearings.** Unless otherwise provided by law, [any proceeding before the licensing authority] in every case in which the licensing authority refuses to issue, renew, restore or reinstate a license, or proposes to take disciplinary action or other licensing sanctions against a licensee, the proceeding before the licensing authority shall be conducted in accordance with chapter 91.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the board or of a member thereof, or of any subpoena issued by it or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 21. Section 436B-27, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The department, licensing authority, or any person may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by law, and if injured thereby, for the recovery of damages. The department may also seek the imposition of fines provided by subsection (a) [except where the recovery of damages is requested, the]. The plaintiff or petitioner in a suit for an injunction need not

allege or prove actual damages to prevail. Reasonable attorney fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party.

(d) All tools, implements, armamentariums, documents, materials, or any other property used by any person to provide professional or vocational services without a license required by law shall be [subject to forfeiture under the provisions of chapter 712A.] declared forfeited to the State by the court and turned over to the department for disposition as it deems appropriate."

SECTION 22. Section 436E-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§436E-6[]] Board of acupuncture.** There shall be a board of acupuncture, the members of which shall be appointed by the governor [in accordance with section 26-34, except as provided in this section].

The board shall consist of five persons, two of whom shall be private citizens and three shall be acupuncturists licensed in accordance with this chapter. [The members of the board shall serve without pay but shall be reimbursed for actual expenses incurred in the discharge of their duties. A majority of the board shall constitute a quorum.] Each person on the board shall have a two-year term and shall serve not more than two terms, consecutive or otherwise."

SECTION 23. Section 436E-7, Hawaii Revised Statutes, is amended to read as follows:

**"[§436E-7[]] Powers and duties of the board.** [The] In addition to any other powers and duties authorized by law, the board shall:

- (1) Adopt rules in accordance with chapter 91 to carry out the purposes of this chapter, with special emphasis on the health and safety of the public;
- (2) Develop standards for licensure;
- (3) Prepare, administer, and grade examinations, provided that the board may contract with a testing agency to provide [such] those services;
- (4) Issue, renew, suspend, and revoke licenses;
- (5) Register applicants [of] or holders of a license;
- (6) Investigate and conduct hearings regarding any violation of this chapter and any rules of the board;
- (7) Maintain a record of its proceedings; and
- (8) Do all things necessary to carry out the functions, powers, and duties set forth in the chapter."

SECTION 24. Section 436E-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§436E-10[]] Revocation or suspension of licenses.** [(a) Any] In addition to any other actions authorized by law, any license to practice acupuncture under this chapter may be revoked or suspended by the board of acupuncture at any time in a proceeding before the board for any [one or more of the following acts or conditions on the part of the holder of the license:] cause authorized by law, including but not limited to the following:

- (1) Obtaining a fee on the assurance that a manifestly incurable ailment can be permanently cured;

- (2) The use of false, fraudulent, or deceptive advertising and making untruthful and improbable statements;
  - (3) Habitually using any habit forming controlled substance, such as opium or any of its derivatives, morphine, heroin, or cocaine;
  - (4) Procuring a license through fraud, misrepresentation, or deceit;
  - (5) Professional misconduct or gross carelessness or manifest incapacity in the practice of acupuncture; or
  - (6) Violating any rules adopted [hereunder].
- (b) If any license is revoked or suspended by the board for any act or condition listed in this section, the holder of the license shall be notified in writing by the board of the revocation or suspension. Any license to practice may be restored by the board as provided by rule.] under this chapter."

SECTION 25. Section 437-1.1, Hawaii Revised Statutes, is amended by deleting the definition "person".

[““Person” is defined as provided for in section 1-19.”]

SECTION 26. Section 437-5, Hawaii Revised Statutes, is amended to read as follows:

**“§437-5 Board.** A motor vehicle industry licensing board is created [for the State. The board] and shall consist of seven members [and shall be selected in the manner provided by section 26-34. The board shall designate one of its members as chairman]. Three of the members shall be engaged in the motor vehicle industry and four of the members shall be private citizens not connected with the industry.”

SECTION 27. Section 437-6, Hawaii Revised Statutes, is amended to read as follows:

**“§437-6 Powers and duties of the board.** In addition to any other [duties and powers granted by this chapter,] powers and duties authorized by law, the board shall:

- (1) Adopt, amend, and repeal from time to time rules not inconsistent with this chapter, as the board deems appropriate for the carrying out of the provisions and purposes of this chapter and for the efficient administration thereof, and the proper conduct of the business [which are] that is subject to this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by the board, which rules, when [promulgated and filed as provided in] adopted under chapter 91, shall have the effect of law[.];
- (2) Grant, deny, suspend, or revoke licenses [which] that are authorized by this chapter, fine licensees, and impose conditions as may be set forth in the rules of the board in connection with the granting of licenses[.];
- (3) Prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case[.];

- (4) Prescribe all forms to be used for the purposes of this chapter not otherwise provided for [herein.];
- (5) Establish, by rules, minimum qualifications for salespersons or dealers which must be met by applicants prior to the issuance of any license[.]; and
- (6) The exercise by the board of power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in chapter 91 or in this chapter."

SECTION 28. Section 437-7, Hawaii Revised Statutes, is amended by amending subsection (d) as follows:

"(d) All applicants for the issuance of a new license shall pay a fee concurrently with each application, except the application fee for a new [salesman's] salesperson's or auctioneer's license shall be a lesser amount than the fee for other licenses issued under this chapter. [The application fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.]"

SECTION 29. Section 437-28, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) [The] In addition to any other actions authorized by law, the board [may], after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed [from time to time] by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license [if] for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;

- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson or dealer:
  - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
  - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
  - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty; [or]
  - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any

- repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section<sup>2</sup> shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction; or
- (E) Has engaged in any improper business conduct;
- (18) Being an applicant or holder of a dealer's license:
- (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
- (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
- (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Being an applicant or holder of an auction's license:
- (A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or
- (B) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
- (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer;
- (B) Does not intend to be employed as a salesperson as the principal occupation; or
- (C) Intends to be employed as a salesperson for more than one dealer;
- (21) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or
- (22) Being a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative:
- (A) Has attempted to coerce or has coerced any dealer in this State to enter into any agreement with [such] the manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter a new franchise agreement with the dealer;
- (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with [such] the manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same

make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer;

- (C) Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon the cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement [shall], at the dealer's option, shall either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts, and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used [herein,] in this paragraph, "good faith" means the duty of each party to any franchise agreement fully to comply with that agreement, or to act in a fair and equitable manner towards each other;
- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be *prima facie* evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be *prima facie* evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor or production difficulty, or other similar cause beyond the reasonable control of the manufacturer;
- (E) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or

accessories or for similar transportation for the vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon the franchised dealer in this State during the same period is deemed to have so discriminated against the franchised dealer in this State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in this State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This subparagraph shall be liberally interpreted to effect its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs [which] that are related to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;

- (F) Has required a dealer of new motor vehicles in this State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, [which] that are regularly installed on that particular model of new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment [which] that are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense; or
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid

within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval.

(b) [Upon finding by the board or by the director of commerce and consumer affairs that a licensee is engaging within this State in activities which involve (1) an immediate and unreasonable threat to personal safety or (2) fraud or misrepresentation upon customers, and that, for the protection of the public from the possible consequences of practices, the business of the licensee should be immediately suspended, the board or the director may order the summary suspension of the license for a period not to exceed five days, pending a hearing by the board on the charges involving the practices. The order of suspension shall be served upon the licensee at the same time as the notice of hearing upon the charges, which hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing cannot be extended except upon request of the licensee for a reasonable continuance adequately to prepare a defense.

Any attempt of the licensee to continue the business or occupation while the license is so suspended shall of itself be sufficient to warrant a permanent revocation of the license and shall also subject the licensee to all the penalties prescribed by this chapter for violations.] For disregard of an order suspending [the] a license pursuant to section 436B-23, the board may summarily take possession of and impound all motor vehicles belonging to or in the possession of the licensee whether or not the vehicles are situated upon the licensed premises, pending final action in this case or [may], without taking possession of the motor vehicles, may render them unusable; provided that the right of the board to take any action and any liens for towing or storage or otherwise arising from the action are subject to and subordinate to any security interest [which] that has attached to the motor vehicles prior thereto, and the board [shall], prior to taking any action, shall give notice thereof to any secured party whose security interest in the motor vehicles is known to the board or who, prior to any action by the board, had filed a financing statement covering the motor vehicles or had noted the lien on the legal ownership certificates thereof."

SECTION 30. Section 437-29, Hawaii Revised Statutes, is amended to read as follows:

**"§437-29 [Notice of hearing; discretionary] Discretionary powers of board.** [(a) Before suspending, revoking, or refusing to renew a license, the board shall notify the licensee in writing of the specific charges against the licensee and shall afford the licensee an opportunity to be heard in person, or by counsel, with reference thereto. Notice of the hearing may be served in person, or by mailing the same by registered mail addressed to the address shown on the latest application for a license or amended license. No hearing shall be held less than fifteen days after notice has been so served.

(b)] (a) Where any applicant for a license or stockholder owning more than a ten per cent interest in the applicant or any officer, director, trustee, employee, or partner of [such] the applicant has been guilty of any act or omission involving personal misconduct which by this chapter is made ground for refusing to issue a license or for revoking or suspending a license, such as the making of a false statement of a material fact in an application, the commission of a fraudulent act in connection with the sale or negotiation for the [purpose]

purchase of motor vehicles, and the like, the board shall have discretion, nevertheless, to issue the license or suspend or reject the revocation of the license, upon such reasonable conditions, including the furnishing of an additional bond not exceeding \$5,000, as to future good conduct of the applicant and other person concerned, as the board determines, provided the board finds:

- (1) That there are extenuating circumstances [which] that indicate that the act or omission was not due to moral turpitude; or
- (2) That a reasonable time fixed by [regulation] rule of the board, not less than one year, has elapsed since the act or omission occurred, together with evidence of the person's rehabilitation or general good character, sufficient to indicate that the person is not likely to repeat the offense or engage in illegal, unlawful, or unconscionable practices; or
- (3) That [such] the favorable action by the board will not jeopardize the public interest.

[(c)] Denial of application for a new license. No person whose application for the issuance of a new license has been denied by the board shall be entitled to a hearing thereon, unless the person files a written request for a hearing with the board within fifteen days after the issuance of the notice of such denial.

(d) (b) Notice to treasurer. A copy of the application of each dealer or auction executed and approved by the board or a report of the suspension, revocation, or change of status of a dealer's or auction's license shall be furnished to the treasurer promptly upon the granting, suspension, revocation, or change of status of [such] the license."

SECTION 31. Section 437B-3, Hawaii Revised Statutes, is amended to read as follows:

**"[§437B-3]] Motor vehicle repair industry board.** There shall be [within the department of commerce and consumer affairs for administrative purposes] a motor vehicle repair industry board consisting of seven members [appointed by the governor in the manner prescribed in section 26-34]. Three members of the board shall be persons connected with the motor vehicle repair industry and at least two of [such] those members shall be motor vehicle mechanics registered under this chapter [except that those motor vehicle mechanics first appointed to the board need not be registered but shall be persons who would qualify for registration under this chapter]. The remaining four members shall not be connected with the motor vehicle repair industry. [The board shall elect one of its members chairman. No member of the board shall receive any compensation for the member's services, but each shall be reimbursed for necessary expenses incurred in the performance of the member's duties.]"

SECTION 32. Section 437B-4, Hawaii Revised Statutes, is amended to read as follows:

**"§437B-4 Powers and duties of board.** In addition to any other powers and duties [established by this chapter,] authorized by law, the board [shall], in accordance with this chapter and chapter 91[:] shall:

- (1) Establish such qualifications for the registration of motor vehicle repair dealers and motor vehicle mechanics as may be necessary for the welfare of the public and the motor vehicle repair industry, provided that no person shall be registered as a motor vehicle mechanic without first receiving certification as provided by this chapter[.];

- (2) Inquire into the practices and policies of the motor vehicle repair industry and make [such] rules with respect to such practices and policies as may be deemed important and necessary by the board for the welfare of the public and the motor vehicle repair industry[.];
- (3) Contract and cooperate with the University of Hawaii in developing and administering the certification program provided for in this chapter[.];
- (4) [Make,] Adopt, amend, and repeal such rules not inconsistent with this chapter, as the board deems appropriate for effectuating the purpose of this chapter and to ensure the welfare of the public[.];
- (5) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs[.]; and
- (6) Enforce this chapter and rules adopted pursuant thereto."

SECTION 33. Section 437B-11, Hawaii Revised Statutes, is amended to read as follows:

**"§437B-11 Prohibited practices.** [The] In addition to any other grounds for disciplinary action authorized by law, the following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 437B-12:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order [which] that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring the customer's signature, as soon as the customer signs the document;
- (4) Any other conduct [which] that constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or rules adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted practices or [workmanship;] professional standards;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other than stated on the registration except that mobile repair facilities may be permitted if the registration so indicates;
- (11) Rebuilding or restoring of rebuilt vehicles as defined in section 286-2 in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year;
- (12) Subcontracting, recommending, or referring motor vehicle repair work to, or in any way assisting, a motor vehicle repair dealer or

- mechanic whose registration or certification is not in full compliance with this chapter;
- (13) Failure to directly supervise a motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper; and
- (14) Servicing mobile air conditioners without using refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated or was in use by the motor vehicle repair industry prior to December 31, 1989.”

SECTION 34. Section 437B-12, Hawaii Revised Statutes, is amended to read as follows:

**“§437B-12 Enforcement.** (a) In addition to any other actions authorized by law, in accordance with [the provisions of] chapter 91, the board may fine, suspend, revoke, or refuse to renew the registration of a motor vehicle repair dealer or mechanic for any violation of this chapter or rules adopted pursuant thereto. The board may also order restitution as provided in subsection (c).

(b) Any fine that is imposed shall be based on the following schedule:

First offense .....	\$75
Second offense .....	\$150
Subsequent offenses .....	\$300 to \$1,000

(c) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle repair dealer or mechanic to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine schedule set forth in subsection (b).

(d) If a motor vehicle repair dealer operates more than one motor vehicle repair facility in this State, the board pursuant to subsection (a) may only revoke, suspend, or refuse to renew the registration of the specific motor vehicle repair facility [which] that has violated this chapter. [Such] The violation, or [such] the action by the board, shall not affect in any manner the right of the motor vehicle repair dealer to operate the dealer's other motor vehicle repair facilities; provided that the board may suspend, revoke, or refuse to renew the registration for all motor vehicle repair facilities operated in this State by a motor vehicle repair dealer upon a finding that the motor vehicle repair dealer has, or is, engaged in a course of repeated and wilful violations of this chapter, or rules adopted pursuant thereto.

[e] (e) The expiration of a valid registration shall not deprive the board of jurisdiction to proceed with any investigation or disciplinary proceeding against a motor vehicle repair dealer or mechanic or to render a decision suspending, revoking, or refusing to renew a registration.

[f] (e) Each mobile air conditioner serviced without using refrigerant recovery and recycling equipment, and each instance of wilfully causing or allowing CFCs to be released into the air from any source or process regulated under this chapter, other than through common use of a product or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules, constitutes a separate offense for which fines may be imposed under subsection (b)."

SECTION 35. 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

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consisting of seven members who shall be appointed and may be removed by the governor [in the manner prescribed in section 26-34]. 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 36. Section 438-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The] In addition to any other powers and duties authorized by law, the board may give examinations for the issuance of certificates of registration to practice barbering or issue temporary permits; grant, revoke, or suspend certificates 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 [which] that shall have the force and effect of law."

SECTION 37. Section 438-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The] In addition to any other actions authorized by law, the board may take disciplinary action against any person to whom a certificate has been issued under this chapter, including but not limited to revocation of the certificate, suspension, fine, or a combination thereof, or refuse to grant or renew any certificate for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Procuring a certificate through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross negligence, or manifest incapacity;
- (3) Permitting an uncertified person to perform activities which require a certificate 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 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 38. Section 439-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be a board of cosmetology consisting of seven members[, who shall be appointed, and may be removed, by the governor in the manner provided in section 26-34]."

SECTION 39. Section 439-5, Hawaii Revised Statutes, is amended to read as follows:

"**§439-5 [Meetings.] Quorum.** [The board shall hold meetings at times as it deems necessary.] A majority of the board shall constitute a quorum and the concurrence of a majority of the members present shall be necessary to make any action of the board valid."

SECTION 40. Section 439-7, Hawaii Revised Statutes, is amended to read as follows:

**“§439-7 [Rules.] Powers and duties.** [The] In addition to any other powers and duties authorized by law, the board may adopt, amend, and repeal rules [as] it deems proper to fully effectuate and carry out the purpose of this chapter which is declared to be the protection of the general public in its dealings with practitioners of cosmetology or those training the practitioners. [The rules shall be adopted subject to chapter 91 and shall have the force and effect of law.]”

SECTION 41. Section 439-15, Hawaii Revised Statutes, is amended to read as follows:

**“§439-15 License, fees.** (a) The board shall issue a license as a beauty operator, or instructor, as the case may be, to each person who passes the required examination, pays the proper fees, and meets all of the other requirements of this chapter. The license shall state specifically the licensure category for which the person is licensed and shall be signed by the chairperson and executive secretary and impressed with the seal of the board.

(b) All licenses issued by the board shall expire on December 31 of each odd-numbered year.

(c) Every licensed beauty operator and instructor shall pay to the board by December 31 of each odd-numbered year a biennial renewal fee. The payment of the renewal fee shall entitle the licensee to renewal of the license.

(d) Failure or refusal to renew the license by December 31 of each odd-numbered year shall constitute a forfeiture of the license. The license shall be [reinstated] restored upon payment of all delinquent fees and a penalty fee if application is made within three years after lapse.

[e) All fees required by this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.]”

SECTION 42. Section 439-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All licenses shall expire on December 31 in each odd-numbered year. Licenses may be renewed by payment of a biennial fee prior to the date of expiration. A lapsed license may be [reinstated] restored upon payment of all delinquent fees and a penalty fee.”

SECTION 43. Section 439-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All licenses shall expire on December 31 following the date of issue, but may be renewed by payment of the annual license fee prior to the date of expiration. A lapsed license may be [reinstated] restored upon the payment of all delinquent fees and a penalty fee.”

SECTION 44. Section 439-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other actions authorized by law, the board may take disciplinary action against any license issued under this chapter, including but not limited to revocation, suspension, fine, or a combination thereof, or

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refuse to grant or renew any license for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an unlicensed person to perform activities which require a license under this chapter;
- (4) Violation of this chapter or the rules adopted pursuant thereto;
- (5) Making any false representation or promise through advertising or otherwise;
- (6) Failing to display the license as provided in this chapter;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failing to comply with a board order; or
- (9) Making a false statement on any document submitted or required to be filed by this chapter.”

SECTION 45. Section 439-20, Hawaii Revised Statutes, is amended to read as follows:

**“§439-20 Hearing.** [In every case where it is proposed to revoke or suspend a license for any of the causes enumerated in section 439-19, the person concerned shall be given notice and opportunity for hearing in conformity with chapter 91. Any person aggrieved by the denial or refusal of a license by the board shall submit a request for a hearing pursuant to chapter 91 within sixty days of the date of the denial or refusal. The notice of hearing shall be given at least five days before the hearing.]

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the board[,] or any member thereof, or of any subpoena issued by it[,] or any member, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the board[,] or any member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 46. Section 440-2, Hawaii Revised Statutes, is amended to read as follows:

**“§440-2 Commission established.** There shall be a board which shall be known as the state boxing commission of Hawaii. The commission shall consist of five members [who shall be appointed and may be removed by the governor in the manner provided by section 26-34]. One of the members shall be a member of the Hawaiian association of an amateur athletic federation of the United States of America. One member shall be designated by the governor as [chairman] chairperson of the commission.”

SECTION 47. Section 440-7, Hawaii Revised Statutes, is amended to read as follows:

**“§440-7 [Secretary; other] Other employees.** [The department of commerce and consumer affairs shall employ a secretary subject to chapters 76 and 77. The secretary shall attend all meetings of the boxing commission, keep a full

and true record of all its books, documents, and papers, prepare for service notices and other papers as may be required by the commission, coordinate and supervise the activities and duties of whatever other offices the commission establishes, and otherwise act for and in behalf of the commission as the commission may prescribe and in a manner not inconsistent with the terms and intent of this chapter.]

Subject to chapters 76 and 77, the department of commerce and consumer affairs may employ clerks, inspectors, and other employees as it deems necessary."

SECTION 48. Section 440-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§440-8.5 Powers and duties of the commission.** In addition to [the] any other powers and duties [enumerated elsewhere in this chapter,] authorized by law, the commission shall adopt rules pursuant to chapter 91 to provide for the following:

- (1) A trust or escrow account system to ensure that all financial obligations are met by a promoter before a boxing contest. This system shall supersede all other financial obligatory requirements imposed on promoters by this chapter;
- (2) A public record accounting for the distribution of all tickets provided to the commission by a promoter and anything else of value which is provided to the commission;
- (3) An annual clinic or seminar on health and medical safety for boxers;
- (4) A mandatory neurological examination for any boxer who is knocked out in a boxing contest, and an eye examination as part of a boxer's annual medical examination; and
- (5) An automatic medical suspension from boxing for a period of time to be determined by the commission for any boxer who is knocked out from head blows or who has received a severe beating about the head. The period of time of the automatic medical suspension shall be based upon the severity of the beating received by the boxer."

SECTION 49. Section 440-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The] In addition to any other actions authorized by law, the commission shall have the power to revoke or suspend the license of any person, partnership, or corporation licensed under any of the classifications designated in this chapter, or fine the licensee, or both, for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Violation of any provision of this chapter or the rules adopted pursuant thereto or any other law, [regulation,] or rule [which] that applies to those persons licensed under this chapter;
- (2) Manifest incapacity, professional misconduct, or unethical conduct;
- (3) Making any false representations or promises through advertising or other dissemination of information;
- (4) Any fraudulent, dishonest, or deceitful act in connection with the licensing of any person, partnership, or corporation under this chapter or in connection with any boxing match;
- (5) Making any false or misleading statement in any application or document submitted or required to be filed in this chapter;

- (6) Revocation or suspension of a license or other disciplinary action against the licensee by another state or boxing commission; or
- (7) Failure to report any disciplinary action, including medical and mandatory suspensions, or revocation or suspension of a license in another jurisdiction within fifteen days preceding any boxing match in which the licensee participates."

SECTION 50. Section 441-19, Hawaii Revised Statutes, is amended to read as follows:

**"§441-19 Powers and duties of director.** In addition to any other [duties and] powers and duties [granted by this chapter] authorized by law, the director [shall], pursuant to chapter 91[:] shall:

- (1) Grant licenses to cemetery and pre-need funeral authorities pursuant to this chapter and rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter and carry out the purpose thereof, which [purpose] is the protection of the general public in its acquisitions of cemetery property, pre-need interment services, at-need funeral services, and pre-need funeral services. The rules may forbid acts or practices deemed by the director to be detrimental to the accomplishment of the purpose of this chapter, and the rules may require mortuary, cemetery, and pre-need funeral authorities to make reports to the director containing such information as will better enable the director to enforce this chapter and the rules, or as will better enable the director from time to time to amend the rules to more fully effectuate the purpose of this chapter[, and further, the]. The rules may also require mortuary, cemetery, and pre-need funeral authorities to furnish reports to their clients containing such matters of information as the director deems necessary to promote the purpose of this chapter; provided that this enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the director's broad general power to make all rules necessary to fully effectuate the purpose of this chapter;
- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Fine, suspend, or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause [which] that would be [ground] grounds for revocation or suspension of a license;
- (5) Report to the governor annually and at such other times and in such other manner as the governor may require concerning the director's activities;
- (6) Publish and distribute pamphlets and circulars containing such information as the director deems proper to further the accomplishments of the purpose of this chapter;
- (7) Investigate the actions of any person acting in the capacity of a licensee under this chapter if there is reason to believe that there may be a violation of this chapter or the rules adopted pursuant thereto;
- (8) Extend the deadline for, or defer the filing of, any periodic report required under this chapter, provided that the licensee meets the conditions and requirements set forth by the director in rules; and

- (9) Provide in the rules for alternatives to any bonding or insurance requirement imposed by this chapter when [such] a bond or insurance cannot [be] reasonably be secured and the alternative measures provide for the same degree of protection to the consumer."

SECTION 51. Section 441-23, Hawaii Revised Statutes, is amended to read as follows:

**"§441-23 Fine, revocation, suspension, and renewal of authority licenses.** [The] In addition to any other actions authorized by law, the director may fine an authority, revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any [such] license for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Any dishonest or fraudulent act as a cemetery or pre-need funeral authority [which] that causes substantial damage to another;
- (2) Making repeated misrepresentations or false promises through advertising or otherwise;
- (3) Violation of this chapter or the rules adopted pursuant thereto;
- (4) Commingling the money or other property of others with that of the licensee;
- (5) Adjudicated insane or incompetent;
- (6) Selling or offering to sell any cemetery property, pre-need interment, funeral services, or pre-need funeral services based on speculation or promises of profit from resale;
- (7) Failing to file the actuarial study or an audited financial statement or to maintain in effect the bond as required by section 441-22; or
- (8) Failing to maintain pre-need trusts or perpetual care funds as required by this chapter.

[No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.]"

SECTION 52. Section 441-29, Hawaii Revised Statutes, is amended to read as follows:

**"§441-29 Application for license; fees.** Every applicant for a license under this chapter shall file an application with the director in such form and setting forth such information as may be prescribed or required by the director and shall furnish such additional information bearing upon the issuance of the license as the director requires. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a copartnership or corporation any officer may sign the application and verify the same on behalf of the applicant. The application shall be accompanied by an application fee[, none of which is refundable, as provided in rules adopted by the director pursuant to chapter 91]."

SECTION 53. Section 441-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The fee for a cemetery or pre-need funeral authority original license, for reinstatement of a suspended license, for biennial renewal of a license, and for the reissuance of a license when there has been a change in the licensee's name, shall be as provided in rules adopted by the director pursuant to chapter 91. [All

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fees and other moneys collected or received under this chapter shall be paid to the director and deposited with the director of finance to the credit of the general fund.]”

SECTION 54. Section 442-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person to practice chiropractic without a license. Any person applying for a license to practice chiropractic shall submit an application to the board of chiropractic examiners sixty days prior to the examination accompanied by the application and examination fees, and such documents, and affidavits as are prescribed by law. The application shall be submitted in accordance with the rules of the board of chiropractic examiners, shall be on a form prescribed by the board, and shall be signed and verified under oath by the applicant[, and in]. In addition thereto, each applicant shall furnish to the board of examiners:

- (1) An unretouched, unmounted photograph taken within sixty days next preceding the date of the application;
- (2) A photostatic copy of the diploma from a chiropractic college or school holding status with the commission on accreditation as provided in this section;
- (3) After March 1, 1958, satisfactory proof that the applicant has completed two years of liberal arts or science study at a university or college; provided that the foregoing requirement shall not [be applicable] apply to applicants having entered an approved chiropractic college on or before October 31, 1955; and
- (4) Evidence of having attended and graduated from a chiropractic college accredited by, or recognized as a candidate for accreditation by, any chiropractic accrediting agency recognized by the United States Department of Education. Students who have matriculated in any chiropractic college prior to October 15, 1984, shall be exempt.”

SECTION 55. 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,” [which] that shall consist of five members[, who shall be appointed by the governor, in the manner prescribed in section 26-34]. 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. [Each member of the board shall serve without pay; provided that the actual and necessary traveling expenses of the members of the board incurred in connection with the performance of official duties shall be paid by the department of commerce and consumer affairs, upon proper vouchers approved by the department.]”

SECTION 56. Section 442-5, Hawaii Revised Statutes, is amended to read as follows:

**“§442-5 Board’s powers.** [The] In addition to any other powers and duties authorized by law, the board [of chiropractic examiners] may adopt a seal, which shall be affixed to all official acts of the board; adopt from time to time such rules as the board may deem proper and necessary for the performance of its work; examine applicants and issue licenses and order the limitation, restriction, revocation, suspension, or placement under probation of licenses to practice chiropractic; summon witnesses and take testimony as to matters pertaining to its duties; [promulgate] adopt by rule continuing educational requirements for reregistration of licenses designed to promote the continuing professional competence of licensees and protection of the public. Each member may administer oaths and take affidavits, and do any and all things necessary or incidental to the exercise of the powers and duties herein granted or imposed.”

SECTION 57. Section 442-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other actions authorized by law, the board [of chiropractic examiners] shall refuse to issue or may order any license issued under this chapter to be revoked, suspended, limited, restricted, or placed under probation at any time in a proceeding before the board or fine a licensee for any [one or more of the following grounds:] cause authorized by law, including but not limited to the following:

- (1) Procuring or aiding or abetting in procuring a criminal abortion;
- (2) Employing what is popularly known as a “capper” or “steerer”;
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Wilfully betraying a professional secret;
- (5) Making any untruthful statement in advertising one’s practice or business under this chapter;
- (6) False, fraudulent, or deceptive advertising;
- (7) Advertising directly or indirectly, or in substance upon any card, sign, newspaper advertisement, or other written or printed sign of advertisement that the holder of a license or the licensee’s employer or employee will treat, cure, or attempt to treat or cure any venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, lost manhood, sexual weakness, or sexual disorder or any disease of the sexual organs;
- (8) Being habitually intemperate;
- (9) Habitually using any habit-forming drug, such as opium, or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
- (10) The advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
- (11) Procuring a license through fraudulent misrepresentation or deceit;
- (12) Professional misconduct or gross carelessness or manifest incapability in the practice of chiropractic;
- (13) Violating section 453-2; and
- (14) Knowingly recording, registering, or filing, or offering for recordation, registration, or filing, with the department of commerce and consumer affairs any written statement which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information.”

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SECTION 58. Section 443B-1, Hawaii Revised Statutes, is amended by deleting the definition "person".

[““Person” includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.”]

SECTION 59. Section 443B-2, Hawaii Revised Statutes, is amended to read as follows:

**“§443B-2 Powers and duties of the director.** In addition to any other [duties and powers granted by this chapter,] powers and duties authorized by law, the director shall:

- (1) Grant certificates of registration to collection agencies pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter;
- (3) Enforce this chapter and the rules relating to collection agencies;
- (4) Fine, suspend, terminate, or revoke any registration for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any registration for any cause which would be grounds for revocation, termination, or suspension of a registration;
- (5) Investigate the actions of any person or agency acting or alleged to be acting in the capacity of a registrant under this chapter;
- (6) Order an audit of an account or an unannounced verification of an account's cash balance; and
- (7) Extend the deadlines required under this chapter and the rules; provided that the registrant or applicant meets the conditions and requirements prescribed.”

SECTION 60. Section 443B-4.57, Hawaii Revised Statutes, is amended to read as follows:

**“[§443B-4.57[]] Fine, revocation, suspension, termination, denial of registration, renewal of registration, or restoration of registration.** [The] In addition to any other actions authorized by law, the director may fine any agency, revoke or terminate any registration, suspend the right of the registrant to use the registration, or refuse to renew or restore a registration for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Dishonesty, deceit, fraud, or gross negligence in conducting business as a collection agency;
- (2) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (3) Advertising or acting as a collection agency without a current and active certificate of registration issued under this chapter;
- (4) Violation of any provision of this chapter or the rules adopted pursuant thereto;
- (5) Commingling of clients' funds or other property;
- (6) Breach of fiduciary duty;
- (7) Failure to notify the director in writing of any material change in information; and
- (8) Providing false or misleading information at the time of application or during the time of registration.”

SECTION 61. Section 443B-4.59, Hawaii Revised Statutes, is amended to read as follows:

**“[§]443B-4.59[] Restoration of forfeited registration.** (a) A forfeited registration may be restored by submitting an application provided by the director and by paying a delinquent renewal fee and a restoration fee in the amount specified by rule.

(b) Failure to restore a forfeited registration within sixty days of forfeiture shall cause the registration to be terminated.

(c) The director may extend the sixty day limitation for good cause shown.

(d) Upon termination of registration, the collection agency shall cease to do business.

[e) Within fifteen days of receipt of the notification of termination, the collection agency may request an administrative hearing pursuant to chapter 91 to contest the termination.]”

SECTION 62. Section 444-1, Hawaii Revised Statutes, is amended to read as follows:

**“§444-1 Definitions.** As used in this chapter:

[1] “Board” means the contractors license board[;].

“CFC” means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-13, CFC-112, CFC-113, CFC-114, and CFC-115. The term “CFC” does not include any hydrofluorocarbon (“HFC”) or hydrochlorofluorocarbon (“HCFC”) compounds.

[2] “Contractor” means any person who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake to alter, add to, subtract from, improve, enhance, or beautify any realty or construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding or other structures or works in connection therewith[;].

[3] “Contractor” includes a subcontractor, a specialty contractor, and any person, general engineering, general building, or specialty contractor who performs [construction as defined in section 444-1(2)] any of the activities listed in the previous paragraph directly or indirectly for the federal government[;].

[4] “Person” means an individual, partnership, joint venture, corporation, or any combination thereof. “Corporation” includes an association, business trust or any organized trust or any organized group of persons[;]

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Investigator” means any person employed by the department of commerce and consumer affairs to investigate matters relating to any person who furnishes commodities or services for which a license is required from the department or any board or commission thereunder.

“Refrigerant recovery and recycling equipment” means a device used to recover and to purify CFCs from a device for later reuse.

[5] “RME” means responsible managing employee[;].

[6] “Sale” means any arrangement between two or more persons as a result of which there is, or is to be, a transfer of property for a consideration[;].

[7] “Director” means the director of the department of commerce and consumer affairs;

(8) "Investigator" means any person employed by the department of commerce and consumer affairs to investigate matters relating to any person who furnishes commodities or services for which a license is required from the department or any board or commission thereunder.

(9)<sup>1</sup> "CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-13, CFC-112, CFC-113, CFC-114, and CFC-115. The term "CFC" does not include any hydrofluorocarbon ("HFC") or hydrochlorofluorocarbon ("HCFC") compounds.

(10)<sup>1</sup> "Refrigerant recovery and recycling equipment" means a device used to recover and to purify CFCs from a device for later reuse.]

If any provision of this section, or the application thereof to any person, or circumstances, is held to be invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable."

SECTION 63. 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 [appointed by the governor in the manner prescribed in section 26-34].

(b) Of the board members:

- (1) Ten [members of the board] 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 [members of the board] shall be general engineering or building contractors, five [members] shall be specialty contractors, and three [members] shall be noncontractors. No member shall receive any compensation for [his] the member's services, but each shall be reimbursed for [his] necessary traveling expenses incurred in the performance of [his] duties.
- (3) Each county shall be represented on the board.

(c) [Except for members of the board first appointed, no] No one, except the three noncontractor members, shall be eligible for appointment who does not at the time of [his] the member's appointment hold a valid and unexpired license to operate as a contractor. [Each of the contractor members of the board first appointed shall, within thirty days of his appointment, qualify for and obtain a license to operate as a contractor.]

(d) Organization, records, reports. Immediately upon the appointment and qualification of the original members, and annually thereafter, the board shall organize by the election of one member as chairman and one member as vice-chairman. The board shall keep a complete record of all its proceedings and shall present annually to the governor through the director of commerce and consumer affairs a detailed statement of the receipts and disbursements of the board during the preceding year, with a statement of its acts and proceedings and such recommendations as the board may deem proper.]"

SECTION 64. Section 444-4, Hawaii Revised Statutes, is amended to read as follows:

**"§444-4 Powers and duties of board.** In addition to any other [duties and powers granted by this chapter] powers and duties authorized by law, the contractors license board shall:

- (1) Grant licenses, including conditional licenses, to contractors pursuant to this chapter and rules;
- (2) [Make,] Adopt, amend, or repeal such rules as it may deem proper fully to effectuate this chapter and carry out the purpose thereof, which [purpose] is the protection of the general public. All [such] rules shall be approved by the governor and the director [of commerce and consumer affairs], and when adopted pursuant to chapter 91, shall have the force and effect of law. The rules may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter. The rules may require contractors to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules, or as will better enable the board from time to time to amend the rules more fully to effectuate the purposes of this chapter. The rules may require contractors to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the board's general power to make all rules necessary fully to effectuate the purpose of this chapter;
- (3) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs, including, but not limited to, procedures for the disposal of air conditioning units utilizing CFCs that include mandatory recovery and recycling of CFCs;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- (5) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- (6) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter; and
- (7) Contract for professional testing services to prepare, administer, and grade [such] the examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of such examinations and tests, whether they shall be oral, written, or both, and the score that shall be deemed a passing score."

SECTION 65. Section 444-5, Hawaii Revised Statutes, is amended to read as follows:

**"§444-5 [Executive secretary; other] Other assistants.** [(a)] Subject to chapters 76 and 77 the department [of commerce and consumer affairs] may employ and remove such administrative and clerical assistants as the contractors license board may require [and prescribe their powers and duties].

- [b) (1) The department shall employ an executive secretary of the board whose position shall be subject to chapters 76 and 77. The executive secretary shall be employed with due regard to the executive secretary's fitness, thorough administrative ability and knowledge of and experience in the business of contracting. The executive secretary shall devote the executive secretary's entire time to the duties of the executive secretary's office and shall not be actively engaged or

employed in any other business, vocation, or employment, nor shall the executive secretary have any pecuniary interest, direct or indirect, in any contracting enterprise or enterprises conducted or carried on within the State;

- (2) The executive secretary shall, under the supervision of the board, administer this chapter and the rules and regulations and orders established thereunder and perform such other duties as the board may require; the executive secretary shall attend but not vote at all meetings of the board; the executive secretary shall be in charge of the offices of the board and responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to contracting;
  - (3) The board may, by written order filed in its office, delegate to the executive secretary such of its powers or duties as it deems reasonable and proper for the effective administration of this chapter, except the power to make rules or regulations. The delegated powers and duties may be exercised by the executive secretary in the name of the board.
- (c) The department may appoint an investigator who shall be exempt from the provisions of chapter 76 and who shall act as investigator for the contractors license board.]”

SECTION 66. Section 444-12, Hawaii Revised Statutes, is amended to read as follows:

**“§444-12 Application; fees.** (a) Every applicant for a license under this chapter shall file an application with the [contractors license] board in such form and setting forth such information as may be prescribed or required by the board, and shall furnish such additional information bearing upon the issuance of the license as [it] the board shall require. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a [copartnership,] partnership, joint venture, or corporation, any member or officer thereof may sign the application and verify the same on behalf of the applicant.

[b) Every application for a license hereunder shall be accompanied by an application fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(c)] (b) Every applicant who is required by the board to be examined shall pay, directly to the testing agency, an examination fee as provided in rules adopted by the director pursuant to chapter 91.”

SECTION 67. Section 444-15, Hawaii Revised Statutes, is amended to read as follows:

**“§444-15 Fees; biennial renewals.** [(a) The fees for each license and biennial renewal thereof prescribed by this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b)] The biennial fee or inactive license fee shall be paid to the [contractors license] board on or before April 30 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee and submit all documents requested by the board before [such] that date shall constitute a forfeiture of the licensee's license. Any [such] forfeited license may be restored upon written application therefor within sixty days from [such] that date and the payment of the required fee plus an amount equal to ten per cent thereof.

Upon written request of a licensee, the board may place that person's active license in an inactive status. The license, upon payment of the inactive license fee, may continue inactive for the biennial period. Failure, neglect, or refusal of any licensee in inactive status to pay the inactive license fee shall constitute a forfeiture of the license. The license may be reactivated at any time during the biennial period by making written request to the board and by fulfilling all the requirements, including the payment of the appropriate fees."

SECTION 68. Section 444-16, Hawaii Revised Statutes, is amended to read as follows:

**"§444-16 Action on applications.** Within one hundred and twenty days after the filing of a proper application for a license and the payment of the required fees, the [contractors license] board shall (1) conduct an investigation of the applicant, and in [such] that investigation may post pertinent information, including but not limited to, the name and address of the applicant, and if the applicant is associated in any partnership, corporation, or other entity, the names, addresses, and official capacities of the applicant's associates; and (2) either issue a license to the applicant or else notify the applicant in writing by registered mail of the board's decision not to grant the license and specifically notify applicant of the applicant's right to have a hearing within fifteen days on the board's decision. The hearing shall be conducted in accordance with [section 444-18.] chapter 91."

SECTION 69. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**"§444-17 Revocation, suspension, and renewal of licenses.** [The contractors license] In addition to any other actions authorized by law, the board may revoke any license issued hereunder, or suspend the right of the licensee to use [such] the licenses, or refuse to renew any [such] license for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Any dishonest or fraudulent or deceitful act as a contractor [which] that causes a substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, [which] that is prejudicial to a person entitled to have the construction project or operation completed in accordance with [such] those plans and specifications;
- (6) Wilful violation of any law of the State, or [of] any [political subdivision thereof,] county, relating to building, including any violation of any applicable rule [or regulation] of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than

- three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
- (8) When the licensee being a [copartnership] partnership or a joint venture permits any member or employee of [such copartnership] the partnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
  - (9) When the licensee being a corporation permits any officer or employee of [such] the corporation who does not hold a license to have the direct management of the contracting business thereof;
  - (10) Misrepresentation of a material fact by an applicant in obtaining a license;
  - (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
  - (12) Wilful failure in any material respect to comply with this chapter or the rules [and regulations promulgated] adopted pursuant thereto;
  - (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
  - (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
  - (15) 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 [such] the debt or with intent to hinder, delay, or defraud the person to whom [such] the debt is due;
  - (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
  - (17) Knowingly entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
  - (18) Servicing an air conditioning unit utilizing CFCs without using refrigerant recovery and recycling equipment;
  - (19) Disposing of an air conditioning unit utilizing CFCs without first removing the CFCs with refrigerant recovery and recycling equipment; and
  - (20) Wilfully causing or allowing CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.

[No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years.]

SECTION 70. Section 447-4, Hawaii Revised Statutes, is amended to read as follows:

**“§447-4 Revocation of dentist’s license.** The board of dental examiners

may revoke the license of any dentist who permits any dental hygienist employed by or working under the dentist's supervision to perform any dental operation other than that permitted under this chapter[; provided before any license is revoked the holder thereof shall be notified in writing of the grounds for revocation and shall be given an opportunity to present evidence and be heard by the board].”

SECTION 71. Section 447-6, Hawaii Revised Statutes, is amended to read as follows:

**“§447-6 Prohibited acts; discipline; penalty.** (a) [The] In addition to any other actions authorized by law, the board of dental examiners may suspend or revoke any license issued under this chapter or fine a licensee for any [of the following reasons:] cause authorized by law, including but not limited to the following:

- (1) Professional misbehavior; or
- (2) Any other violation of this chapter or rules adopted pursuant thereto.

(b) Any person who violates any of the provisions of this chapter[,] or any other law, or who fails to comply with any of the requirements or provisions of this chapter[,] or any other law, a penalty for which is not otherwise provided, shall be fined not less than \$50, nor more than \$250, and each day's violation or failure to comply [with the provisions hereof] shall be deemed a separate violation and shall result in a separate fine.

(c) In any proceeding for the suspension or revocation of a license, or the imposition of a fine on a licensed dental hygienist, the licensee shall be given notice and opportunity for a hearing in conformity with chapter 91.]”

SECTION 72. Section 448-5, Hawaii Revised Statutes, is amended to read as follows:

**“§448-5 Board of examiners; appointment.** The [governor shall appoint, in the manner prescribed in section 26-34, and for neglect of duty, incompetency, or dishonorable conduct, may remove the] board of dental examiners[, which] 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. [The members of the board shall serve without pay, and each shall serve until a successor is appointed and qualified.] As used in this chapter, “board” means the board of dental examiners.”

SECTION 73. Section 448-6, Hawaii Revised Statutes, is amended to read as follows:

**“§448-6 [Officers;] Powers and duties, meetings.** [(a) The board of dental examiners shall elect one of its members chairman and another as vice-chairman.

(b)] (a) The board shall meet for the purpose of examining applicants and for other purposes at such times as it designates. Adequate notice of the times and places of examinations shall be given by publication in a newspaper of general circulation in the State. The board may prescribe which members shall participate in the examination and licensing procedures.

[(c) The] (b) In addition to any other powers and duties authorized by law, the board shall adopt such rules as it deems proper and necessary for the performance of its work."

SECTION 74. Section 448-9, Hawaii Revised Statutes, is amended to read as follows:

**"§448-9 Application for examination for graduates of dental colleges accredited by the American Dental Association.** Any person of eighteen years or more, shall be eligible to take an examination before the board [of dental examiners] upon [complying with the following requirements:] submission of:

- (1) [Submit an] An application [in writing] on a form prescribed by the board to the executive secretary of the board not later than sixty days prior to the date of the scheduled examination[.];
- (2) [Remit application] Application and examination fees[.]; and
- (3) [Submit with each application documentation] Documentation and credentials [which] that shall include but are not limited to the following:
  - (A) A recent unmounted photograph of the applicant;
  - (B) A diploma or certificate of graduation from a dental college accredited by the Council of Dental Education of the American Dental Association, recognized and approved by the board; and
  - (C) A certificate or other evidence satisfactory to the board of having passed parts I and II of the examination of the National Board of Dental Examiners."

SECTION 75. Section 448-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person of eighteen years or more, who is a graduate of a foreign dental school not accredited by the [America] American Dental Association and a permanent resident of the United States shall be eligible to take an examination before the board [of dental examiners] upon [complying with the following requirements:] submission of:

- (1) [Submit an] An application [in writing] on a form prescribed by the board to the executive secretary of the board not later than sixty days prior to the date of the scheduled examination[.];
- (2) [Remit application] Application and examination fees[.]; and
- (3) [Submit with each application documentation] Documentation and credentials [which] that shall include but are not limited to the following:
  - (A) A recent unmounted photograph of the applicant;
  - (B) A complete transcript of the academic and clinical dental school record of the applicant, authenticated by either the president, secretary, dean, or registrar of the educational institution. The transcript shall be accompanied by an affidavit showing to the satisfaction of the board that the applicant is

the person named in each transcript submitted, that the transcript is a true recital of the full number of academic years of undergraduate courses required for graduation, and that [such] the courses of professional instruction in dentistry were accomplished in a resident course of instruction;

- (C) A legible, true copy of the dental diploma or dental degree conferred upon the applicant as evidence of the completion of the courses of dental instruction required for graduation, authenticated by either the president, secretary, dean, or registrar of the educational institution. The diploma or degree shall be accompanied by an affidavit showing to the satisfaction of the board that the applicant is the person named in the document, that the applicant is the lawful holder, and that it was procured in the regular resident course of instruction and examination without fraud or misrepresentation;
- (D) Certification by the licensing authority of the governmental jurisdiction, wherein is located the foreign institution from which the applicant was graduated that the applicant has been admitted or licensed to practice dentistry in that foreign state, country, or political subdivision;
- (E) A certificate or other evidence satisfactory to the board of having passed parts I and II of the examination of the National Board of Dental Examiners; and
- (F) Other documentation and credentials as may be required by the board."

SECTION 76. Section 448-10, Hawaii Revised Statutes, is amended to read as follows:

**"§448-10 Examination; time[; establishment of fees by rule; disposition of fees].** (a) The board [of dental examiners] shall require all applicants to take the state written and practical examination on dentistry. In administering the examination the State shall consider current trends in dental education. The requirements for the examination in operative and laboratory dentistry shall be decided by the board and mailed to each applicant. All instruments, materials, and patients shall be supplied by the applicant. Two examinations shall be held each year.

(b) The board [of dental examiners] shall establish and administer a restorative technique examination to all qualified applicants under section 448-9.5. In administering the examination the State shall consider current trends in dental education. No applicant shall be permitted to take the practical examination under subsection (a) unless the applicant has passed the restorative technique examination. [The restorative technique examination fee, together with all other fees or charges in this chapter or in rules adopted by the board, shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be deposited with the director of finance to the credit of the general fund.]"

SECTION 77. Section 448-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board [of dental examiners] shall refuse to issue a license to any applicant who fails to meet all of the requirements imposed by this chapter and

may refuse to issue a license to any applicant who has previously committed any act which would, if committed by a licensee, result in the revocation or suspension of the license.

[The] In addition to any other actions authorized by law, the board may suspend or revoke any license issued under this chapter and may fine a licensee for any [of the following reasons:] cause authorized by law, including but not limited to the following:

- (1) Fraud in procuring license;
- (2) Habitual intoxication or addiction to the use of drugs;
- (3) Wilful or repeated violations of the rules of the department of health;
- (4) Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court;
- (5) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient;
- (6) Assisting in the care or treatment of a patient, without the knowledge of the patient or the patient's legal representative;
- (7) Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry;
- (8) Making any misrepresentations or false promises, directly or indirectly, to influence, persuade, or induce dental patronage;
- (9) Professional connection or association with, or lending one's name to another for, the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding oneself, themselves, or itself out in any manner contrary to this chapter;
- (10) By false or fraudulent representations, obtaining or seeking to obtain practice or money or any other thing of value;
- (11) Practicing, either in the State or elsewhere, under a name other than one's own;
- (12) Any other improper, unprofessional, or dishonorable conduct in the practice of dentistry; and
- (13) Violation of section 447-4."

SECTION 78. Section 448-18, Hawaii Revised Statutes, is amended to read as follows:

**“§448-18 Hearings.** [In every case in which it is proposed to revoke, suspend, or refuse to issue a license under section 448-17, the person concerned shall be given notice and opportunity to be heard by the board of dental examiners in conformity with chapter 91. Written notice shall be given to the person concerned at least five days before the hearing.]

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the board[,] or of a member thereof, or of any subpoena issued by it[,] or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 79. Section 448E-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§448E-2] Board; appointment.** There is established [within the department of commerce and consumer affairs for administrative purposes] the board of electricians and plumbers consisting of seven members [appointed by the governor as provided in section 26-34. The board shall designate one of its members as chairman]. Two of the members shall be engaged in the electrical trade and two of the members shall be engaged in the plumbing trade. Three of the members shall be private citizens not connected with the industry."

SECTION 80. Section 448E-4, Hawaii Revised Statutes, is amended to read as follows:

**"§448E-4 Powers and duties of board.** [The] In addition to any other powers and duties authorized by law, the board shall have all the powers and duties necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limitation, the following powers and duties:

- (1) To grant licenses which shall be renewable on a biennial basis to:
  - (A) [Journeyman] Journeyworker electricians[,];
  - (B) [Journeyman] Journeyworker specialty electricians[,];
  - (C) Supervising electricians[,];
  - (D) Supervising specialty electricians[,];
  - (E) Master plumbers[,];
  - (F) [Journeyman] Journeyworker plumbers[,];
  - (G) Maintenance electricians[,];
  - (H) [Journeyman] Journeyworker industrial electricians[,]; and
  - (I) Supervising industrial electricians;
- (2) To [make,] adopt, amend, or repeal such rules as it may deem proper to effectuate this chapter and to insure the safety and welfare of the general public. All [such] rules shall be adopted pursuant to chapter 91. The rules may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
- (3) To enforce this chapter and rules adopted pursuant thereto including the denial, suspension, or revocation of any license; and
- (4) To examine all applicants and determine their qualifications prior to the issuance of licenses."

SECTION 81. Section 448E-8, Hawaii Revised Statutes, is amended to read as follows:

**"§448E-8 Fees; biennial renewals.** [(a) The fees for each original license and renewal thereof prescribed by this chapter shall be fixed by the board.

(b)] The biennial renewal fee shall be paid to the board before July 1 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee before such date shall constitute a forfeiture of the license. Any [such] license so forfeited may be restored upon written application therefor within one year from [such] that date and the payment of the required fee plus an amount equal to ten per cent thereof."

SECTION 82. Section 448E-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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“(a) [The] In addition to any other actions authorized by law the board, after notice and hearing as provided in chapter 91, may suspend or revoke any license, or impose fines, or [deny the renewal of any license, or] prior to [such] the notice and hearing, deny the issuance or renewal of any license for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) A license was or is sought to be obtained by fraud, misrepresentation, or deceit;
- (2) Gross negligence, incompetency, misconduct, or dishonesty in the practice of the profession;
- (3) False, fraudulent, or deceptive advertising;
- (4) Permitting an unlicensed person to perform activities requiring a license; or
- (5) Violation of any provisions of this chapter and any rules of the board.”

SECTION 83. Section 448F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other powers and duties authorized by law, the department pursuant to chapter 91, may adopt rules as it deems necessary for the public health or safety relating to, but not limited to:

- (1) The education, training, experience or qualifications required to obtain a license under this chapter;
- (2) The practices, standards, or conduct of persons holding a license under this chapter; and
- (3) The use of anesthetic injections, topical anesthetics, other medications, and prescription drugs.”

SECTION 84. Section 448F-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§448F-6]] Denial of licensure[; hearing]. [(a)] No applicant shall be licensed as an electrologist if:

- (1) The applicant has been convicted of a crime and the basis of denial of licensure falls within the exceptions provided in section 831-3.1; [or]
- (2) The applicant has been declared mentally incompetent by any court and the decree has not since been dismissed; or
- (3) Proceedings brought against the applicant pursuant to this section resulted in findings of any of the causes listed in section 448F-7(b).  
[(b) Any person whose application for licensure has been denied shall be given notice and the opportunity for a hearing.]”

SECTION 85. Section 448F-7, Hawaii Revised Statutes, is amended to read as follows:

“[[§448F-7]] Refusal to permit examination or issue license; discipline; complaints; grounds; proceedings; hearings. (a) [The] In addition to any other actions authorized by law, the director shall have the power to refuse to admit persons to its examinations or to issue or to renew a license, to revoke, limit, condition, or suspend a license as an electrologist and to fine or otherwise discipline a licensed electrologist for any cause authorized by law, including but

not limited to any violation of section 448F-7(b).

(b) The department shall have the power to accept, investigate, prosecute, and hear complaints regarding any person, who is a licensed electrologist regarding any ground for disciplinary actions authorized by law, including but not limited to the following [allegations]:

- (1) Unfitness or incompetence by reason of negligence, habits, or other causes regardless of whether actual damage or damage to the public is established;
- (2) Habitual intemperance, addiction, or dependency on alcohol or other habit-forming substances;
- (3) Mental incompetence resulting in an inability to practice as an electrologist;
- (4) Submitting to or filing with the department any application, notice, statement, or other document in procuring or attempting to procure licensure as an electrologist, which is false or untrue or contains any material misstatement of fact;
- (5) Using the title, licensed electrologist, or any designation tending to imply that the person is a licensed electrologist when the person is not in fact licensed or the person's license has been suspended or revoked;
- (6) Violating conditions or limitations upon which licensure is granted;
- (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm an individual or the public in the course of professional services or activities;
- (8) Having disciplinary action taken against the electrologist in another state;
- (9) Aiding or abetting an unlicensed person, knowingly combining or conspiring with an unlicensed person, allowing one's license to be used by an unlicensed person, or acting as agent or associate of an unlicensed person to evade the use of title restrictions of this chapter;
- (10) Engaging in false or misleading advertising;
- (11) Engaging in sexual conduct in connection with professional services or activities; or
- (12) Violating chapter 321[,] relating to the department of health, or any rule adopted thereto.

[(c) In any proceeding under this section the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91.]”

SECTION 86. Section 448H-3, Hawaii Revised Statutes, is amended to read as follows:

**“§448H-3 Elevator mechanics licensing board; appointment; organization.** There is created an elevator mechanics licensing board within the department of commerce and consumer affairs for administrative purposes. The board shall consist of seven members, four of whom shall be licensed elevator mechanics, two others of whom shall be lay members, not connected or associated with the elevator or building industry, and one of whom shall be the branch manager of the boiler and elevator inspection bureau, division of occupational safety and health, department of labor and industrial relations. [The governor shall appoint the members of the board in accordance with section 26-34; provided that in the initial appointment of the board, the elevator mechanic members need not satisfy

the licensing requirements of this chapter, but shall have been elevator mechanics registered by the department of labor and industrial relations. The board shall elect one of its members as chairman.

Members of the board shall serve without compensation but shall be reimbursed for travel and other necessary expenses incurred in the performance of official duties.]”

SECTION 87. Section 448H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§448H-4 Meetings; quorum.** The board shall meet not less than [once] twice a year at a time and place as determined by the board. The board shall also meet but not later than thirty days prior to the licensing examination pursuant to section 448H-5(2) in order to evaluate applications therefor. [Four members of the board shall constitute a quorum.] Any board member who misses two consecutive meetings of the board or fifty per cent of the meetings in a year shall be removed from the board.”

SECTION 88. Section 448H-5, Hawaii Revised Statutes, is amended to read as follows:

**“§448H-5 Powers and duties of the board.** [The] In addition to any other powers and duties authorized by law, the board shall:

- (1) Adopt rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Develop, apply, review and upgrade appropriate techniques, including examinations and investigations for determining whether a person meets the requirements of this chapter and standards to insure that elevator mechanics will be persons qualified to serve as such;
- (3) Prescribe, at a minimum, that a nationally recognized examination, augmented with locally developed material, be used in testing for licensure, the passing grade for the examination to be not less than seventy per cent;
- (4) Issue licenses to persons determined, after application of [such] those techniques, to have met [such] the required qualifications and revoke or suspend licenses, previously issued by the board pursuant to hearings held in accordance with chapter 91, in any case where the individual holding any [such] license is determined substantially to have failed to conform to [such] the required qualifications, this chapter, or the rules of the board;
- (5) Establish and carry out procedures designed to insure that persons licensed as elevator mechanics will, during any period they serve as such, comply with the requirements of this chapter, the rules of the board, and chapter 397 and [the] rules [promulgated] adopted thereunder;
- (6) Receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as an elevator mechanic has failed to comply with the requirements of this chapter regarding any complaint regarding job performance by mechanics, the rules of the board, or chapter 397 and the rules [promulgated] adopted thereunder;
- (7) Register apprentice elevator mechanics;
- (8) Maintain a record of its proceedings;

- (9) Assist and advise the department of labor and industrial relations in the [promulgation] adoption of rules relating to the conditions of work for elevator mechanics including requirements related to equipment or facilities essential for the safe installation, repair, maintenance, or alteration of any elevator, dumbwaiter, escalator, moving walk or ramp, and manlift; and
- (10) Notify the department of labor and industrial relations of any fact or situation that, in the opinion of the board, constitutes a violation of chapter 397 or of any rule [promulgated] adopted thereunder."

SECTION 89. Section 448H-8, Hawaii Revised Statutes, is amended to read as follows:

**"§448H-8 Fees.** Application, examination, license, temporary permit, and biennial renewal fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A fee is required for each reexamination. Application fees are not refundable.

Licenses shall expire on June 30 of each even-numbered year. [All fees received by the board pursuant to the provisions of this chapter shall be deposited with the director of finance to the credit of the general fund.]"

SECTION 90. Section 451A-1, Hawaii Revised Statutes, is amended by deleting the definition "license".

[““License” means a license issued under this chapter.”]

SECTION 91. Section 451A-2, Hawaii Revised Statutes, is amended to read as follows:

**"§451A-2 License required.** It shall be unlawful for any person not licensed under this chapter to engage in the sale or practice of dealing and fitting of hearing aids or to use any sign, card, or device to indicate that the person is licensed and registered.

Any person wishing to obtain a license or a permit or certificate of endorsement shall [make application to the board] apply on a form prescribed by the board and shall furnish to the board:

- (1) Satisfactory proof that the person is a graduate of a high school approved and recognized by the board; and
- (2) Satisfactory proof that the person has fulfilled all of the requirements of the board.

An applicant shall be required to pass a licensing examination."

SECTION 92. Section 451A-3, Hawaii Revised Statutes, is amended to read as follows:

**"§451A-3 Appointment, qualifications, term.** There is hereby established a board [within the department of commerce and consumer affairs] of hearing aid dealers and fitters which shall consist of seven members [who shall be appointed by the governor in a manner prescribed in section 26-34]. 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

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aid dealer and fitter[; provided that in the membership of the first board, the hearing aid dealers and fitters shall have, to qualify for appointment, at least five years of experience and possess all the qualifications provided in section 451A-2].

All members of the board shall be residents of the State. [The board shall elect a chairman and vice-chairman from the members of the board.]”

SECTION 93. Section 451A-5, Hawaii Revised Statutes, is amended to read as follows:

**“§451A-5 Powers and duties of the board.** [The] In addition to any other powers and duties authorized by law, the powers and duties of the board are to:

- (1) Adopt rules in accordance with chapter 91 to carry out the purposes of this chapter[.];
- (2) Develop standards for licensure[.];
- (3) Prepare and administer examinations[.];
- (4) Issue, renew, suspend, and revoke licenses[.];
- (5) Register applicants and holders of a license, permit and certificate of endorsement[.];
- (6) Investigate and conduct hearings regarding any violation of this chapter and any rules [and regulations] of the board[.];
- (7) Maintain a record of its proceedings[.];
- (8) Do all things necessary to carry out the functions, powers, and duties set forth in the chapter[.];
- (9) Monitor medical authorizations and waiver records[.]; and
- (10) Develop policies and procedures, in consultation with the state ethics commission, for handling real or potential conflicts of interest.”

SECTION 94. Section 451A-13, Hawaii Revised Statutes, is amended to read as follows:

**“§451A-13 Discipline; grounds; proceeding; hearings.** (a) [The] In addition to any other actions authorized by law, the board may deny, revoke, or suspend any license, certificate of endorsement, or temporary permit issued under this chapter and fine or otherwise discipline a licensee [upon proof that the person has:] for any cause authorized by law, including but not limited to proof that the person has:

- (1) Obtained a license, certificate of endorsement, or temporary permit by fraud or deceit;
- (2) Obtained a fee or the making of a sale by fraud or misrepresentation;
- (3) Employed with knowledge, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter;
- (4) Applied, caused, or promoted for advertising, the use of any matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation which is misleading, deceptive, or untruthful;
- (5) Advertised a particular model or type of hearing aid for sale which in fact is not immediately available and where it is established that the purpose was to obtain prospects for the sale of a different model or type;
- (6) Represented that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting,

adjustment, maintenance, or repair of hearing aids when that is not true, or used the words "doctor", "clinic", or similar words, abbreviations, or symbols related to the medical profession when it is not accurate;

- (7) Permitted the use of a license by another;
- (8) Advertised a product or used a manufacturer's name or trademark which implies a relationship which in fact does not exist;
- (9) Given or offered to give, directly or indirectly, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors;
- (10) Engaged in the fitting and selling of hearing aids under a false name or alias with fraudulent intent;
- (11) Sold a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids;
- (12) Committed gross incompetence or negligence in fitting and selling hearing aids;
- (13) Violated any provisions of this chapter and any rules;
- (14) Submitted to or filed with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact; or
- (15) Failed to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final.

(b) Any person who wishes to make a complaint against a person who has a license, certificate of endorsement, or temporary permit shall file a complaint in writing with the board within one year from the date of the action upon which the complaint is based.

[c] In any proceedings to impose disciplinary sanctions against a licensee, the board shall give the person concerned notice and opportunity for hearing in conformity with chapter 91. Appeals from the final order of the board shall be made pursuant to chapter 91.

(d) Any revocation or suspension of a license imposed by the board shall be in accordance with section 92-17(c).

(e)] (c) Any fine imposed by the board after hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation."

**SECTION 95.** Section 452-4, 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 a state board of massage consisting of five members [appointed by the governor as provided in section 26-34]."

**SECTION 96.** Section 452-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [The] In addition to any other powers and duties authorized by law,

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the board may grant, or upon proof of violation of this chapter or the rules adopted by the board governing the practice under this chapter, revoke, suspend, or refuse to renew a license as provided in this chapter.”

SECTION 97. Section 452-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other actions authorized by law, the board may take disciplinary action against any licensee, including, but not limited to, revocation, suspension, fine, or a combination thereof, or may refuse to grant or renew a license for any [of the following reasons:] cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit or permitting an unlicensed person to perform activities which require a license under this chapter;
- (2) Conviction of any crime involving moral turpitude;
- (3) Practicing massage while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Failure to display a license as provided in this chapter;
- (5) Professional misconduct, gross carelessness, or manifest incapacity in the practice of massage;
- (6) Violating this chapter or the rules adopted pursuant thereto;
- (7) Failing to comply with a board order;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) Making a false statement on any document submitted or required to be filed by this chapter; or
- (10) Any representation, or the use of any designation, which states or implies that the person is able to perform a technique of massage which the person is not trained to perform.”

SECTION 98. Section 453-5, Hawaii Revised Statutes, is amended to read as follows:

**“§453-5 Board of medical examiners; appointment, removal, qualifications.** (a) For the purpose of carrying out this chapter the governor shall appoint [in the manner prescribed in section 26-34.] a board of medical examiners, whose duty it shall be to examine all applicants for license to practice medicine or surgery. As used in this chapter, “board” means the board of medical examiners.

The board shall consist of nine persons, seven of whom shall be physicians or surgeons licensed under the laws of the State and two of whom shall be lay members appointed from the public at large. Of the seven physician or surgeon members, four shall be appointed from the city and county of Honolulu and one each from each of the other counties. Medical societies in the various counties may conduct elections periodically but no less frequently than every two years to determine nominees for the board to be submitted to the governor. In making appointments the governor may consider recommendations submitted by the medical societies and the public at large. Each member shall serve until a successor is appointed and qualified.

[b) The members of the board shall serve without pay; provided that they shall be allowed their reasonable expenses for travel and other costs incurred in the discharge of their duties. A majority of the board shall constitute a quorum.

The board shall hold its meetings in public places and shall comply with chapter 92.

(c) The department of commerce and consumer affairs shall provide administrative support to the board.] (b) The department shall employ, not subject to chapters 76 and 77, an executive secretary to administer the board's activities and an employee to administer the medical claims conciliation panels established under chapter 671. The employee responsible for administration of the medical claims conciliation panels shall have no duties in administration of the board's activities."

SECTION 99. Section 453-5.1, Hawaii Revised Statutes, is amended to read as follows:

**"§453-5.1 Powers and duties of board.** In addition to other powers and duties [established by this chapter,] authorized by law, the board of medical examiners shall have all the powers necessary or convenient to effectuate the purpose of this chapter, including, without limitation, the following powers:

- (1) To adopt rules, pursuant to chapter 91; and
- (2) To enforce this chapter and rules adopted pursuant thereto."

SECTION 100. Section 453-6, Hawaii Revised Statutes, is amended to read as follows:

**"§453-6 Fees; expenses.** No applicant shall be examined under this chapter until the applicant has paid to the board [of medical examiners] application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall reregister with the board no later than January 31, of each even-numbered year and for [such] that registration shall pay a renewal fee. At the time of reregistration, the physician or surgeon shall present to the board evidence of compliance with a program of continuing medical education adopted by the board. Failure to reregister and present [such] evidence of compliance shall constitute a forfeiture of license, which may be restored only upon written application therefor and payment to the board of a restoration fee. A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required. [All such fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.]"

SECTION 101. Section 453-8, Hawaii Revised Statutes, is amended to read as follows:

**"§453-8 Revocation, limitation, suspension, or denial of licenses.** (a) [Any] In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board [of medical examiners] at any time in a proceeding before the board, or may be denied, for any [one or more of the following acts or conditions on the part of the holder of such license or the applicant therefor:] 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) Engaging in false, fraudulent, or deceptive advertising, including, but not limited to:
  - (A) Making excessive claims of expertise in one or more medical specialty fields;
  - (B) Assuring a permanent cure for an incurable disease; or
  - (C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
- (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Professional misconduct, gross negligence, or manifest incapacity in the practice of medicine or surgery;
- (8) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
- (9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association or the American Medical Association;
- (10) Violation of the conditions or limitations upon which a limited or temporary license is issued;
- (11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder;
- (14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or
- (15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.

[(b)] If any license is revoked, limited, suspended, or denied by the board for any act or condition listed in this section, the board shall notify the holder of, or the applicant for, the license in writing of the revocation, limitation, suspension, or denial. Any license to practice medicine and surgery which has been revoked under this section may be restored by the board.

[(c)] [(b)] If disciplinary action related to the practice of medicine has been taken against the applicant in any jurisdiction that would constitute a violation under this section, or if the applicant reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition for licensure:

- (1) Physical and mental evaluation of the applicant by a licensed physician approved by the board;

- (2) Probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians or surgeons;
- (3) Limitation of the license by restricting the fields of practice in which the licensee may engage;
- (4) Further education or training or proof of performance competency; and
- (5) Limitation of the medical practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public."

SECTION 102. Section 453-8.2, Hawaii Revised Statutes, is amended to read as follows:

**"§453-8.2 Disciplinary action.** (a) In addition to any other actions authorized by law, in disciplining a licensee in a proceeding [under section 453-9, held in conformity with chapter 91, the board may impose one or more of the following actions:

- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians or surgeons[.];
- (2) Suspend the license[.];
- (3) Revoke the license[.];
- (4) Limit the license by restricting the fields of practice in which the licensee may engage[.];
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 and not more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings[.]; or
- (6) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public.
- (7) (6) Require further education or training or require proof of performance competency.

(b) Unless otherwise expressly provided, the actions, remedies, or penalties provided by this chapter are cumulative to each other and to the actions, remedies, or penalties available under all other laws of this State."

SECTION 103. Section 455-4, Hawaii Revised Statutes, is amended to read as follows:

**"§455-4 State board of examiners in naturopathy.** The governor shall appoint [in the manner prescribed by section 26-34] the board of examiners in naturopathy, consisting of three members. Each member shall serve until the member's successor is appointed and qualified. Two members of the board [shall], before appointment, shall have been licensed as a naturopathic physician in the State and one shall be a public member."

SECTION 104. Section 455-6, Hawaii Revised Statutes, is amended to read as follows:

**"§455-6 Powers and authority of the board.** [The] In addition to any other powers and duties authorized by law, the board may:

- (1) Adopt and use a seal to be affixed to all official acts of the board;
- (2) Adopt, amend, or repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (3) Develop standards for licensure;
- (4) Issue, renew, suspend, and revoke licenses and fine licensees;
- (5) Investigate and conduct hearings regarding any violation of this chapter and any rules of the board;
- (6) Maintain a record of its proceedings; and
- (7) Do all things necessary to carry out the functions, powers, and duties set forth in this chapter."

SECTION 105. Section 455-11, Hawaii Revised Statutes, is amended to read as follows:

"~~§455-11~~ Discipline; grounds; proceedings; hearings. (a) [The] In addition to any other actions authorized by law, the board shall have the power to deny, revoke, suspend, or refuse to renew any license to practice naturopathy applied for or issued by the board in accordance with this chapter, and to fine or otherwise discipline a licensee for any [of the following causes:] 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;
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Betraying a patient's confidence;
- (5) Making any untruthful and improbable statement in advertising one's naturopathic practice or business;
- (6) False, fraudulent, or deceptive advertising;
- (7) 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;
- (8) Practicing naturopathy while the ability to practice is impaired by alcohol, drug, physical disability, or mental instability;
- (9) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (10) Professional misconduct or gross carelessness or manifest incapacity in the practice of naturopathy;
- (11) Conduct or practice contrary to recognized standard of ethics of the naturopathic profession;
- (12) Utilizing medical service or treatment which is inappropriate or unnecessary;
- (13) Submitting to or filing with the board any notice, statement, or other document required under this chapter which is false or untrue or contains any material misstatement of fact;
- (14) Failure to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final;
- (15) Using the title "physician" without clearly identifying oneself as being a naturopathic physician; and
- (16) Violation of any provisions of this chapter or rules adopted under this chapter.

[(b) In any proceeding to impose disciplinary sanctions against a licensee, the board shall give the person concerned notice and an opportunity for hearing in conformity with chapter 91.

In any such proceeding, the board shall have power to administer oaths, compel the attendance of witnesses and the production of documentary evidence, and examine witnesses.

(c) Any revocation or suspension of a license imposed by the board shall be in accordance with section 92-17(c).

(d) [b] Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$500 and no more than \$10,000 for each violation."

SECTION 106. Section 457-3, Hawaii Revised Statutes, is amended to read as follows:

**"§457-3 State board of nursing; appointment; term of office; removal from office.** [There shall be a board of nursing the members of which shall be appointed and may be removed by the governor in the manner prescribed in section 26-34.] The board shall consist of nine members, five of whom shall be registered nurses, two of whom shall be licensed practical nurses and two of whom shall be public members. Both nursing education and nursing service shall be represented on the board. The term of office for members of the board shall be three years. No member shall be appointed to more than two consecutive terms or serve more than six years. Six 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 107. Section 457-5, Hawaii Revised Statutes, is amended to read as follows:

**"§457-5 Duties and powers of board.** [(a) The board shall hold meetings as it deems necessary. The board shall have a chairman and a vice-chairman, who shall be elected annually from its members.

(b) The] (a) In addition to any other powers and duties authorized by law, the board may:

- (1) Adopt, amend, or repeal rules, pursuant to chapter 91, not inconsistent with the law, as may be necessary to enable it to carry into effect this chapter;
- (2) Prescribe standards for preparing persons for licensure under this chapter;
- (3) Provide for surveys of educational programs as it may deem necessary;
- (4) Accredit educational programs as meet the requirements of this chapter and the rules of the board;
- (5) Deny or withdraw accreditation from educational programs for failure to meet prescribed standards;
- (6) Examine, license, and renew the licenses of qualified applicants;
- (7) Conduct hearings upon charges calling for discipline of a licensee or, denial, suspension, or revocation of a license;
- (8) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
- (9) Cause the prosecution of all persons violating this chapter and to incur necessary expenses therefor; and

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(10) Keep a record of all its proceedings.

[(c)] (b) The board shall monitor and evaluate the scope of the practice of nursing in other states and make recommendations to the legislature, when deemed desirable, for appropriate amendment to the definitions under section 457-2 and any other provision of this chapter.

[(d) The members of the board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.]"

SECTION 108. Section 457-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An applicant for a license to practice nursing as a registered nurse shall submit [to] an application on a form prescribed by the board and shall provide written evidence, verified by oath or affirmation, that the applicant:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (2) Has completed a nursing program approved by the Hawaii board of nursing."

SECTION 109. Section 457-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An applicant for a license to practice nursing as a licensed practical nurse shall submit [to] an application on a form prescribed by the board and shall provide written evidence, verified by oath or affirmation, that the applicant:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (2) Has completed a licensed practical nurse program, or its equivalent, approved by the board, and holds a diploma or certificate therefrom."

SECTION 110. Section 457-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any licensee who allows a license to lapse by failing to renew the license as provided in subsection (a) may be [reinstated] restored by the board on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee.

Any person practicing nursing during the time the person's license has lapsed shall be considered an illegal practitioner and shall be subjected to the penalties provided for violations of this chapter.

A nurse who does not engage in nursing in the State during the succeeding year shall not be required to pay the renewal fee as long as the nurse remains inactive. Should the nurse wish to resume nursing at some future time, the nurse shall so notify the board and remit the renewal fee for the current biennial period."

SECTION 111. Section 457-12, Hawaii Revised Statutes, is amended to read as follows:

**"§457-12 Discipline; grounds; proceedings; hearings.** (a) [The] In addition to any other actions authorized by law, the board shall have the power to

deny, revoke, limit, or suspend any license to practice nursing as a registered nurse or as a licensed practical nurse applied for or issued by the board in accordance with this chapter, and to fine or to otherwise discipline a licensee for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Fraud or deceit in procuring or attempting to procure a license to practice nursing as a registered nurse or as a licensed practical nurse;
- (2) Gross immorality;
- (3) Unfitness or incompetence by reason of negligence, habits, or other causes;
- (4) Habitual intemperance, addiction to, or dependency on alcohol or other habit-forming substances;
- (5) Mental incompetence;
- (6) Unprofessional conduct as defined by the board in accordance with its own rules;
- (7) Wilful or repeated violation of any of the provisions of this chapter or any rule adopted by the board;
- (8) Revocation, suspension, limitation, or other disciplinary action by another state of a nursing license for reasons as provided in this section;
- (9) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a nurse, notwithstanding any statutory provision to the contrary;
- (10) Failure to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final;
- (11) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact; or
- (12) Violation of the conditions or limitations upon which any license is issued.

[b] In any proceeding to discipline a licensee or for the suspension, limitation, or revocation of a license to practice nursing, the licensee sought to be disciplined or the person whose license is sought to be suspended, limited, or revoked shall be given notice and opportunity for hearing in conformity with chapter 91. Any person whose application for a license has been denied shall be given notice and the opportunity for a hearing pursuant to chapter 91.

[c] (b) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation.

[d] (c) The remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State."

SECTION 112. Section 457B-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The governor shall appoint the members of the board in accordance with section 26-34.] The board shall consist of seven members who shall serve for a term of four years. No member shall be appointed to more than two full consecutive terms. The board shall be composed of persons representing professions

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and institutions concerned with the care and treatment of chronically ill or infirm elder patients, including but not limited to doctors, skilled nurses, hospital administrators, long term care facility administrators, physical therapists, occupational therapists, nutritionists, and gerontological social workers; provided that no more than three members shall be nursing home administrators.”

SECTION 113. Section 457B-6, Hawaii Revised Statutes, is amended to read as follows:

**“§457B-6 Powers and duties.** [The] In addition to any other powers and duties authorized by law, the board shall:

- (1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets the board's standards;
- (3) Issue licenses to individuals determined, after the application of appropriate techniques, to meet the board's standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding a license is determined substantially to have failed to conform to the requirements of the board's standards;
- (4) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators shall, during any period that they serve as such, comply with the requirements of the board's standards. The board shall also initiate and maintain cooperative arrangements with the long-term care ombudsman,<sup>3</sup> department of human services and the<sup>4</sup> department of health for the sharing of information on the performance of administrators;
- (5) Receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of the board's standards;
- (6) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of administrators of nursing homes and of procedures and methods for the enforcement of licensing standards with respect to administrators of nursing homes who have been licensed;
- (7) Adopt in accordance with chapter 91 rules as may be necessary for the purposes of this chapter; and
- (8) Maintain a record of all its proceedings.”

SECTION 114. Section 457B-9, Hawaii Revised Statutes, is amended to read as follows:

**“§457B-9 Fees.** (a) An applicant for a license to practice nursing home administration by examination shall pay application and examination fees. A reexamination fee is required for each reexamination. Application fees shall not be refundable. Each applicant who successfully passes the examination shall pay

a license fee.

(b) There shall be a biennial renewal fee which shall be paid to the board on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed nursing home administrator to pay the biennial renewal fee shall constitute a forfeiture of the nursing home administrator's license. The license may be restored within three years upon written application therefor and the payment to the board of all delinquent fees plus a penalty fee and evidence of participation in educational programs.

[c) All fees and other moneys collected or received under this chapter or rules adopted by the board shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.]"

SECTION 115. Section 458-2, Hawaii Revised Statutes, is amended to read as follows:

**"§458-2 Board of examiners; members, qualifications.** The governor shall appoint [in the manner prescribed in section 26-34 as the] a board of dispensing opticians (hereinafter in this chapter referred to as the "board") consisting of five members.

Upon the expiration of the member's term of office a member shall continue to serve until the member's successor has been appointed and has qualified. [A member may be removed by the governor in the manner prescribed in section 26-34.] Three members of the board shall be persons engaged in the occupation of dispensing opticians and two shall be public members. [Each member of the board is entitled to necessary travel and other expenses incurred in the discharge of the member's duties.]"

SECTION 116. Section 458-3, Hawaii Revised Statutes, is amended to read as follows:

**"§458-3 [Organization:] Powers and duties; meetings[, records].** [The board of dispensing opticians shall annually elect from its members a chairman and a vice-chairman. The board shall keep a complete record of its proceedings. The] In addition to any other powers and duties authorized by law, the board, subject to chapter 91 [and with the approval of the governor and the director of commerce and consumer affairs], may [make,] adopt, amend, and repeal rules for the administration of this chapter.

The board shall meet a minimum of four times a year, at quarterly intervals. Each member [is required to] shall attend at least one-half of all board meetings in a year. Any member not attending at least one-half of all board meetings in a year shall forfeit that member's seat on the board."

SECTION 117. Section 458-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) To apply for a license to engage in the occupation of dispensing optician, an individual must have completed one of the following:

- (1) The equivalent of a high school education and three years of work experience as an opticianry apprentice as required by the board's administrative rules;
- (2) Graduation from an opticianry course accredited by the Commission on Opticianry Accreditation; or

(3) Previous licensure in another jurisdiction which required successful completion of the national examinations specified in subsection (c). The applicant shall submit to the board an application for a license [in] on a form [approved] prescribed by the board, which shall include the applicant's experience and signature, and an application fee."

SECTION 118. Section 458-9, Hawaii Revised Statutes, is amended to read as follows:

**"§458-9 Revocation or suspension of certificates or licenses.** [After notice and hearing, as in this chapter provided,] In addition to any other actions authorized by law, the board [may],<sup>4</sup> in conformity with chapter 91, may revoke or suspend any certificate or license issued under this chapter for any cause authorized by law, including but not limited to fraud or dishonesty in obtaining the certificate or license, for dishonesty, fraud, gross negligence, or incompetency in the occupation or business of dispensing optician, or for violation of this chapter."

SECTION 119. Section 458-10, Hawaii Revised Statutes, is amended to read as follows:

**"§458-10 [Hearings before board; procedure, notice.] Subpoenas; oaths.** [(a) Commencement of proceedings. The board of dispensing opticians may initiate proceedings under this chapter either on its own motion or on the complaint of any person. The proceedings shall be subject to chapter 91.

(b) Notice; service and contents. A written notice as required by section 91-9 shall be served on the accused not less than thirty days prior to the date of the hearing either personally or by mailing a copy thereof by registered or certified mail with return receipt requested to the address of the accused last known to the board.

(c) Failure to appear. If, after having been served with the notice of hearing as provided for herein, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against the accused and may enter such order as is justified by the evidence, which order shall be final; provided that within thirty days from the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in the accused's behalf.

(d) Counsel; witnesses, cross-examination. At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on the accused's own behalf, cross-examine witnesses, and examine such evidence as may be produced against the accused. The accused shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on the accused's behalf.

(e) Subpoenas; oaths.] In all proceedings before the board, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, as are possessed by circuit courts. In case of disobedience by any person or persons of any order of the board or a member of the board or any subpoena issued by it or the member or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge on application by the board or member thereof shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein.

[The fees and traveling expenses of witnesses shall be the same as allowed witnesses of the circuit courts, and shall be paid from any revenues or funds available for the expenses of the board.

(f) Evidence. The board shall not be bound by technical rules of evidence.

(g) Record. A stenographic record of the hearings shall be kept and a transcript thereof filed with the board.

(h) Attorney for the board. At all hearings the attorney general, or one of the attorney general's deputies designated by the attorney general, shall appear and represent the board.]"

SECTION 120. Section 458-11, Hawaii Revised Statutes, is amended to read as follows:

**"§458-11 Reinstatement.** The board may [reissue] reinstate without examination the license or certificate of any dispensing optician issued under this chapter which has been revoked or may modify the suspension of any such license or certificate which has been suspended."

SECTION 121. Section 459-3, Hawaii Revised Statutes, is amended to read as follows:

**"§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. [The board shall be appointed by the governor in accordance with section 26-34.] 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 122. Section 459-4, Hawaii Revised Statutes, is amended to read as follows:

**"§459-4 [Organization; meetings; rules.] Powers and duties of the board.** [The members of the board of examiners in optometry shall qualify by taking oath of office before a notary public, or other officer empowered to administer oaths. At the first meeting of the board after each annual appointment, the board shall elect a chairperson and vice chairperson. The] In addition to any other powers and duties authorized by law, the board shall prescribe rules in harmony with this chapter, as may be necessary to carry out its legal responsibilities and duties, to do all things necessary or incidental to the exercise of the powers and duties as established by these statutes, and to regulate the practice of optometry in the State."

SECTION 123. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

**"§459-9 Refusal to permit examination or issue license; revocation and suspension of license; grounds for.** [The] In addition to any other actions authorized by law, the board of examiners in optometry may refuse to admit persons to its examinations or to issue a license or may revoke or suspend, for the period of time as may be determined by the board, a license previously issued, or

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may impose a penalty as shall be established by the board, for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Presentation to the board of any certificate or testimony or information which was untrue in any material respect or illegally or fraudulently obtained, or when fraud or deceit has been practiced in obtaining any license under this chapter or in passing an examination;
- (2) Conduct of a character likely to deceive or defraud the public, or habits of intemperance or drug addiction calculated to destroy the accuracy of the work of an optometrist, or professional misconduct, or gross carelessness or negligence, or manifest incapacity in the practice of optometry;
- (3) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (4) Directly or indirectly accepting or offering employment to practice optometry from, or to any person not having a valid, unrevoked and unsuspended license or from any company or corporation;
- (5) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any intended or prospective wearer or user;
- (6) Using any name in connection with the licensee's practice other than the name under which the licensee is licensed to practice, or using any advertising which fails to clearly identify the individual licensee or which is ambiguous or misleading as to the licensee's identity;
- (7) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performances of the services;
- (8) Violating this chapter or the rules adopted by the board;
- (9) Utilizing pharmaceutical agents without first being certified as provided in section 459-7 or utilizing pharmaceutical agents for purposes other than those specified in section 459-1; or
- (10) Failure to refer a patient to an appropriate licensed physician upon discovery, by history or examination, that the patient evidences an ocular abnormality or symptoms of systemic disease requiring further diagnosis and possible treatment by a licensed physician."

SECTION 124. Section 460-4, Hawaii Revised Statutes, is amended to read as follows:

**"§460-4 Board; appointment, powers, and duties.** The governor shall appoint [and may remove in the manner prescribed in section 26-34] 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) with scores deemed satisfactory by the board and who otherwise meets the requirements of the laws of this State. Subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, the board may [make,] adopt, amend, and repeal all necessary rules relating to the enforcement of this chapter and not inconsistent therewith. [The members of the board shall serve without pay.]"

SECTION 125. Section 460-5, Hawaii Revised Statutes, is amended to read as follows:

**"§460-5 Fees.** (a) No applicant for a license to practice as an osteopathic physician and surgeon shall be examined until the applicant has paid to the board [of osteopathic examiners] application and examination fees.

(b) Section 460-2 and any other provisions of this chapter to the contrary notwithstanding, there shall be paid to the board by every person licensed to practice as an osteopathic physician and surgeon, biennially in each even-numbered year on or before June 30, a renewal fee. Failure of any licensee to pay any renewal fee shall work a forfeiture of the license. Licenses forfeited by this section shall be [reissued] restored upon payment of a penalty fee and all fees which the licensee would have paid if the licensee had continuously renewed the license.

(c) All fees collected by the board shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.

(d) All fees required by this chapter or rules adopted by the board shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.]”

SECTION 126. Section 460-6, Hawaii Revised Statutes, is amended to read as follows:

**"§460-6 Application for license.** Each applicant for a license provided for in this chapter shall comply with the following requirements:

- (1) [Make application] Apply on [blank forms prepared and furnished] a form prescribed by the board of osteopathic examiners;
- (2) Submit evidence verified on oath and satisfactory to the board that the applicant is a graduate of a school or college of osteopathy which is approved by the American Osteopathic Association; and
- (3) Submit satisfactory evidence to the board that the applicant has served an internship of at least one year in a hospital approved by the American Osteopathic Association and the American College of Osteopathic Surgeons, or the equivalent of the requirement as determined by the board, if the applicant graduated prior to 1943.”

SECTION 127. Section 460-12, Hawaii Revised Statutes, is amended to read as follows:

**"§460-12 Refusal, suspension, and revocation of license.** [The] 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 [upon any one or more of the following grounds:] 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) 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) 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) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (7) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (8) Professional misconduct, gross carelessness, or manifest incapacity in the practice of osteopathy;
- (9) Negligence or incompetence, including, but not limited to, the consistent use of medical service in osteopathy which is inappropriate or unnecessary;
- (10) Conduct or practice contrary to recognized standards of ethics of the osteopathic profession as adopted by the American Osteopathic Association;
- (11) Revocation, suspension, or other disciplinary action by another state of a license or certificate for reasons as provided in this section;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of an osteopathic physician and surgeon, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, the uniform controlled substances law, or any rule adopted thereunder; or
- (14) 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 128. Section 460-14.5, Hawaii Revised Statutes, is amended to read as follows:

**“§460-14.5 Disciplinary action.** In disciplining a licensee in a proceeding under section 460-12, the board may impose one or more of the following actions:

- (1) Place the licensee on probation, including conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed osteopathic physicians and surgeons;
- (2) Suspend the license;
- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 nor more than \$5,000 for each violation exclusive of the costs of the disciplinary proceedings; or
- (6) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public; or
- (7) (6) Require further education or training or require proof of performance competency."

SECTION 129. Section 460J-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§460J-2] Pest control board.** (a) There shall be a pest control board of nine members. Six members of the board shall be appointed by the governor[, pursuant to section 26-34]; 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.

(b) Except for members of the board first appointed, no one, except the ex officio and public 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 pest control operator.

(c) Immediately upon the appointment and qualification of the original members, and annually thereafter, the board shall organize by the election of one member as chairman and one member as vice-chairman. The board shall keep a complete record of all proceedings and shall present annually to the governor through the director of commerce and consumer affairs a detailed statement of the receipts and disbursements of the board during the preceding year, with a statement of its acts and proceedings and such recommendations as the board may deem proper. The board is placed within the department of commerce and consumer affairs for administrative purposes.

(d) No member of the board shall receive any compensation for the member's services, but each shall be reimbursed for the member's necessary expenses, including travel expenses, incurred in the performance of the member's duties.]"

SECTION 130. Section 460J-3, Hawaii Revised Statutes, is amended to read as follows:

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**“[[§460J-3]]<sup>1</sup> Powers and duties of board.** In addition to any other [duties and powers granted by this chapter] powers and duties authorized by law, the board shall:

- (1) Grant licenses to operators pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as it may deem necessary to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All rules shall be adopted pursuant to chapter 91. The rules shall:
  - (A) Forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
  - (B) Require operators to make reports to the board containing items of information that will enable the board to improve the enforcement of this chapter and its rules to fully effectuate the purposes of this chapter;
  - (C) Require operators to furnish reports to owners containing matters of information as the board deems necessary to promote the purpose of this chapter;
  - (D) Require liability insurance verification for license renewals; and
  - (E) Provide for the development of an enforcement information reporting system;
- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause [which] that would be grounds for revocation or suspension of a license; and
- (5) Direct the executive secretary to publish and distribute pamphlets and circulars containing information as it deems proper to further the accomplishment of the purpose of this chapter.”

SECTION 131. Section 460J-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every applicant for a license under this chapter shall file an application on forms prescribed or required by the board, and shall furnish any additional information bearing upon the issuance of the license as the board requires. Every application shall be sworn to before an officer authorized to administer oaths and shall be accompanied by the application and examination fees. In the case of a [copartnership,] partnership, joint venture, or corporation, any licensed member or officer therefor may sign the application and verify the same on behalf of the applicant and every application shall be accompanied by the application and license fees. In the case of a proprietorship, every application shall be accompanied by the application and license fees.”

SECTION 132. Section 460J-14, Hawaii Revised Statutes, is amended to read as follows:

**“§460J-14 Fees; biennial renewal.** The biennial renewal fee shall be paid to the board on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed operator to pay the biennial renewal fee shall constitute a forfeiture of the person's license. Any license may be restored upon written application therefor within one year from the due date of the renewal fee and the payment of the delinquent fee plus an amount equal to ten per cent thereof.

[All fees and other money collected or received under this chapter or rules adopted by the board shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.]"

SECTION 133. Section 460J-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The] In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any [of the following causes:] 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 [of] any [political subdivision thereof,] county relating to building, including any violation of any applicable rule [or regulation] of the department of health, or of any applicable safety or labor law;
- (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 [such] the operation or construction repairs or in any modification of [such] the contract;
- (5) Failure to comply with this chapter, or any rule [or regulation] 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;
- (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 any infestation or infection of wood-destroying pests found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests 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;
- (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 [such] the debt or with intent to hinder, delay, or defraud the person to whom [such] the debt is due;

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- (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.

[No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years.]

SECTION 134. Section 460J-16, Hawaii Revised Statutes, is amended to read as follows:

**“§460J-16 Hearings.** [(a) In every case in which the board denies or refuses to grant or renew a license, the board shall give the person concerned notice and opportunity for hearing in conformity with chapter 91. Any person aggrieved by the denial or refusal by the board to grant or renew a license shall submit a request for a contested case hearing within sixty days of the date of the board's proposed denial or refusal. Appeal to the circuit court under section 91-14, or any other applicable statute, may only be taken from the board's final order, following a contested case hearing.

(b) In every case where it is proposed to revoke or suspend a license, the board shall give the person concerned notice and hearing in conformity with chapter 91. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing. The hearing whenever possible shall be held on the island on which the aggrieved party resides.

(c)] In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses[,] and the production of documentary evidence, and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the board[,] or of any member thereof, or of any subpoena issued by it[,] or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board[,] or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 135. 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 [who shall be appointed by the governor in the manner prescribed by section 26-34].

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 136. Section 461-3, Hawaii Revised Statutes, is amended to read as follows:

**“§461-3 [Officers.] Records.** [(a) The board shall elect one of its members to serve as chairman. The chairman of the board shall preside at all meetings and in the chairman's absence the members present shall select a chairman pro tem.

(b) The executive secretary [shall], subject to the direction of the board, shall make and keep all records and record books required to be kept by the board and shall furnish the department of health with copies of those records as it requires.”

SECTION 137. Section 461-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other powers and duties authorized by law, the board shall:

- (1) Adopt, amend, and repeal rules pursuant to chapter 91, as it deems proper for the purposes of this chapter;
- (2) Examine, license, and renew the licenses of qualified applicants;
- (3) Inspect, or may designate a duly authorized representative to inspect, any pharmacy or premises in the State where drugs are packed, packaged, compounded, sold, offered for sale, exposed for sale, or kept for sale to ensure compliance with this chapter and rules established by the board; and
- (4) Fine, suspend, or revoke any license or permit for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant or renew any license or permit for any cause which would be ground for revocation or suspension of a license or permit.”

SECTION 138. Section 461-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any applicant for a license as a pharmacist shall submit an application on a form prescribed by the board and shall provide evidence to the board that the applicant:

- (1) Is at least eighteen years of age[.];
- (2) Holds a degree from a school or college of pharmacy or department in a university, which school or college or department is recognized and accredited by the American Council of Pharmaceutical Education[.];
- (3) Has a minimum of two thousand hours practical experience in any state of the United States in a pharmacy under the supervision of a registered pharmacist. Service and experience in a pharmacy under the supervision of a registered pharmacist as required in this section shall be predominantly related to the selling of drugs, compounding prescriptions, preparing pharmaceutical preparations, keeping records and making reports required under state and federal statutes. In the event an applicant has no practical experience as required, the applicant may take the examination and upon passing the examination, shall not receive a license until after the fulfillment of the practical experience requirement[.]; and
- (4) Has passed an examination as may be prescribed by the board.”

SECTION 139. Section 461-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other actions authorized by law, the board shall have the power to deny, revoke, or suspend any license or permit applied for or issued by the board in accordance with this chapter, and to fine or otherwise discipline a licensee or permit holder for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an unlicensed person to perform activities which require a license under this chapter;
- (4) Violation of any of the provisions of this chapter or the rules adopted pursuant thereto;
- (5) Violation of any state or federal drug, controlled substance, or poison law;
- (6) False, fraudulent, or deceptive advertising;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failure to comply with a board order;
- (9) Making a false statement on any document submitted or required to be filed by this chapter; or
- (10) Habitual intemperance or addiction to the use of habit-forming drugs.”

SECTION 140. Section 461J-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§461J-4] Board of physical therapy; establishment, appointment, membership.** (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 members [appointed by the governor pursuant to section 26-34]. Three 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 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. All members shall be at least eighteen years of age and residents of the State.

[b) The terms for the physical therapist members first appointed shall be as follows: one shall serve for a term of four years, one shall serve for a term of three years, and one shall serve for a term of two years.

(c) 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.

[d] (c) The governor may fill each vacancy for a physical therapist member from a recommendation list of at least two or more persons submitted by the Hawaii Chapter of the American Physical Therapy Association.

[e) Members shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.]”

SECTION 141. Section 461J-5, Hawaii Revised Statutes, is amended to read as follows:

**"[§461J-5] Meetings; general duties.] Powers and duties of board.**

[(a) The board shall hold meetings semiannually and at such other times deemed necessary by a quorum of the board. A quorum of the board shall be three members.

(b)] In addition to any other powers and duties [prescribed under this chapter,] authorized by law, the board may:

- (1) Adopt, amend, or repeal rules in accordance with chapter 91 for the purposes of this chapter;
- (2) Recommend the denial or withdrawal of accreditation from educational programs for failure to meet prescribed standards;
- (3) Conduct hearings upon charges calling for discipline of a licensee or denial, suspension, limitation, or revocation of a license;
- (4) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
- (5) Enforce this chapter and the rules adopted pursuant thereto; and
- (6) Keep a record of all its proceedings."

SECTION 142. Section 461J-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An applicant for a permanent license to practice physical therapy shall submit proof of educational qualifications and any other information required by the board on an application form [supplied] prescribed by the board. The board shall maintain a current list of schools of physical therapy which are approved by an agency recognized by the United States Department of Education or Council on Postsecondary Accreditation.

In the case of foreign-trained persons, the board shall establish procedures for assessing the education and training to determine in each case whether it is equivalent to that of applicants trained in the United States."

SECTION 143. Section 461J-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§461J-12] Revocation, suspension, probation of license.** (a) [Any] In addition to any other actions authorized by law, any license issued under this chapter may be revoked or suspended, by the board at any time for any [one or more of the following acts or conditions on the part of the holder of the license:] cause authorized by law, including but not limited to the following:

- (1) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (2) Wilfully betraying patient confidentiality;
- (3) Making an untruthful and improbable statement in advertising one's practice of business;
- (4) False, fraudulent, or deceptive advertising;
- (5) Being habituated to the excessive use of drugs or alcohol or being or having been addicted to, dependent on, or a habitual user of, a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;

- (6) Practicing physical therapy while the ability to practice is impaired by alcohol, drugs, or mental instability;
- (7) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (8) Professional misconduct, gross carelessness, or manifest incapacity in the practice of physical therapy;
- (9) Conduct or practice contrary to the ethics of the profession of physical therapists in the United States;
- (10) Violation of the conditions or limitations upon which a temporary license is issued or an exemption is granted; or
- (11) Violation of this chapter or the rules adopted pursuant thereto.

[(b) All actions under this section shall be taken in accordance with chapter 91.

(c) Any license revoked or suspended may be restored in full by the board but not until at least one calendar year has elapsed from the date of revocation or suspension.] (b) To [restore] reinstate a suspended license, or to grant licensure to an applicant whose license was previously revoked, the board may require further education or training or require proof of competence in performance.

[(d)] (c) In lieu of revoking or suspending a license, the board may place the licensee on probation, the terms of which may require observation of the licensee by an appropriate group or society of physical therapists.”

SECTION 144. Section 462A-3, Hawaii Revised Statutes, is amended to read as follows:

**“§462A-3 Powers and duties of the director.** In addition to any other [duties and powers granted by this chapter] powers and duties authorized by law, the director shall:

- (1) Grant licenses to port pilots and deputy port pilots pursuant to this chapter;
- (2) [Make,] Adopt, amend, or repeal rules in accordance with chapter 91 as may be necessary to carry out the purposes of this chapter which are to provide for maximum efficiency in navigating vessels entering or leaving the waters of this State; maintain a pilotage system devoted to the preservation, and protection of lives, property and vessels entering or leaving waters of the State; and ensure an adequate supply of qualified pilots in aid of commerce and navigation;
- (3) Develop appropriate standards for licensure including examinations and investigations to determine whether persons applying for full port pilot, or deputy port pilot licenses are qualified;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- (5) Suspend, revoke or deny the issuance of any license for any cause prescribed by this chapter, or for any violation of the rules;
- (6) Investigate any person for violations of any provisions of this chapter;
- (7) Adopt methods to improve disciplinary and enforcement programs against violations of this chapter; and
- (8) Do all things reasonable, necessary, and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter.”

SECTION 145. Section 462A-8, Hawaii Revised Statutes, is amended to read as follows:

**“§462A-8 Denial, suspension, or revocation.** [The] In addition to any other actions authorized by law, the director may deny the issuance of a license to any applicant, and may suspend or revoke the license of any pilot for any [of the following reasons:] cause authorized by law, including but not limited to the following:

- (1) Violation of this chapter or any rule adopted by the director;
- (2) Loss, damage, or injury due to negligent pilotage;
- (3) Habitual use of any substance rendering a pilot unfit to be entrusted with the charge of a vessel;
- (4) Inability to physically or mentally perform the duties of a pilot;
- (5) Failure to maintain active service as a pilot in the State;
- (6) Procurement of a license through fraudulent misrepresentation or deceit;
- (7) Participation in any unfair or deceptive act or practice as prohibited by section 480-2;
- (8) Violation of any law or [regulation] rule intended to promote marine safety or protect navigational waters;
- (9) Failure to report marine accidents in accordance with the rules of this chapter; or
- (10) Failure to maintain a current and valid federal pilots license issued in accordance with title 46, United States Code, chapter 71.”

SECTION 146. Section 463-2, Hawaii Revised Statutes, is amended to read as follows:

**“§463-2 Board of private detectives and guards; appointment; qualifications; term.** Appointment and removal. There shall be a board of detectives and guards consisting of seven members, six of whom shall be nominated, and by and with the advice and consent of the senate, appointed by the governor. The terms of [such] the members shall be for four years. Each term shall commence on July 1 and expire on June 30. No person shall be appointed consecutively to more than two terms, provided that [such] membership shall not exceed eight consecutive years. The director of commerce and consumer affairs shall be an ex officio nonvoting seventh member of the board and may designate a representative to sit in the director's stead.

Of the six appointed members, two shall be chiefs of police of any of the four counties, two shall be private citizens not engaged in any of the licensed practices, and two shall be persons actively engaged in any of the licensed practices; provided that one person shall be a licensed private detective and one person shall be a licensed guard.

[The board shall examine applicants for private detective or guard licenses, grant licenses, and revoke or suspend licenses of licensees who violate this chapter.]”

SECTION 147. Section 463-3, Hawaii Revised Statutes, is amended to read as follows:

**“§463-3 Policy [and standards.]; powers and duties.** It is the policy of this State to protect the general public from unlawful and unethical conduct and operation of the business of private detective and guards. [The] In addition to any

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other powers and duties authorized by law, the board of detective and guards may adopt, amend, or repeal rules [and regulations], which shall have the force and effect of law, relating to qualifications for licensing of private detectives and guards, to the conduct and operation of the businesses of such license, and to the revocation or suspension for cause of such licenses. The board shall consult with appropriate state and federal agencies and any appropriate industry or trade organization in establishing [such] those rules [and regulations]. The rules [and regulations] so established shall be on the basis of what the board deems best suited to the public interest. The board also shall examine applicants for private detective or guard licenses, grant licenses, and revoke or suspend licenses of licensees who violate this chapter."

SECTION 148. Section 463-4, Hawaii Revised Statutes, is amended to read as follows:

**“§463-4 Procedure in revocation or suspension of licenses.** (a) Actions to revoke or suspend licenses granted under this chapter shall be subject to chapter 91 and shall be commenced by a notice of hearing.

(b) The notice of hearing shall be served by certified mail to the [accused's] licensee's last known business address.

(c) The [accused] licensee shall be given thirty days from the date of mailing [such] the notice in which to answer.

(d) Any licensee whose license has been revoked or suspended may file an appeal to the circuit courts.

(e) Prosecution of such actions shall be conducted by the department of the attorney general.]”

SECTION 149. Section 463-9, Hawaii Revised Statutes, is amended to read as follows:

**“§463-9 Form of application for license.** Application for [such] a license shall be made under oath on a form [to be furnished] prescribed by the board which [form] may require a statement of the applicant's full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether [such] the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant's background, character, competency, and integrity as it deems appropriate, and shall request criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs.”

SECTION 150. Section 463-10, Hawaii Revised Statutes, is amended to read as follows:

**“§463-10 Licenses and renewal of licenses; establishment of fees by**

**rule.** [(a)] The license shall state the name and address of the principal office or place of business of the licensee, the name under which the licensed business is to be conducted, and the name of the principal detective or guard, if the licensee is a corporation.

The holder of a license issued by the board of detectives and guards who continues in active practice shall biennially renew the license and pay the renewal fee not later than June 30 of each even-numbered year.

The holder of an expired license may have the license restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee.

[(b) All fees required under this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.]”

SECTION 151. Section 463E-5, Hawaii Revised Statutes, is amended to read as follows:

**“§463E-5 Fees; expenses.** No applicant shall be examined under this chapter until the applicant has paid to the board [of medical examiners] application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall reregister with the board no later than January 31 of each even-numbered year, and for registration shall pay a renewal fee. At the time of reregistration, the licensee shall provide written proof of a minimum of forty hours of postgraduate work or continuing education of podiatric medicine taken during the previous biennium. Failure to reregister and present this proof shall constitute a forfeiture of the license, which may be restored only upon written application therefor and payment to the board of a restoration fee. A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required. [All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.]”

SECTION 152. Section 463E-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to or in lieu of revoking or suspending a license to practice podiatric medicine, the board may impose one or more of the following actions:

- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed podiatrists;
- (2) Limit the license by restricting the field of practice in which the licensee may engage;
- (3) Fine the licensee, including assessment against the licensee of the cost of the disciplinary proceedings. Any fine imposed by the board [after a hearing in accordance with chapter 91] shall be no less than \$500 and no more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings; or
- [4) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public; or

- (5) (4) Require further education or training or require proof of performance competency."

SECTION 153. Section 464-6, Hawaii Revised Statutes, is amended to read as follows:

**"§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" [, to be appointed by the governor in the manner prescribed in section 26-34]. 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. [Members of the board shall serve without pay, except the secretary, who shall be allowed such compensation as the board may fix with the approval of the governor.] Any member of the board[, however,] who incurs expenses in connection with the preparation and grading of examination papers shall be reimbursed for those expenses with the approval of the [board].

The department of commerce and consumer affairs shall employ, subject to chapters 76 and 77, a secretary and such other clerical help as are necessary for the proper performance of the board's work and may make any reasonable expenditures which are necessary to carry out the functions of the board.] department."

SECTION 154. Section 464-7, Hawaii Revised Statutes, is amended to read as follows:

**"§464-7 Powers and duties of board; secretary; records.** [The] In addition to any other powers and duties authorized by law, the board [is entitled to the services of the attorney general in connection with its affairs, and] may compel the attendance of witnesses upon subpoena, administer oaths, take testimony, and do all other things necessary and proper to carry out this chapter in all matters within its jurisdiction. It shall adopt and have an official seal and [make,] adopt, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, rules for the performance of its duties and the carrying on of its business and the enforcement of this chapter. [It shall be provided with suitable office quarters by the State and shall hold at least two regular meetings during each year.] It shall have a [chairman, a vice-chairman,] chairperson, a vice-chairperson, and a secretary, and a quorum shall consist of not less than six members.

[All fees and other moneys received by the board shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.]

The board shall keep a record of its proceedings and all applicants for licensure as engineers, architects, surveyors, or landscape architects, the date of application, name, age, educational and other qualifications, place of business and residence, whether or not an examination was required, and whether or not the applicant was licensed and a certificate issued to the applicant and the date of the

action. The records shall be prima facie evidence of all matters therein contained."

SECTION 155. Section 464-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Application for licensure shall be made upon [blanks to be furnished] a form prescribed by the board and shall be signed and sworn to by the applicant. With each application there shall be paid to the board an application fee, the fee to be nonreturnable after the application has been entered in the records of the board.

For each examination, or repetition thereof in whole or in part as shall be limited or permitted by the rules of the board, the candidate shall pay to the board an examination fee; provided where the candidate is eligible to take only that part of the examination pertaining to engineering fundamentals the candidate shall pay the appropriate fee. The fee paid shall not be refundable; provided if a candidate after having paid the fee is unable for any reason beyond the candidate's control to participate in the examination, the board may extend the time of the candidate's participation to the next regular examination date and credit the candidate the amount of the fee paid."

SECTION 156. 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 the date of expiration and the amount required for the renewal thereof. [The fee for renewal and all other fees in this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.] Licenses which have expired for failure to pay renewal fees on or before the date required in this subsection may be [reinstated] restored within one year of the expiration date upon payment of a fee for each renewal. Any person who fails to [reinstate] restore the person's license within one year of the date of its expiration shall reapply for licensure."

SECTION 157. Section 464-10, Hawaii Revised Statutes, is amended to read as follows:

**"§464-10 Licensees; suspension or revocation of licenses; fines; hearings.** [The] In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to [who is found guilty of any] fraud or deceit in obtaining the license or [of] gross negligence, incompetency, or misconduct in the practice of the profession, or [who is convicted of] violating this chapter or the rules of the board. Any person may prefer charges in writing with the executive secretary of the board against any person holding a license.

In every case where it is proposed to impose any penalty under this section, the board shall give the licensee concerned notice and hearing in conformity with chapter 91. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the board[,] or of any member thereof, or of any subpoena issued by it[,] or by a member, or the refusal of any witness to testify to any matter regarding which the person may be questioned lawfully, any circuit judge, on application by the board[,] or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

Any licensee who violates this chapter or the rules adopted pursuant thereto may also be fined not less than \$500 nor more than \$1,000 per violation. Each day of violation or failure to comply shall constitute a separate offense."

SECTION 158. Section 465-4, Hawaii Revised Statutes, is amended to read as follows:

**"§465-4 Board of psychology; appointment, qualifications, term, expenses.** [(a)] There is created a board of psychology[, within the department of commerce and consumer affairs for administrative purposes,] consisting of seven members. [In accordance with section 26-34, the governor shall appoint, with the advice and consent of the senate,] There 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. [The board shall elect one of its members to serve as chairman.

(b) Members shall serve without compensation, except that they shall be reimbursed for actual expenses incurred in the performance of official duties on islands other than the island of their residence.]"

SECTION 159. Section 465-6, Hawaii Revised Statutes, is amended to read as follows:

**"§465-6 Powers and duties.** [The] In addition to any other powers and duties authorized by law, the board shall:

- (1) Examine the qualifications of applicants for licensing under this chapter to determine their eligibility for licensing as psychologists and forward to the director the names of applicants who are eligible for licensing no later than ninety days after the date of application;
- (2) Prepare, administer, and grade examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of the examinations and tests, whether they shall be oral, written, or both and the score that shall be deemed a passing score. Examinations must be scheduled at least once annually;
- (3) Keep a record of action taken on all applicants for licensing; the names of all persons licensed; petitions for temporary permits; actions involving suspension, revocation, or denial of licenses; decisions on waiver of examination in whole or in part and receipt and disbursal of any moneys; and

- (4) Adopt, amend, and repeal pursuant to chapter 91, rules as it deems proper for the purposes of this chapter."

SECTION 160. Section 465-12, Hawaii Revised Statutes, is amended to read as follows:

"**§465-12 Fees; disposition.** Application, examination, license, renewal, and temporary permit fees required by this chapter, none of which are refundable, shall be as provided in rules adopted by the director pursuant to chapter 91.

[All fees shall be paid to the director and shall be deposited with the director of finance to the credit of the general fund.]"

SECTION 161. Section 465-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The] In addition to any other actions authorized by law, the board shall refuse to grant a license to any applicant and may revoke or suspend any license, or may place a license, or may put a license holder on conditional probation, [upon any of the following grounds:] for any cause authorized by law, including but not limited to the following:

- (1) Professional misconduct, gross carelessness, manifest incapacity, or incompetency in the practice of psychology;
- (2) Violation of this chapter by the applicant within one year of the application, or violation of this chapter by a license holder any time the license is valid;
- (3) Any unethical practice of psychology as defined by the board in accordance with its own rules;
- (4) Fraud or deception in applying for or procuring a license to practice psychology as defined in section 465-1;
- (5) Conviction of a crime substantially related to the qualifications, functions, or duties of psychologists;
- (6) Wilful unauthorized communication of information received in professional confidence;
- (7) The suspension, revocation, or imposition of probationary conditions by another state of a license or certificate to practice psychology issued by that state if the act for which the disciplinary action was taken constitutes a violation of this chapter;
- (8) The commission of any dishonest, corrupt, or fraudulent act or any act of sexual abuse, or sexual relations with a client, or sexual misconduct which is substantially related to the qualifications, functions, or duties of a psychologist;
- (9) Harassment, intimidation, or abuse, sexual or otherwise, of a client or patient;
- (10) Exercising undue influence in the manner as to exploit the client or patient for financial or other personal advantage to the practitioner or a third party;
- (11) Conviction of fraud in filing medicaid claims or conviction of fraud in filing claims to any third party payor, for which a copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence;
- (12) Aiding or abetting any unlicensed person to engage in the practice of psychology;

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- (13) Repeated acts of excessive treatment or use of diagnostic procedures as determined by the standard of the local community of licensees; or
- (14) Inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, inebriation, or excessive use of any substance, or as a result of any mental or physical condition."

SECTION 162. Section 466-3, Hawaii Revised Statutes, is amended by deleting the definition "licensee".

[““Licensee” means the holder of a license issued by the board under sections 466-5 and 466-6.”]

SECTION 163. Section 466-4, Hawaii Revised Statutes, is amended to read as follows:

**“§466-4 Board of public accountancy.** (a) There shall be a board of public accountancy to be known as the state board of public accountancy, which shall consist of nine members [appointed by the governor in the manner prescribed in section 26-34]. All members of the board shall be citizens of the United States and residents of this State. Five members thereof shall be certified public accountants in active practice, holding current licenses and current permits to practice public accountancy issued under this chapter. Two members thereof shall be public accountants in active practice holding current licenses and current permits to practice public accountancy issued under this chapter, and two shall be public members.

(b) The governor shall remove or suspend any member of the board for cause, in accordance with [the provisions of] section 26-34, including any member thereof:

- (1) Who ceases to engage in active practice as a certified public accountant or as a public accountant, as the case may be; or
- (2) Whose license of certified public accountant or of public accountant, as the case may be, or whose permit to practice public accountancy:
  - (A) Has been canceled, revoked, or suspended;
  - (B) Has expired without renewal; or
  - (C) Has otherwise become invalid.

(c) The board shall elect annually a chairperson and a vice chairperson from its members. The board shall conduct its meetings and keep records of its proceedings in accordance with the provisions of chapter 92.

(d) Members of the board of public accountancy shall not receive any compensation for performance of the duties imposed upon them by this chapter, but shall be entitled to necessary traveling expenses.

(e) (c) The director shall employ clerks, proctors, examiners, and other personnel under [the provisions of] chapters 76 and 77 to assist the board in the performance of its duties.

[f) (d) In addition to any other powers and duties authorized by law, the board [may], in accordance with [the provisions of] chapter 91[.] shall:

- (1) Initiate investigations and hearings, either upon complaint or on its own motion on any matter involving the conduct of certified public accountants, public accountants, or firms, or the violation of any of the provisions of this chapter or the rules of the board;
- (2) Adopt, amend, and repeal rules governing the administration and

- enforcement of this chapter and the conduct of the licensees, as it deems appropriate to establish and maintain high standards of competence and integrity in the practice of public accountancy;
- (3) Grant, deny, suspend, or revoke licenses [which] that are authorized by this chapter and impose such conditions as may be necessary in connection with the granting, denial, suspension, or revocation of licenses;
  - (4) Prescribe the proof to be furnished for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case; and
  - (5) Grant, renew, forfeit and restore permits to practice [which] that are authorized by this chapter and impose such conditions as may be necessary in connection with the granting, renewal, forfeiture and restoration of permits."

SECTION 164. Section 466-8, Hawaii Revised Statutes, is amended to read as follows:

**"§466-8 Fees.** [(a) All fees required by this chapter or rules adopted by the board shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b)] (a) An application for admission to the examination described in section 466-5(f) shall be accompanied by the application and examination fees. The board may prescribe by rule the terms and conditions upon which an applicant who is unable to attend the examination may receive a credit in the amount of the fee paid toward a subsequent examination.

[(c)] (b) An application for the issuance of a [certificate] license of certified public accountant under section 466-5(a) or a [registration] license of public accountant under section 466-6(a) shall be accompanied by a [certificate or registration] license fee.

[(d)] (c) An applicant for the renewal of a current [certificate] license of certified public accountant under section [466-5(a)] 466-5 or for the renewal of a [registration] license of public accountant under section [466-6(a)] 466-6 shall pay a fee biennially in each odd-numbered year on or before December 31. An applicant for the renewal of a [certificate] license of certified public accountant or [for the renewal of a registration of] public accountant which is not current under this chapter or under the laws of this State theretofore existing shall pay a fee with the application for renewal in an amount equal to twice the amount of the fees which the applicant would have paid had the applicant timely renewed the [certificate or registration] license since the date it was last current.

[(e)] (d) An application for the issuance of a biennial permit to practice for an individual or firm under section 466-7(a) and (d) shall be accompanied by the application and permit to practice fees. An applicant for the restoration of a forfeited permit shall pay a fee with the application for restoration in an amount equal to twice the amount of the fees which the applicant would have paid had the applicant renewed the permit by December 31 of every odd-numbered year.

[(f)] (e) An application for the issuance of a temporary permit to practice under section [466-7(b)] 466-7(c) shall be accompanied by the application and temporary permit to practice fees.

[(g)] (f) Any person requesting the board to proctor the certified public accountant examination for another state shall pay a proctoring fee.

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[(h) All fees and other moneys received by the board pursuant to this chapter shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.]"

SECTION 165. Section 466-9, Hawaii Revised Statutes, is amended to read as follows:

**"§466-9 Disciplinary action.** (a) In addition to any other actions authorized by law, in accordance with chapter 91, the board may take the following action:

- (1) Cancel or revoke any license or permit issued under section 466-5, 466-6, or 466-7, or corresponding provisions of prior law;
- (2) Suspend a license or permit for a period of not more than two years;
- (3) Refuse to renew a license or permit for a period of not more than two years;
- (4) Reprimand, censure or limit the scope of practice of any licensee or firm;
- (5) Impose an administrative fine not exceeding \$1,000;
- (6) Place a licensee or firm on probation;
- (7) Require a firm to have a quality review conducted in the manner specified by the board; or
- (8) Require a licensee to attain satisfactory completion of additional continuing professional education hours as specified by the board.

(b) [Any] In addition to any other grounds for disciplinary action authorized by law, any one or more of the following shall constitute grounds for disciplinary action:

- (1) Fraud or deceit in obtaining a license or permit;
- (2) Disciplinary action taken by another state where the license is canceled, revoked, suspended, denied, or refused renewal;
- (3) Failure, on the part of a holder of a license or a permit under section 466-5, 466-6, or 466-7, to maintain compliance with the requirements for issuance of a license or a permit, or renewal of a license or permit, or to report changes to the board;
- (4) Revocation or suspension of the right to practice before any state or federal agency;
- (5) Dishonesty, deceit, fraud, or gross negligence in the practice of public accountancy or in the filing or failure to file a licensee's or firm's own income tax returns;
- (6) Violation of any provision of this chapter or of any rule adopted by the board;
- (7) Violation of any provision of professional conduct established by the board under this chapter;
- (8) Conviction of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this State, or of any other state if the act involved would have constituted a crime under the laws of this State;
- (9) Performance of any fraudulent act while holding a license or permit issued under this chapter; or
- (10) Any conduct reflecting adversely upon the licensee's or permit holder's fitness to engage in the practice of public accountancy.

(c) Upon application of any person against whom disciplinary action has been taken under [the provisions of] subsection (a) [of this section], the board [may], in accordance with [the provisions of] chapter 91, may reinstate [such

person and reissue any] the person's license or permit to practice which was affected by [such] the disciplinary action.

- (1) The board shall specify the manner in which an application shall be made, the time within which it shall be made, and the circumstances under which the [forfeited] license may be reinstated[.]; and
- (2) Before [reissuing,] reinstating, the board may:
  - (A) Require the applicant to show successful completion of specified continuing professional education; and
  - (B) Make the reinstatement of a license or permit conditional and subject to satisfactory completion of a quality review conducted in a manner as the board may specify."

SECTION 166. Section 466K-3, Hawaii Revised Statutes, is amended to read as follows:

**"§466K-3 Powers and duties of the director.** [The] In addition to any other powers and duties authorized by law, the director shall have the following powers and duties:

- (1) To grant permission to practice as a certified real estate appraiser in this State pursuant to this chapter and 12 United States Code §3301 et seq. and the rules and regulations adopted pursuant thereto;
- (2) To adopt, amend, or repeal rules as the director finds necessary to effectuate fully this chapter and 12 United States Code §3301 et seq.;
- (3) To enforce this chapter and 12 United States Code §3301 et seq. and rules and regulations adopted pursuant thereto;
- (4) To discipline a certified real estate appraiser for any cause prescribed by this chapter or 12 United States Code §3301 et seq. or for any violation of the rules and regulations and refuse to grant a person permission to practice as a certified real estate appraiser for any cause that would be grounds for disciplining a certified real estate appraiser;
- (5) To act as the designated representative of this State to implement 12 United States Code §3301 et seq.; and
- (6) To appoint an advisory committee to assist with the implementation of this chapter and 12 United States Code §3301 et seq. and the rules and regulations adopted pursuant thereto."

SECTION 167. Section 467-3, Hawaii Revised Statutes, is amended to read as follows:

**"§467-3 Commission, appointments, qualifications, tenure.** There shall be appointed [in the manner provided by section 26-34,] a commission to be known as the real estate commission, [and] 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 [chairman.] 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. [The members of the commission shall serve without pay. All expenses shall be paid out of the special fund provided in section 467-11.]”

SECTION 168. Section 467-4, Hawaii Revised Statutes, is amended to read as follows:

**“§467-4 Powers and duties of commission.** In addition to any other [duties and powers granted by this chapter] powers and duties authorized by law, the real estate commission shall:

- (1) Grant licenses to real estate brokers and real estate salespersons pursuant to this chapter;
- (2) [Make,] Adopt, amend, or repeal such rules [and regulations] as it may deem proper to fully effectuate this chapter and carry out its purpose, which [purpose] is the protection of the general public in its real estate transactions. All rules [and regulations] shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91 shall have the force and effect of law. The rules [and regulations] may forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purpose of this chapter, and the rules [and regulations] may require real estate brokers and salespersons to make reports to the commission containing such items of information as will better enable the commission to enforce this chapter and the rules [and regulations], or as will better enable the commission from time to time to amend the rules [and regulations] to more fully effect the purpose of this chapter, and, further, the rules [and regulations] may require real estate brokers and salespersons to furnish reports to their clients containing such matters of information as the commission deems necessary to promote the purpose of this chapter. This enumeration of specific matters which may properly be made the subject of rules [and regulations] shall not be construed to limit the commission's broad general power to make all rules [and regulations] necessary to fully effectuate the purpose of this chapter;
- (3) Enforce this chapter and rules [and regulations] adopted pursuant thereto;
- (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules [and regulations], and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- (5) Report to the governor through the director of commerce and consumer affairs annually and at such other times and in such other manner as the governor may require concerning its activities;
- (6) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter; and
- (7) Enter into contract or contracts with qualified persons or firms to assist the commission in conducting review of applications and monitoring the schools by conducting school visitations.”

SECTION 169. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

**"§467-14 Revocation and suspension of licenses.** [The] In addition to any other actions authorized by law, the real estate commission may revoke any license issued under this chapter, or suspend the right of the licensee to use the license, for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee's services from both of [such] the parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom the salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;

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- (13) Violating this chapter[,] [chapter] chapters 484, 514A, 514E, or 515; [or] section 516-71[,] or the rules adopted pursuant thereto;
- (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
  - (A) A licensed broker of another state, territory, or possession of the United States if [such] that broker does not conduct in this State any of the negotiations for which a commission is paid;
  - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if [such] that broker does not conduct in this State any of the negotiations for which a commission is paid; or
  - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent;
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee; or
- (20) Failure to maintain a reputation for honesty, truthfulness, financial integrity, and fair dealing.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

[No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.]

SECTION 170. Section 468E-6, Hawaii Revised Statutes, is amended to read as follows:

**"§468E-6 Board of speech pathology and audiology.** (a) There is hereby established within the department of commerce and consumer affairs a state board of speech pathology and audiology consisting of seven members [who shall be appointed by the governor in a manner prescribed in section 26-34].

(b) The membership of the board shall include two speech pathologists, two audiologists, and three public members, one of whom shall be licensed to practice medicine in the State and hold a certificate of qualification from the American Board of Otorhinolaryngology. [For purposes of the initial appointments to the board, the original speech pathologists and audiologists appointed shall meet all requirements of section 468E-5 except those relating to examination. Subsequent appointees] Appointees shall be fully licensed speech pathologists or audiologists.

All members of the board shall be residents of the State.

(c) Members shall serve for a term of three years. Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year.

[(d) The board shall meet during the first month of each fiscal year to select a chairman and for other appropriate purposes. At least one additional meeting shall be held before the end of each fiscal year. Further meetings may be convened at the call of the chairman or the written request of any two board members. The board shall conduct its meetings and keep records of its proceedings in accordance with the provisions of chapter 92.]

(e) Members of the board shall not receive any compensation for performance of the duties imposed upon them by this chapter, but shall be entitled to necessary traveling expenses.

(f) The director of commerce and consumer affairs shall employ clerks, proctors, examiners and other personnel under the provisions of chapters 76 and 77 to assist the board in the performance of its duties.

(g) [(d) Four members of the board shall constitute a quorum for all purposes, but in no instance shall a meeting of the two speech pathologist members and two audiologist members alone be considered a quorum.]

**SECTION 171.** Section 468E-7, Hawaii Revised Statutes, is amended to read as follows:

**“§468E-7 Functions and powers of the board.** (a) [The] In addition to any other powers and duties authorized by law, the board [shall], in accordance with [the provisions of] chapters 91 and 92, shall administer, coordinate, and enforce [the provisions of] this chapter.

(b) [The] In addition to other powers and duties authorized by law, the board [shall], in accordance with [the provisions of] chapter 91, shall adopt rules relating to professional conduct to effectuate the policy of this chapter, including but not limited to rules [which] that establish ethical standards of practice, and for other purposes, and may amend or repeal the same.”

**SECTION 172.** Section 468E-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The] In addition to any other actions authorized by law, the board may take disciplinary action against any licensee, including but not limited to revocation, suspension, fine, or a combination thereof, or refuse to issue or renew a license for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
- (2) Professional misconduct or unethical conduct;
- (3) Conduct constituting fraudulent or dishonest dealings;
- (4) Violating any provision of this chapter or rules adopted thereunder;

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- (5) Failure to comply with a board order; or
- (6) Making a false statement on any document submitted or required to be filed by this chapter."

SECTION 173. Section 468E-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Any person who fails to renew the person's license within the five years after the date of its expiration may not renew it, and it may not be restored[, reissued, or reinstated] thereafter, but [such] the person may apply for and obtain a new license if the person meets the requirements of this chapter."

SECTION 174. 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 [in the manner provided in section 26-34].

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 175. Section 471-10, Hawaii Revised Statutes, is amended to read as follows:

**"§471-10 Refusal to grant and revocation or suspension of license.** (a) [The] In addition to any other actions authorized by law, the board may refuse to grant, renew, reinstate or restore a license for any cause which would be ground for revocation of a license under [this section.] the law.

(b) [The] In addition to any other actions authorized by law, the board may revoke or suspend the license of any veterinarian or fine the licensee, or both, for any [of the following causes:] cause authorized by law, including but not limited to the following:

- (1) Professional misconduct, gross negligence, or manifest incapacity;
- (2) Violation of this chapter or the rules adopted pursuant thereto or any other law which applies to the licensee as a practicing veterinarian;
- (3) Making any false representations or promises through advertising or otherwise;
- (4) Habitual intemperance in the use of alcoholic beverages or addiction to the use of narcotic or dangerous substances;
- (5) Mental incompetence;
- (6) Any fraudulent, dishonest, or deceitful act in connection with the practice of veterinary medicine;
- (7) Making a false statement in any document submitted or required to be filed by this chapter;
- (8) Revocation, suspension, or other disciplinary action by another state of a license or certificate for reasons as provided in this section;

- (9) Conviction, whether by nolo contendere or otherwise, or a penal offense substantially related to the qualifications, functions, or duties of a veterinarian, notwithstanding any statutory provision to the contrary;
- (10) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereto; or
- (11) Failure to report any disciplinary action taken against a licensee in another jurisdiction within thirty days after the disciplinary action becomes final."

SECTION 176. Section 471-11, Hawaii Revised Statutes, is amended to read as follows:

**"§471-11 Hearings.** In every case where it is proposed to refuse to grant, renew, reinstate, or restore a license or to revoke or suspend the exercise of a license for any of the causes enumerated in section 471-10, the person concerned shall be given notice and opportunity for hearing in conformity with chapter 91. [The notice of hearing shall be given at least five days before the hearing.]

In all proceedings before it, the board of veterinary examiners and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or the member, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the board, or any member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein."

SECTION 177. Section 514E-1, Hawaii Revised Statutes, is amended by deleting the definition "person".

[““Person” means one or more natural persons, partnerships, joint ventures, corporations, associations, trusts, other entities, or any combination thereof.”]

SECTION 178. Section 514E-1.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§514E-1.5[]] Time share administrator; [other personnel.] duties.** The director shall appoint a time share administrator, who shall not be subject to chapters 76 and 77, to administer this chapter. The administrator shall be responsible for the performance of the duties conferred upon the director by this chapter.

[The director shall employ, subject to chapters 76 and 77, such other administrative and clerical assistants as the director deems necessary for the proper administration of this chapter.]”

SECTION 179. Section 514E-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a) [If the director determines, after notice and a hearing.] For any cause authorized by law, including but not limited to a determination by the director** that any person has violated any provision of this chapter or any rule adopted by the director pursuant to this chapter, or that a person has authorized, directed,

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ordered, or personally participated in any violation of this chapter or any rule adopted by the director pursuant to this chapter, in addition to any other actions authorized by law, the director:

- (1) May fine the person a sum of not less than \$500 nor more than \$10,000 for each separate offense; provided that each date of violation shall constitute a separate offense; and
- (2) May issue an order suspending or revoking the registration of the person and the right of the person to offer or sell time share interests or otherwise engage in time share activities."

SECTION 180. Section 373-14.7, Hawaii Revised Statutes, is repealed.

SECTION 181. Section 436E-8, Hawaii Revised Statutes, is repealed.

SECTION 182. Section 436E-11, Hawaii Revised Statutes, is repealed.

SECTION 183. Section 437-8, Hawaii Revised Statutes, is repealed.

SECTION 184. Section 437-22, Hawaii Revised Statutes, is repealed.

SECTION 185. Section 437-30, Hawaii Revised Statutes, is repealed.

SECTION 186. Section 437-31, Hawaii Revised Statutes, is repealed.

SECTION 187. Section 437B-5, Hawaii Revised Statutes, is repealed.

SECTION 188. Section 439-4, Hawaii Revised Statutes, is repealed.

SECTION 189. Section 439-6, Hawaii Revised Statutes, is repealed.

SECTION 190. Section 439-9, Hawaii Revised Statutes, is repealed.

SECTION 191. Section 440-3, Hawaii Revised Statutes, is repealed.

SECTION 192. Section 440-4, Hawaii Revised Statutes, is repealed.

SECTION 193. Section 441-34, Hawaii Revised Statutes, is repealed.

SECTION 194. Section 442-4, Hawaii Revised Statutes, is repealed.

SECTION 195. Section 442-13, Hawaii Revised Statutes, is repealed.

SECTION 196. Section 442-20, Hawaii Revised Statutes, is repealed.

SECTION 197. Section 443B-4.61, Hawaii Revised Statutes, is repealed.

SECTION 198. Section 443B-7, Hawaii Revised Statutes, is repealed.

SECTION 199. Section 444-6, Hawaii Revised Statutes, is repealed.

SECTION 200. Section 444-18, Hawaii Revised Statutes, is repealed.

SECTION 201. Section 444-19, Hawaii Revised Statutes, is repealed.

- SECTION 202. Section 444-20, Hawaii Revised Statutes, is repealed.
- SECTION 203. Section 448E-3, Hawaii Revised Statutes, is repealed.
- SECTION 204. Section 448E-7, Hawaii Revised Statutes, is repealed.
- SECTION 205. Section 448F-10, Hawaii Revised Statutes, is repealed.
- SECTION 206. Section 451A-4, Hawaii Revised Statutes, is repealed.
- SECTION 207. Section 451A-8.5, Hawaii Revised Statutes, is repealed.
- SECTION 208. Section 452-5, Hawaii Revised Statutes is repealed.
- SECTION 209. Section 452-7, Hawaii Revised Statutes, is repealed.
- SECTION 210. Section 452-8, Hawaii Revised Statutes, is repealed.
- SECTION 211. Section 452-20, Hawaii Revised Statutes, is repealed.
- SECTION 212. Section 453-5.2, Hawaii Revised Statutes, is repealed.
- SECTION 213. Section 453-9, Hawaii Revised Statutes, is repealed.
- SECTION 214. Section 455-8.5, Hawaii Revised Statutes, is repealed.
- SECTION 215. Section 455-12, Hawaii Revised Statutes, is repealed.
- SECTION 216. Section 457-6, Hawaii Revised Statutes, is repealed.
- SECTION 217. Section 457-10, Hawaii Revised Statutes, is repealed.
- SECTION 218. Section 457B-5, Hawaii Revised Statutes, is repealed.
- SECTION 219. Section 458-12, Hawaii Revised Statutes, is repealed.
- SECTION 220. Section 459-11, Hawaii Revised Statutes, is repealed.
- SECTION 221. Section 460J-4, Hawaii Revised Statutes, is repealed.
- SECTION 222. Section 460J-5, Hawaii Revised Statutes, is repealed.
- SECTION 223. Section 460J-18, Hawaii Revised Statutes, is repealed.
- SECTION 224. Section 460J-31, Hawaii Revised Statutes, is repealed.
- SECTION 225. Section 461-4, Hawaii Revised Statutes, is repealed.
- SECTION 226. Section 461-16.5, Hawaii Revised Statutes, is repealed.
- SECTION 227. Section 461J-11, Hawaii Revised Statutes, is repealed.
- SECTION 228. Section 462A-7, Hawaii Revised Statutes, is repealed.

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SECTION 229. Section 462A-20, Hawaii Revised Statutes, is repealed.

SECTION 230. Section 463-16, Hawaii Revised Statutes, is repealed.

SECTION 231. Section 463E-7, Hawaii Revised Statutes, is repealed.

SECTION 232. Section 463E-13, Hawaii Revised Statutes, is repealed.

SECTION 233. Section 464-16, Hawaii Revised Statutes, is repealed.

SECTION 234. Section 465-5, Hawaii Revised Statutes, is repealed.

SECTION 235. Section 465-14, Hawaii Revised Statutes, is repealed.

SECTION 236. Section 466-14, Hawaii Revised Statutes, is repealed.

SECTION 237. Section 468E-15, Hawaii Revised Statutes, is repealed.

SECTION 238. Section 471-4, Hawaii Revised Statutes, is repealed.

SECTION 239. Section 471-5, Hawaii Revised Statutes, is repealed.

SECTION 240. Section 471-12, Hawaii Revised Statutes, is repealed.

SECTION 241. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>5</sup>

SECTION 242. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

### Notes

1. So in original.
2. Prior to amendment "subsection" appeared here.
3. Prior to amendment "the" appeared here.
4. Should be underscored.
5. Edited pursuant to HRS §23G-16.5.

## ACT 203

S.B. NO. 3237

A Bill for an Act Relating to University of Hawaii.

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

SECTION 1. Section 26-52, Hawaii Revised Statutes, is amended to read as follows:

**"§26-52 Department heads and executive officers.** The salaries of the following state officers shall be as follows:

- (1) The salary of the superintendent of education shall be \$90,041 a year;
- (2) The salary of the president of the University of Hawaii shall be set

- by the board of regents; provided that effective [July 1, 1996,] July 1, 1998,<sup>1</sup> the salary of the president of the University of Hawaii shall be set by the legislature;
- (3) The salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human services, labor and industrial relations, land and natural resources, personnel services, public safety, taxation, and transportation shall be \$85,302 a year; and
- (4) The salary of the adjutant general shall be \$85,302 a year. If the salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail."

SECTION 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 12, 1992.)

Note

1. Comma should be underscored.

ACT 204

S.B. NO. 3286

A Bill for an Act Relating to Public Accountancy.

*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) There shall be a board of public accountancy to be known as the state board of public accountancy, which shall consist of nine members appointed by the governor in the manner prescribed in section 26-34. All members of the board shall be citizens of the United States and residents of this State. [Five] Six members thereof shall be certified public accountants [in active practice,] holding current licenses and current permits to practice public accountancy issued under this chapter, of which four of the six certified public accountant members shall be in active practice. [Two members] One member thereof shall be a public [accountants] accountant in active practice holding a current [licenses] license and a current [permits] 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 June 12, 1992.)

A Bill for an Act Relating to Escrow Depositories.

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

SECTION 1. Chapter 449, Hawaii Revised Statutes, is amended by adding eleven new sections to be appropriately designated and to read as follows:

**“§449- Applicability of chapter.** This chapter shall apply to all escrow depositories and to any other corporations that, by violating any of the provisions of this chapter, shall be subject to the penalties and fines provided in this chapter.

**§449- Name of escrow depository.** The name of every escrow depository licensed to engage in business in this State shall be subject to the approval of the commissioner, and shall have the following characteristics:

- (1) It shall be unique;
- (2) It shall not be confusing or likely to mislead the public into believing that the escrow depository is related to or part of another company, if it is not so related;
- (3) It shall contain the words “escrow” or “escrow depository”; and
- (4) It may but need not contain the words “Corporation,” “Incorporated,” “Corp.,” “Inc.,” “Limited” or “Ltd.”

This section shall not apply to escrow depositories which were licensed on January 1, 1992. Where an escrow depository that is not required to comply with this section is subsequently sold or acquired, the commissioner may require the acquired company to comply with this section.

**§449- Indicia of escrow depository prohibited.** Unless licensed under this chapter to engage in the business of an escrow depository, no person may use the word “escrow” or words of similar import, or translations of those words, as a facetious or fanciful name, or in a manner that might suggest or tend to lead others into believing that the person is an escrow depository.

**§449- Grant of approval.** (a) Following the hearing on the application, if any, the commissioner shall issue a written decision and order. If the commissioner decides in favor of the application, the commissioner shall issue a license to act as an escrow depository pursuant to section 449-8.

(b) Approval shall be granted only if the commissioner finds that the character, financial responsibility, experience, ability, and general fitness of the officers and directors are such as to command the confidence of the community in the State and to warrant the beliefs that the officers and directors are competent to successfully manage an escrow business and the applicant will be an honest and efficient escrow depository.

(c) In granting approval, the commissioner may impose such conditions and restrictions as shall be in the public interest, including without limitation requiring an applicant to fulfill representations contained in its application and agreements made during the application process.

**§449- Denial of license.** If the commissioner is not satisfied that an 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 a license may be appealed to the circuit court as provided in chapter 91.

**§449- Sale or transfer of license or change in control.** (a) No escrow depository license shall be transferred.

(b) A bona fide sale of all or substantially all of the ongoing operations of a licensee shall not result in the assignment or transfer of the escrow depository license. The purchaser of all or substantially all of the ongoing operations of a licensee shall file an application for approval in accordance with this chapter and shall not act as an escrow depository unless it has been licensed by the commissioner.

(c) If the licensee is a corporation, any intended transfer of its voting stock which may result in the acquisition of control of the licensee may be considered a transfer of license. Any intended transfer of the voting stock which may result in the acquisition of control shall be reported to the commissioner in writing. Upon determination by the commissioner that the intended transfer will result in the acquisition of control, the transferee of the stock shall file an application for approval to act as an escrow depository and shall not acquire control of an escrow depository until the transferee has been approved by the commissioner.

**§449- Relocation of office.** No escrow depository may relocate its offices without first obtaining prior written approval from the commissioner. The application shall set forth the reasons for the relocation and other information that may be required by the commissioner.

**§449- Branch offices.** No escrow depository may establish a branch office without first obtaining prior written approval from the commissioner. The application shall set forth the reasons for the branch office and other information that may be required by the commissioner.

**§449- Maintenance of books and records.** (a) Every escrow depository shall keep in a safe and secure place within this State those books and records that directly relate to any escrow business conducted within this State, and such other books and records as may be necessary for the commissioner to ensure full compliance with the laws of this State.

(b) All books and records 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.

(c) All records, statements, and reports required or authorized by this chapter shall be made in writing in the English language.

(d) Every escrow depository shall preserve all of its records for a minimum of six years or for such greater or lesser period as the commissioner may prescribe.

**§449- Examinations.** (a) The commissioner may conduct examinations of escrow depositories as often as the commissioner deems necessary for the purpose of assuring that the escrow depository is in compliance with all laws, rules, or orders issued by the commissioner.

(b) The commissioner shall have full access to the vaults, books, and papers of the escrow depository and may make such inquiries as may be necessary to ascertain the condition of the corporation. All directors, incorporators, officers, employees, and agents of an institution being examined shall cooperate fully with the commissioner and the commissioner's examiners, and shall answer

## ACT 205

all inquiries and furnish all information pertaining to the same, to the best of their knowledge and ability.

(c) The licensee shall bear the expenses of any examination or investigation by the commissioner.

**§449- Removal of officers or directors.** (a) The commissioner may order the removal of any officer or director from office or employment with an escrow depository and prohibit the person's affiliation or participation in the affairs of the escrow depository if the commissioner determines that any of the following circumstances exist:

- (1) The person has violated a state law regulating escrow depositories, violated a cease and desist order, engaged or participated in an unsafe or unsound practice in connection with the escrow depository, or breached a fiduciary duty;
- (2) As a result of a statutory violation or breach the escrow depository has suffered or will probably suffer financial loss or other damage, the interests of the escrow depository's clients have been or may be prejudiced, or the person has received financial gain as a result of such violation or breach; or
- (3) The violation or breach involves the person's personal dishonesty, or demonstrates the person's wilful or continuing disregard for the safety or soundness of the escrow depository.

(b) The commissioner shall serve the officer or director and the board of directors of the escrow depository with written notice containing the alleged violations or breaches, a summary of the facts upon which the allegations are based, and a statement of the commissioner's intention to remove the person from office or prohibit the person's affiliation with the escrow depository, or both. If the commissioner deems it necessary for the protection of the escrow depository or its clients, the notice may also suspend the officer or director from office or prohibit the party from further participation in any manner in the conduct of the affairs of the escrow depository, or both.

(c) Upon request of the person made within ten days after service of notice, the commissioner shall hold a hearing at which any pertinent evidence may be presented and after which the commissioner shall issue findings and a determination. If no hearing is timely requested, the commissioner may proceed to issue orders of removal or prohibition, or both, on the basis of the facts set forth in the written notice.

(d) No officer or director whose removal or prohibition has been ordered pursuant to this section shall thereafter participate in any manner in the conduct of the affairs of the affiliated escrow depository as long as the order remains in effect. Any violation of the order shall constitute a violation of law, and shall be sufficient for the issuance of a cease and desist order to the escrow depository."

SECTION 2. Section 449-1, Hawaii Revised Statutes, is amended to read as follows:

(1) By adding a new definition to be appropriately inserted and to read:

"Acquisition of control" means acquisition by a person or persons acting in concert of the power to vote fifty-one per cent or more of any voting securities of a licensee."

(2) By amending the definition of "escrow depository" to read:

"Escrow depository" means the [person who,] corporation which, in an

escrow, and for compensation, receives, holds, and delivers the money, other consideration, or instrument affecting title to real property.”

(3) By amending the definition of “financial institution” to read:

“Financial institution” means any bank, savings and loan association, [finance company] financial services loan company, or credit union doing business in the State whose accounts are insured by [either] the Federal Deposit Insurance Corporation, [the Federal Savings and Loan Insurance Corporation,] the National Credit Union Share Insurance Fund or other similar or successor program of federal insurance.”

SECTION 3. Section 449-2, Hawaii Revised Statutes, is amended to read as follows:

**“§449-2 Rules [and regulations].** Subject to chapter 91, the commissioner may adopt such rules [and regulations] as the commissioner deems necessary for the effective administration and enforcement of this chapter.”

SECTION 4. Section 449-3, Hawaii Revised Statutes, is amended to read as follows:

**“§449-3 Excepted from this chapter.** This chapter does not apply to any of the following when acting as escrow depositories:

- (1) Banks, trust companies, [building and loan associations,] savings and loan associations, and insurance companies, authorized under any law of this State or of the United States to do business in the State[.];
- (2) Any person licensed as a real estate broker in the State who is the broker for a party to the escrow, provided the person does not charge any escrow fee[.]; and
- (3) Any person licensed to practice law in the State who, in escrow, is not acting as the employee of a corporation, provided the person does not charge any escrow fee.”

SECTION 5. Section 449-4, Hawaii Revised Statutes, is amended to read as follows:

**“§449-4 [Penalty.** Any person who violates any provision of this chapter shall be fined not more than \$5,000 or imprisoned not more than six months, or both.] Administrative penalty. Any person who wilfully violates any of the provisions of this chapter, shall be subject to an administrative fine of \$5,000 for each violation. No licensee shall be subject to this penalty for a violation of [sub-sections] section 449-16(b) or (c) if the violation was not intentional or resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid that error. Examples of bona fide errors include, but are not limited to, clerical miscalculations, computer malfunction, printing errors,<sup>1</sup> and computer programming errors.”

SECTION 6. Section 449-6, Hawaii Revised Statutes, is amended to read as follows:

**“§449-6 Application for license.** (a) Any corporation desiring to be licensed as an escrow depository shall file an application [with and pay a fee for

investigation thereof to the commissioner,] upon forms to be furnished by the commissioner [which shall state:]. The application shall be accompanied by a filing fee no part of which shall be refundable.

(b) The application shall contain the following information:

- (1) The corporate name, amount of capital, and office address of the applicant;
- (2) The names of the stockholders, officers, and directors of the applicant;
- (3) Evidence of the character, financial responsibility, experience, and ability of the officers and directors[.]; and
- (4) The names of the proposed escrow officers and their qualifications.”

SECTION 7. Section 449-7, Hawaii Revised Statutes, is amended to read as follows:

**“§449-7 Investigation and ruling.** The commissioner shall make an investigation into the information furnished by the applicant and may require the applicant to furnish additional information. If the commissioner is satisfied, with or without a hearing upon the application, that the [character, financial responsibility, experience, ability, and general fitness of the officers and directors are such as to command the confidence of the business community in the State and to warrant the beliefs that the officers and directors are competent to successfully manage an escrow business and that the applicant will be an honest and efficient escrow depository,] applicant has met all the criteria set forth for approval, the commissioner shall approve the application. [The commissioner shall not disapprove an application without giving the applicant a hearing thereupon. Any decision of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91.]”

SECTION 8. Section 449-7.5, Hawaii Revised Statutes, is amended to read as follows:

**“§449-7.5 Licensing requirements.** (a) Every corporation desiring to be licensed as an escrow depository shall be incorporated in this State and have and maintain a principal place of business in the State for the transaction of its escrow depository business.

[b] (b) Every such licensee shall notify the commissioner in writing of the relocation of its offices, setting forth the proposed relocation and the reason for the relocation and other information as may be required by the commissioner.

(c) An escrow depository may establish a branch office provided notice thereof is given the commissioner in writing within thirty days after establishment of such branch office.

(d) (b) A license issued under this chapter shall be prominently displayed in the place or places of business of the escrow depository.

[e] (c) The escrow depository business shall be under the direct management of an officer, or an employee, designated by its board of directors as escrow officer for the corporation and if the designated escrow officer terminates [his or her] the escrow officer's employment with the escrow depository, the licensee shall notify the commissioner in writing at least fifteen days before the termination date of the designated escrow officer. [Licensee] The licensee shall also inform the commissioner in writing of the new escrow officer for the corporation designated by its board of directors before the present escrow officer terminates the present escrow officer's employment with the company, setting forth the

experience, integrity, and competency of the new designated escrow officer in handling escrow transactions, and such other information as required by the commissioner.”

SECTION 9. Section 449-8, Hawaii Revised Statutes, is amended to read as follows:

**“§449-8 Issuance and renewal of license.** After approval of the application, and payment of the license fee, the commissioner shall issue to the applicant a license to act as an escrow depository. The license shall be effective only upon the applicant’s filing with the commissioner an escrow depository’s bond and evidence that fidelity bonds and errors and omissions insurance, or cash or securities deposits permitted in lieu thereof, have been obtained, all as provided in sections 449-9, 449-11, and 449-12. The license shall be renewed annually, as of July 1, upon payment of the annual renewal fee and the finding of the commissioner, from the information contained in the annual corporate exhibit of the licensee or investigation or hearing, that the licensee continues to meet the qualifications for licensing and has continued in force the bonds and insurance or the cash or securities deposits permitted in lieu thereof. [An escrow depository’s license may not be transferred.]”

SECTION 10. Section 449-9, Hawaii Revised Statutes, is amended to read as follows:

**“§449-9 Escrow depository’s bond.** Before an escrow depository’s license becomes effective, the escrow depository shall give a bond to the commissioner in the penal sum of not less than \$100,000 executed by a surety insurer authorized in this State, conditioned:

- (1) That the escrow depository will honestly, faithfully, and with diligence apply all funds, other consideration, or property and instruments affecting title in accordance with the instructions under which the same were deposited with it, and will promptly account for the same,<sup>2</sup> and
- (2) That the escrow depository will satisfy all judgments and decrees which may be recovered against it in any action or proceeding brought under this chapter.

The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the penal sum of the bond. In lieu of the bond, an escrow depository may deposit cash, a letter of credit, or securities acceptable to the commissioner.”

SECTION 11. Section 449-10, Hawaii Revised Statutes, is amended to read as follows:

**“§449-10 Suit on bond.** The commissioner, or any person claiming to have sustained damage by reason of the failure of the escrow depository to comply with its bond, may bring an action on the bond to recover the damage therefrom. The commissioner may deposit with a court of competent jurisdiction all or any part of the sum of the bond.”

SECTION 12. Section 449-12, Hawaii Revised Statutes, is amended to read as follows:

**"§449-12 Errors and omissions insurance; deposit.** A licensed escrow depository shall at all times either:

- (1) Maintain a policy of errors and omissions insurance executed by an insurer authorized to do business in the State in an amount of not less than \$50,000, and not more than \$100,000, with a deductible thereunder not to exceed \$10,000 per occurrence, to be approved by the commissioner; or
- (2) Deposit an equivalent amount of cash or securities under such terms and conditions as are acceptable to the commissioner."

SECTION 13. Section 449-14, Hawaii Revised Statutes, is amended to read as follows:

**"§449-14 Fees.** The following fees shall be paid by licensed escrow depositories to the commissioner and into the general fund:

- (1) For filing and investigation of an escrow depository's application for license, [\$200.] \$2,000;
- (2) For initial issuance and annual renewal of an escrow depository's license, [\$25.] \$100;
- (3) For initial issuance and annual renewal of a branch office license, [\$5.] \$50; and
- (4) For reissuance of a license or endorsement on the license for the change in the business address of its office, [\$3.] \$25.

An escrow depository that fails to make a payment required by this section shall be subject to an administrative penalty of not more than \$200 per day for each day it is in violation of this section."

SECTION 14. Section 449-15, Hawaii Revised Statutes, is amended to read as follows:

**"§449-15 Audited statements.** (a) Each escrow depository [shall], at its own expense, shall submit to the commissioner within ninety days after the close of its fiscal year [a certified audit of its books and records made by an independent certified public accountant. The audit shall include a direct verification of all deposits of money made with or by the escrow depository.] its annual financial statements accompanied by a report of an independent certified public accountant who has prepared or examined those statements. For good cause, the commissioner may grant a licensee an extension of an additional thirty days to file the reports required by this section.

(b) The audited financial statements shall be prepared in accordance with generally accepted accounting principles and the examination by the independent certified public accountant shall be performed in accordance with generally accepted auditing standards. The financial statements and the independent certified public accountant's report shall include but not be limited to the following:

- (1) An unqualified opinion on the fair presentation of the financial statements taken as a whole. To the extent that this is not possible, then a detailed footnote explaining the reason why an unqualified opinion could not be given shall suffice;
- (2) A direct verification of escrow funds and escrow liabilities. If less than a one hundred per cent verification is performed, there shall be a separate letter from the independent certified public accountant indicating: the number of accounts verified; the percentage of the

verification; the basis for determining the sample size; the method used in selecting the sample items to verify; a description of the sampling technique used; the discrepancies noted; and how the discrepancies were resolved;

- (3) Footnotes to the audited financial statement showing the escrow funds and escrow liabilities and, to the extent that these amounts differ, a reconciliation of the amounts; and
- (4) A statement as to whether the escrow depository is in compliance with this chapter. If the independent certified public accountant reports any incident involving noncompliance, the statement shall address whether the noncompliance may have a material adverse impact on the ongoing operations of the company.

(c)<sup>3</sup> Except with the written approval of the commissioner, an escrow depository shall not be deemed in compliance with this section if the independent certified public accountant expresses a qualified or adverse opinion or a disclaimer of opinion. A request for approval shall be filed by the escrow depository concurrently with the filing of the audited financial statements and the independent certified public accountant's report. The request shall be in letter form and shall contain the arguments as to why the audited financial statements and the independent certified public accountant's report should be considered acceptable. Failure to comply with this section shall be grounds for the suspension or revocation of the escrow depository's license in accordance with [the provisions of] section 449-17. Failure to comply with this section shall authorize the commissioner to order an independent audit at the expense of the escrow depository [and shall also authorize the commissioner to impose an administrative fine of \$100 per day for each day that the audit is overdue].

(d)<sup>3</sup> Failure to furnish any report or information as and when required under this section shall be grounds for the commissioner to impose an administrative penalty of \$200 per day for each day that the audit is overdue. In addition, if the report or information is not filed within thirty days of the required deadline, the commissioner may prohibit the escrow depository from accepting new business until the report or information is filed.”

SECTION 15. Section 449-18, Hawaii Revised Statutes, is repealed.

SECTION 16. All acts passed by the legislature during this regular session of 1992, 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 17. This Act shall not affect rights and duties that matured, penalties that were incurred, proceedings that were begun, and the validity of any transaction lawfully entered into, on or before its effective date.

SECTION 18. 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.

## ACT 206

SECTION 19. The revisor of statutes shall coordinate with the commissioner of financial institutions in amending the section references in the Hawaii Revised Statutes affected by this Act.

SECTION 20. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>4</sup>

SECTION 21. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

### Notes

1. Comma should be underscored.
2. Prior to amendment “,” appeared here.
3. Paragraph redesignated.
4. Edited pursuant to HRS §23G-16.5.

## ACT 206

S.B. NO. 3345

A Bill for an Act Relating Aeronautics.

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

SECTION 1. Section 261-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any other law to the contrary notwithstanding, no tour aircraft operation shall be permitted in any airport under the State’s control without [first obtaining] having a permit. The director shall adopt rules to regulate tour aircraft operations by permit which shall include but not be limited to:

- (1) Identification of the types of aircraft to be utilized;
- (2) The number of operations daily for each type of aircraft used and the days and hours of operation;
- (3) Verification that the applicant is in compliance with all state statutes, including but not limited to section 261-12;
- (4) Verification that the applicant has the Federal Aviation Administration certificate 121 or 135;
- [[(4)] (5) A written assessment by the department of the impact to the surrounding area and to the subject state airport;
- [[(5)] (6) Revocation of a permit based on the failure to comply with the information provided by the applicant and the terms and conditions set forth by the department in the permit; and any false statement or misrepresentation made by the applicant;
- [[(6)] (7) Establishment of penalties for revocation and suspension of a permit for failure to comply with permit conditions;
- [[(7)] (8) Annual renewal of permits; and
- [[(8)] (9) Any change of operations under the existing permit to be approved by the director.

No permit shall be authorized unless accompanied by:

- (1) A Hawaii sectional aeronautical chart marked to indicate routes and altitudes to be used in conducting aerial tours; and
- (2) Noise abatement procedures to be employed in the vicinity of identified noise sensitive areas.

For the purposes of this subsection, "tour aircraft operations" means any business operation which offers aircraft for hire by passengers for the purpose of aerial observation of landmarks and other manmade or natural sites within an island of the State, and for the purpose of transporting passengers for tourist-related activities."

**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 12, 1992.)

**ACT 207**

H.B. NO. 1023

A Bill for an Act Relating to Liquor.

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

**SECTION 1.** The U.S. General Accounting Office and the National Highway Safety Administration studies have found that minimum drinking age laws have helped to reduce the number of alcohol related accidents, injuries, and fatalities among the affected age groups.

As a result, the legislature passed Act 342, Session Laws of Hawaii 1986, as amended by Act 283, Session Laws of Hawaii 1987, to temporarily raise the minimum drinking age from eighteen to twenty-one. The reasons for raising the minimum drinking age were to:

- (1) Reduce the number of traffic accidents involving young adults;
- (2) Mitigate other social problems such as juvenile crime and poor school performance; and
- (3) Prevent the loss of federal highway funds for the State as a consequence of Public Law 98-363.

Act 342 was scheduled to be repealed on September 30, 1991. However, in 1991, the legislature passed Act 206 requesting the director of transportation to conduct a study evaluating the effectiveness of Act 342 and temporarily extending the repeal date of Act 342 to September 30, 1992.

Based on that study, the legislature finds that Act 342 has been partially successful in reducing accidents, injuries, and fatalities caused by driving under the influence of intoxicating liquor. The legislature further finds that one of the recommendations contained in the study is to set the minimum drinking age at twenty-one.

The purpose of this Act is to permanently raise the minimum drinking age to twenty-one.

**SECTION 2.** Act 342, Session Laws of Hawaii 1986, is amended by amending section 9, as amended by section 70 of Act 283, Session Laws of Hawaii 1987, and Act 206, Session Laws of Hawaii 1991, to read as follows:

"**SECTION 9.** This Act shall take effect on October 1, 1986[, and shall be repealed as of September 30, 1992; provided that on repeal sections 281-1, 281-78, 294-13, 712-1250.5, and 712-1252, Hawaii Revised Statutes, are reenacted in the form in which they read on September 30, 1986]."

SECTION 3. Statutory material to be repealed is bracketed.

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

(Approved June 12, 1992.)

**ACT 208**

H.B. NO. 1930

A Bill for an Act Relating to Power of Attorney.

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

SECTION 1. The legislature finds that all competent adults have the fundamental right to control the decisions relating to their own medical care, including the decision to have medical or surgical means or procedures calculated to prolong their lives provided, continued, withheld, or withdrawn. In order that these rights may be respected after a person is no longer able to participate actively in decisions about their medical care and treatment, the legislature hereby declares that the laws of the State recognize the right of an adult person to make a durable power of attorney empowering an attorney-in-fact ("agent") to make decisions on whether to provide, continue, withhold, or withdraw life-sustaining procedures.

SECTION 2. Chapter 551D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§551D- Durable power of attorney for health care decisions.** (a)

A competent person who has attained the age of majority may execute a durable power of attorney authorizing an agent to make any lawful health care decisions that could have been made by the principal at the time of election.

(b) The durable power of attorney made pursuant to this section:

- (1) Shall be in writing;
- (2) Shall be signed by the principal, or by another person in the principal's presence and at the principal's expressed direction;
- (3) Shall be dated;
- (4) Shall be signed in the presence of two or more witnesses who:
  - (A) Are at least 18 years of age;
  - (B) Are not related to the principal by blood, marriage, or adoption; and
  - (C) Are not, at the time that the durable power of attorney is executed, attending physicians, employees of an attending physician, or employees of a health care facility in which the principal is a patient; and
- (5) Shall have all signatures notarized at the same time.

(c) A durable power of attorney for health care decisions shall be presumed not to grant authority to decide that the principal's life should not be prolonged through surgery, resuscitation, life sustaining medicine or procedures or the provision of nutrition or hydration, unless such authority is explicitly stated.

(d) A durable power of attorney for health care decisions shall only be effective during the period of incapacity of the principal as determined by a licensed physician.

(e) No person shall serve as both the treating physician and attorney-in-fact for any principal for matters relating to health care decisions."

SECTION 3. Chapter 551D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§551D- Durable power of attorney sample form.** The following sample form may be copied and used by filling in the blanks or may be changed to add more individualized instructions; or an entirely different format may be used to provide health care instructions.

### **DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS**

**A. Statement of Principal**

Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I, \_\_\_\_\_, being of sound mind, and understanding that I have the right to request that my life be prolonged to the greatest extent possible, wilfully and voluntarily make known my desire that my attorney-in-fact ("agent") shall be authorized as set forth below and do hereby declare:

My instructions shall prevail even if they create a conflict with the desires of my relatives, hospital policies, or the principles of those providing my care.

### **CHECKLIST**

I have considered the extent of the authority I want my agent to have with respect to health care decisions if I should develop a terminal condition or a permanent loss of the ability to communicate concerning medical treatment decisions with no reasonable chance of regaining this ability. I want my agent to request care, including medicine and procedures, for the purpose of providing comfort and pain relief. I have also considered whether my agent should have the authority to decide whether or not my life should be prolonged, and have selected one of the following provisions by putting a mark in the space provided:

- ( ) My agent is authorized to decide whether my life should be prolonged through surgery, resuscitation, life sustaining medicine or procedures, and tube or other artificial feeding or provisions of fluids by a tube.
- ( ) My agent is authorized to decide whether my life should be prolonged through tube or other artificial feeding or provisions of fluids by a tube.

If neither provision is selected, it shall be presumed that my agent shall have only the power to request care, including medicine and procedures, for the purpose of providing comfort and pain relief.

This durable power of attorney shall control in all circumstances. I understand that my physician may not act as my agent under this durable power of attorney.

I understand the full meaning of this durable power of attorney and I am emotionally and mentally competent to make this declaration.

Signed \_\_\_\_\_

Address \_\_\_\_\_

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### **B. Statement of Witnesses**

I am at least 18 years of age and  
-not related to the principal by blood, marriage, or adoption; and  
-not currently the attending physician, an employee of the attending physician, or an employee of the health care facility in which the principal is a patient.

The principal is personally known to me and I believe the principal to be of sound mind.

Witness \_\_\_\_\_

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

### **C. Statement of Agent**

I am at least 18 years of age, I accept the appointment under this durable power of attorney as the attorney-in-fact ("agent") of the principal, and I am not the physician of the principal. The principal is personally known to me and I believe the principal to be of sound mind.

Agent \_\_\_\_\_

Address \_\_\_\_\_

### **D. Notarization**

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the principal, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(SEAL)

Signed \_\_\_\_\_

\_\_\_\_\_ (Official capacity of officer) "

**SECTION 4.** A durable power of attorney for health care decisions executed prior to the effective date of this Act that substantially complies with the requirements of chapter 551D shall be considered valid provided that the powers relating to the health care decisions granted in the power of attorney have not been previously revoked by the principal or otherwise terminated.

**SECTION 5.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 12, 1992.)

#### **Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 209

H.B. NO. 2570

A Bill for an Act Relating to Schools.

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

SECTION 1. 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 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 2. Act 1, Session Laws of Hawaii 1990, is amended by amending section 5 to read as follows:

"SECTION 5. Participation in the pilot A+ Program shall be limited to students enrolled in kindergarten through grade six who, unless otherwise exempt, pay a non-refundable fee of [\$23] \$28 in advance each month, and come from households headed by a single parent or two parents who work during all or a portion of the period that the A+ Program is in session or are the children of persons who staff the program. If the program is not available at the school they attend, eligible students may enroll in a program at a different site but the parent or parents of the student must arrange for and assume full responsibility for the cost of transportation to that program site."

SECTION 3. The director of finance is authorized to issue general obligation bonds in the sum of \$90,000,000, or so much thereof as may be necessary, and the same sum, is appropriated for fiscal year 1993 for deposit into the state educational facilities improvement special fund; 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 4. The departments of education and budget and finance,

## ACT 210

together with members of the legislature designated by the president of the senate and the speaker of the house of representatives shall establish an interim task force to explore alternatives to improve existing or establish new methods to more efficiently utilize state funds for education. The task force shall submit a report containing recommendations to the legislature no later than twenty days prior to the convening of the 1993 regular session.

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 if the actual tax collections accruing to the general fund for fiscal year 1992 equals or exceeds 6.4 per cent or if the council on revenues' September, 1992 estimate of taxes accruing to the general fund for fiscal year 1993 equals or exceeds 5.1 per cent, section 1 of this Act shall be repealed and section 237-31, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 12, 1992.)

## ACT 210

H.B. NO. 2613

A Bill for an Act Relating to the Use of Force.

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

SECTION 1. Section 703-309, Hawaii Revised Statutes, is amended to read as follows:

**“§703-309 Use of force by persons with special responsibility for care, discipline, or safety of others.** The use of force upon or toward the person of another is justifiable under the following circumstances:

- (1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of [such] the parent, guardian, or other responsible person, and:
  - (a) The force is [used for] employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of [his] the minor's misconduct; and
  - (b) The force used is not designed to cause or known to create a [substantial] risk of causing [death, serious] substantial bodily injury, disfigurement, extreme pain or mental distress, or [gross degradation.] neurological damage.
- (2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:
  - (a) The actor believes that the force used is necessary to further [such] that special purpose, including maintenance of reasonable discipline in a school, class, or other group, and that the use of [such] force is consistent with the welfare of the [minors;] minor; and

- (b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under [subsection] paragraph (1)(b) [of this section].
- (3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:
  - (a) The force is [used for] employed with due regard for the age and size of the incompetent person and is reasonably related to the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of [his] the incompetent person's misconduct, or, when such incompetent person is in a hospital or other institution for [his] the incompetent person's care and custody, for the maintenance of reasonable discipline in [such] the institution; and
  - (b) The force used is not designed to cause or known to create a [substantial] risk of causing [death, serious] substantial bodily injury, disfigurement, extreme [or unnecessary] pain[,] or mental distress, or [humiliation.] neurological damage.
- (4) The actor is a doctor or other therapist or a person assisting [him] the doctor or therapist at [his] the doctor's or therapist's direction, and:
  - (a) The force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and
  - (b) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of [his] the minor's or incompetent person's parent or guardian or other person legally competent to consent in [his] the minor's or incompetent person's behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
- (5) The actor is a warden or other authorized official of a correctional institution, and:
  - (a) [He] The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and
  - (b) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and
  - (c) If deadly force is used, its use is otherwise justifiable under this chapter.
- (6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at [his] the direction of the person responsible for the safety of a vessel or an aircraft, and:
  - (a) [He] The actor believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless [his] the actor's belief in the lawfulness of the order is erroneous and [his] the actor's error is due to ignorance or mistake as to the law defining authority; and
  - (b) If deadly force is used, its use is otherwise justifiable under this chapter.

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- (7) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train, or other carrier, or in a place where others are assembled, and:
- (a) [He] The actor believes that the force used is necessary for [such] that purpose; and
  - (b) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress."

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 12, 1992.)

## **ACT 211**

H.B. NO. 2917

A Bill for an Act Relating to Elderly Care.

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

SECTION 1. The legislature finds that the chronically ill and disabled elderly are often in need of a variety of long-term care services including medical, rehabilitation therapy, psycho-social, transportation, personal care, meal, and grooming services. Although agencies and organizations exist in the community that provide one or a few of these services, these agencies and organizations do not offer all of these services.

As a consequence, frail elderly and their families are oftentimes caught in a labyrinth of application forms, endless phone calls, and inquiries to obtain appropriate services that can meet the different health and social needs of a frail elderly. Dealing with multiple agencies and deciphering costs and eligibility requirements are formidable tasks which add to family stress and frustration.

The outcome of this fragmented long-term care system with its limited scope of services is that the frail individual usually must make do with what can be obtained in the community or be prematurely placed in an institution such as a nursing home. This is not only costly to the State as well as families, but it is also undesirable. Instead of placing their elderly in a nursing home, most families prefer to have their loved ones live out their remaining years at home with dignity and with as much independence as possible. Moreover, nursing home placements are expensive due to the high costs of constructing and operating such facilities.

The legislature finds that it is in the State's interest to support the efforts of families who provide home care to family members with chronic illnesses and disabilities.

Faced with a rapidly growing elderly population in Hawaii, an acute shortage of nursing home beds, and the rising cost of long-term care, the 1991 legislature recognized the need for an alternative community-based program that is comprehensive, prevents institutionalization, and contains long-term care costs.

Specifically, the legislature appropriated over \$2 million for a demonstration project at Maluhia Hospital known as the program for all-inclusive care for the elderly (PACE).

PACE is part of a national replication project authorized under the federal Omnibus Reconciliation Act of 1986, as amended, which instructs the secretary of the Department of Health and Human Services to grant Medicare and Medicaid waivers to permit not more than fifteen public or nonprofit private organizations in the nation to provide comprehensive health care services on a capitated basis to frail elderly who are at risk of institutionalization. These Medicare and Medicaid waivers allow PACE to receive a per-person payment each month from Medicare and Medicaid without restrictions on service delivery and fee-for-service limitation. As a result, PACE has the authority and flexibility to consolidate these funds and provide any services ranging from adult day health center to acute hospitalization.

The concept of PACE began in 1973, when On Lok senior health services of San Francisco, California opened one of the nation's first adult day health centers. By 1979, On Lok was providing the comprehensive services which distinguish PACE, and by 1983, full risk and fixed monthly capitation payments were included from Medicare, Medicaid, and private funds.

The legislature finds that PACE provides a complete package of services that enhances the quality of life for the elderly participant and offers the potential to reduce and cap the costs of the medical needs of the participants.

The legislature further finds that PACE costs less than what Medicare, Medicaid, and private individuals currently pay for long-term care. Operating within a cost-effective, capitated risk based financing system, PACE charges a fixed monthly payment per person for a complete package of health and social support services. This capitated financing requires PACE to assume full financial responsibility for a client's total long-term care and for cost overruns. PACE's success depends on aggressive community-based preventive care which maintains the elderly's health and avoids high cost institutional care.

The legislature further finds that PACE is a cost-effective alternative program that addresses the problems of fragmented and costly long-term care by meeting the needs of Hawaii's families who are struggling to maintain their frail elderly in their own homes and avoid institutionalization. Through the demonstration of PACE at Maluhia Hospital, the viability of a cost-effective statewide program offering quality community-based long-term care programs can be evaluated.

The purpose of this Act is to establish the PACE demonstration project in the department of health's Maluhia long-term care health center.

## SECTION 2. For the purposes of this Act:

"Eligible person" means a frail elderly individual who voluntarily enrolls in the PACE demonstration project.

"Frail elderly" means an individual who meets functional eligibility requirements as established by Medicare and Medicaid for nursing home care and who is fifty-five years of age or older.

SECTION 3. A program of all-inclusive care for the elderly (PACE) demonstration project is established in the department of health to provide comprehensive and cost effective long-term care to Hawaii's frail elderly population who are at risk of institutionalization. The goals of the PACE demonstration project shall be to:

## **ACT 212**

- (1) Maintain eligible persons at home as an alternative to long-term institutionalization;
- (2) Provide optimum accessibility to various important social and health resources that are available to assist eligible persons in maintaining independent living;
- (3) Coordinate, integrate, and link such social and health services by removing obstacles which impede or limit improvements in delivery of these services; and
- (4) Provide the most efficient and effective use of capitated funds in the delivery of such social and health services.

**SECTION 4.** The director of health shall report to the legislature at least twenty days prior to the convening of each regular session during the period of the demonstration project. The annual report shall include a comprehensive report on the status of the project, and recommendations for amendments to the law and to the rules of the department pertaining to the project.

**SECTION 5.** The department of health may adopt rules in accordance with chapter 91, Hawaii Revised Statutes, for the purposes of this Act.

**SECTION 6.** Personnel employed for the PACE demonstration project shall not be subject to chapters 76 and 77, Hawaii Revised Statutes.

**SECTION 7.** The department of human services shall support the PACE demonstration project by:

- (1) Cooperating with the department of health in obtaining the necessary federal waivers to develop the PACE demonstration project;
- (2) Applying in a joint application with the organization providing the PACE demonstration project for the Medicare and Medicaid waivers; and
- (3) Providing a system for reimbursement for services to the PACE demonstration project.

**SECTION 8.** This Act shall take effect on July 1, 1992, and shall be repealed on June 30, 1997.

(Approved June 12, 1992.)

## **ACT 212**

H.B. NO. 3006

A Bill for an Act Relating to Child Support.

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

**SECTION 1.** Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The order for automatic assignment shall operate as an assignment by the obligor to the child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of income and who has been served with a certified copy of the assignment order. The

assignment shall be terminated when appropriate by the court or the clerk of the court or the child support enforcement agency; provided that payment of all overdue support shall not be the sole basis for terminating the assignment. In the event that the obligee retains private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment. If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee or from the child support enforcement agency[.], to the extent the overpayment was disbursed to the Department of Human Services. The child support enforcement agency shall establish procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor."

SECTION 2. Section 576E-14, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-14 Modification, suspension, or termination of court and administrative orders.** (a) The responsible parent, the agency, or the person having custody of the dependent child may file a request for suspension, termination, or modification of the child support provisions of a Hawaii court or administrative order with the agency. Such request shall be in writing, shall set forth the reasons for suspension, termination, or modification, including the change in circumstances since the date of the entry of the order, and shall state the address of the requesting party. The agency shall thereafter commence administrative proceedings pursuant to sections 576E-5 through 576E-9.

(b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.

(c) The adoption of any substantive modifications made to the guidelines set forth section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

(d) Upon satisfaction of a responsible parent's support obligation toward the dependent child and the State, the agency or hearings officer without application of any party may issue an order terminating child support and may concurrently<sup>1</sup> if applicable, issue an order terminating existing assignments against the responsible parent's income and income withholding orders.

(e) In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency upon the child reaching the age of nineteen years. In addition, if applicable, the agency or hearings officer may issue an order terminating existing assignments against the responsible parent's income and income assignment orders."

**SECTION 3.** Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of such matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make such further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (2) compelling either party to provide for the support and maintenance of the other party; (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney's fees, costs, and expenses incurred by each party by reason of the divorce. In making such further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the application is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;

- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;
- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made;
- (13) Probable duration of the need of the party seeking support and maintenance.

The court may order support and maintenance to a party for an indefinite period or until further order of the court; provided that in the event the court determines that support and maintenance shall be ordered for a specific duration wholly or partly based on competent evidence as to the amount of time which will be required for the party seeking support and maintenance to secure adequate training, education, skills, or other qualifications necessary to qualify for appropriate employment, whether intended to qualify the party for a new occupation, update or expand existing qualification, or otherwise enable or enhance the employability of the party, the court shall order support and maintenance for a period sufficient to allow completion of the training, education, skills, or other activity, and shall allow, in addition, sufficient time for the party to secure appropriate employment."

SECTION 4. Section 584-18, Hawaii Revised Statutes, is amended to read as follows:

**"[§584-18] Modification of judgment or order.** (a) The court shall have continuing jurisdiction to modify or revoke a judgment or order:

- (1) For future education and support; and
- (2) With respect to matters listed in section 584-15(c) and (d) and section 584-17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 584-15(d) may specify that the judgment or order may not be modified or revoked.

(b)<sup>2</sup> In those cases where child support payments are to continue due to the adult child's pursuance of education, the child support enforcement agency, three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child, to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and the plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders."

## ACT 213

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 12, 1992.)

### Notes

1. Prior to amendment “,” appeared here.
2. Should be underscored.

## ACT 213

H.B. NO. 3233

A Bill for an Act Relating to Recycled Glass.

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

SECTION 1. The purpose of this Act is to encourage alternative uses of recycled glass by requiring its use: (1) in the form of glassphalt (or glasphalt) - a supplemental aggregate in asphalt mixes used on highways and roads; and (2) as an aggregate substitute in non-structural applications. The use of recycled glass for these purposes could potentially involve a large quantity of waste glass that would otherwise be part of Hawaii's waste disposal problem.

Several jurisdictions, including New York City and Baltimore, have successfully utilized glassphalt in pavement reconstruction and re-surfacing projects. Some tests indicate that certain problems associated with glassphalt, such as stripping or loosening of small grains of glass, rippling of the surface, and cracking, can be resolved when glassphalt is used only as a base course.

The purpose of this Act is to require the use of waste glass in the form of glassphalt on Hawaii's roadways after development of appropriate standards.

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

**“§264- Use of glassphalt for pavement construction and repair; required.** (a) Beginning on September 1, 1993, all state and county highway construction and improvement contracts for state and county roadways shall require the utilization of glassphalt for pavement construction when crushed glass is available at a cost equal to or lower than aggregate.

(b) As used in this section, “glassphalt” means an asphaltic concrete mixture utilizing crushed glass, under controlled gradation conditions, as a substitute for a percentage of the aggregate in the mix.”

SECTION 3. The director of transportation shall review studies and analyses of existing glassphalt usage in other states and municipal jurisdictions. Within twelve months after the effective date of this Act, the director of transportation shall submit amended specifications for inclusion in state and county standard specifications of the use of crushed glass in asphaltic concrete paving mixtures.

SECTION 4. Within 180 days after the effective date of this Act, the State shall require the utilization of crushed glass in non-structural applications in all state and county contracts when crushed glass is available at a cost equal to or lower than aggregate. Non-structural use shall include, but not be limited to, the

following: cushioning and backfill of underground utilities; drainage backfill behind retaining walls; drainage backfill surrounding leachlines and perforated drains; and any other similar uses requiring crushed aggregate for cushioning or drainage in non-structural projects.

**SECTION 5.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 12, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 214**

H.B. NO. 3467

A Bill for an Act Relating to Hawaii Employment Relations Act.

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

**SECTION 1.** The purpose of this Act is to amend Hawaii's collective bargaining law to prevent discrimination during and at the conclusion of labor disputes in the public and private sector.

**SECTION 2.** Section 377-6, Hawaii Revised Statutes, is amended to read as follows:

**“§377-6 Unfair labor practices of employers.** It shall be an unfair labor practice for an employer individually or in concert with others:

- (1) To interfere with, restrain, or coerce the employer's employees in the exercise of the rights guaranteed in section 377-4;
- (2) To initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it, but an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with the employer, nor from cooperating with representatives of at least a majority of the employer's employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where the activities or use create no additional expense to the employer;
- (3) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment. An employer, however, may enter into an all-union agreement with the bargaining representative of the employer's employees in a collective bargaining unit, unless the board has certified that at least a majority of the employees have voted to rescind the authority of their bargaining representative to negotiate such all-union agreement within one year preceding the date of the agreement. No employer shall justify any discrimination against any employee for nonmembership in a labor organization if the employer has reasonable grounds for believing that;

- (A) Such membership was not available to the employee on the same terms and conditions generally applicable to other members;
- (B) Or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and the initiation fees uniformly required as a condition for acquiring or retaining membership;
- (4) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit provided that if the employer has good faith doubt that a union represents a majority of the employees, the employer may file a representation petition for an election and shall not be deemed guilty of refusal to bargain;
- (5) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in paragraph (3);
- (6) To violate the terms of a collective bargaining agreement;
- (7) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination of the board or of any tribunal of competent jurisdiction;
- (8) To discharge or otherwise discriminate against an employee because the employee has filed charges or given information or testimony under the provisions of this chapter;
- (9) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally;
- (10) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this chapter;
- (11) To make, circulate, or cause to be circulated a blacklist[.];
- (12) To offer or grant permanent employment to an individual for performing work as a replacement for a bargaining unit member during a labor dispute; or
- (13) Based on employment or willingness to be employed during a labor dispute, to give employment preference to one person over another who:
  - (A) Was an employee at the commencement of the dispute;
  - (B) Exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization engaged in the dispute; and
  - (C) Continues to work for or has unconditionally offered to return to work for the employer.”

SECTION 3. Section 89-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
  - (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
- (6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in section 89-11;
- (7) Refuse or fail to comply with any provision of this chapter; [or]
- (8) Violate the terms of a collective bargaining agreement[.];
- (9) To replace any nonessential employee for participating in a labor dispute; or
- (10) To give employment preference to an individual employed during a labor dispute and whose employment termination date occurs after the end of the dispute, over an employee who exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization involved in the dispute.”

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 12, 1992.)

## ACT 215

H.B. NO. 3673

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 adding a new definition to be appropriately inserted and to read:

“Cruise ship” means any boat, ship, catamaran, windjammer, or other type of vessel used for a commercial, business, or purpose other than solely recreational or pleasure, operating within the jurisdictional waters of the State of Hawaii, licensed by the department of health to operate as a food-service establishment, and which serves food or meals during the course of its operation, that is nonincidental to the consumption of alcoholic beverages.”

SECTION 2. Section 328K-2, Hawaii Revised Statutes, is amended to read as follows:

**“§328K-2 Prohibition in certain places open to the public.** Except as otherwise provided in this part, smoking shall be prohibited in the following places within the State:

- (1) Elevators in buildings open to and used by the public, including elevators in apartment and other multiunit residential buildings;
- (2) Semiprivate rooms, wards, waiting rooms, lobbies, and public hallways of public and private health care facilities, including, but not limited to, hospitals, clinics, and physicians' and dentists' offices. Smoking shall be permitted in a private room or in a semiprivate room when there is no objection by any patient occupying such room;
- (3) Restaurants.
  - (A) All restaurants shall provide nonsmoking areas which are reasonably proportionate to the preference of the users and so located as to obtain the maximum effect of existing physical barriers and ventilation systems, and seating arrangements, to minimize the toxic effect of smoke in adjacent nonsmoking areas; provided no fixed structural or other physical modifications of the restaurant shall be required; and
  - (B) Nothing in this paragraph shall prevent a proprietor or person in charge of a facility from designating the entire restaurant as a nonsmoking area. Owners or proprietors of restaurants may expand or contract the size of designated nonsmoking areas to meet the requirements of their patrons;
- (4) Any room which is used primarily for exhibiting any motion picture, stage drama, dance, musical performance, or other similar performance during the time that the room is open to the public for such performance;
- (5) Museums, libraries, and galleries;
- (6) The following facilities or areas in state or county owned or controlled buildings:
  - (A) Meeting or conference rooms;
  - (B) Auditorium or sports areas that are enclosed;
  - (C) Community centers where persons may gather for meetings, parties, or any other purpose where the area is enclosed;
  - (D) Waiting areas, baggage claim areas, and check-in counters within buildings in all state airports; and
  - (E) All areas open to the public, including service counters and reception or waiting areas;
- (7) Except as otherwise provided in this section, all areas open to the public in the following business establishments:
  - (A) Banks;
  - (B) Credit unions;
  - (C) Financial services loan companies;
  - (D) Retail stores; and
  - (E) Savings and loan associations;
- (8) Any restroom open to the public;
- (9) Taxicabs, when carrying nonsmoking passengers; [and]
- (10) Cruise ships. The dining area of all cruise ships shall include a non-smoking area which is reasonably proportionate to the preference of the users and so located as to obtain the maximum effect of existing physical barriers and ventilation systems, and seating arrangements, to minimize the toxic effect of smoke; provided no fixed structural

or other physical modifications of the cruise ship shall be required.  
This paragraph shall not apply to any cruise ship that does not serve  
any food or meals during its course of operation, or where the ser-  
vice of food is only incidental to the consumption of alcoholic bev-  
erages; and

- [(10)] (11) Notwithstanding the exceptions stated in section 328K-3, any area open to the public which has been designated by the person having control of the area as a nonsmoking area and marked with a "no smoking" sign."

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 12, 1992.)

## ACT 216

S.B. NO. 1274

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. Chapter 198D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§198D- Agreements to defend and indemnify.** (a) The department may enter into agreements with owners of public or private land to further the purposes of this chapter. Agreements between the State and an owner may provide that the State will defend the owner from claims made against the owner by public users of the owner's land. These agreements may also provide that the State will indemnify the owner for losses incurred due to public use.

(b) The existence of an agreement does not allow an action to be brought against the State. The State shall not be made a party in any action solely because of the existence of an agreement to defend or indemnify. Any action defended by the State pursuant to an agreement shall be deemed an action against the owner, and the State may assert all defenses available to the owner.

(c) If the agreement provides for indemnification by the State, no judgment shall be executed against an owner until the legislature has reviewed and approved the judgment."

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

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

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 217

S.B. NO. 2231

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. The purpose of this Act is to include within the Hawaii Rules of Evidence a privilege that would shield confidential communications made by a victim of sexual assault, domestic violence or child abuse to a qualified counselor.

This Act is based in part on the second alternative in The Final Report of the Committee on Hawaii Rules of Evidence. ("Final Report") prepared for the Hawaii Supreme Court and for the Legislature pursuant to Senate Concurrent Resolution No. 136 and Senate Resolution No. 118, Fifteenth Legislature, 1990. The other version would permit disclosure of otherwise confidential victim-counselor communications upon a showing of substantial relevance and pursuant to an in camera inspection procedure. This Act differs from both versions in the Final Report because it creates two categories of victim counselor: sexual assault counselors and domestic violence victims' counselors. These categories follow the Massachusetts law.

The Legislature notes that one feature of this Act is that it expressly excludes counselors who do not operate "independently of any law enforcement agency, prosecutor's office, or the department of human services." With this feature, the privilege reflects the strong public interest in encouraging victims of violence to obtain needed counseling while assuring that the privilege will not suppress statements made in the law-enforcement context.

SECTION 2. Section 346-244, Hawaii Revised Statutes, is amended to read as follows:

"[[§346-244]] Admissibility of evidence. The physician-patient privilege, the psychologist-client privilege, [and] the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report pursuant to this part."

SECTION 3. Section 350-5, Hawaii Revised Statutes, is amended to read as follows:

"§350-5 Admissibility of evidence. [Neither the] The physician-patient privilege, the psychologist-client privilege, [nor] the spousal privilege, and the victim-counselor privilege shall not be [ground] grounds for excluding evidence in any judicial proceeding resulting from a report of child abuse or neglect pursuant to this chapter."

SECTION 4. Section 587-44, Hawaii Revised Statutes, is amended to read as follows:

"§587-44 Admissibility of evidence. The physician-patient privilege, the psychologist-client privilege, [and] the spousal privilege, and the victim-counselor privilege shall not be available to exclude evidence of imminent harm, harm, or threatened harm in any proceeding under this chapter."

SECTION 5. Section 626-1, Hawaii Revised Statutes, is amended by

adding a new rule to be appropriately designated and to read as follows:

- "Rule      Victim-counselor privilege.** (a) Definitions. As used in this rule:
- (1) "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.
  - (2) "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.
  - (3) 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.
  - (4) 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) 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.
  - (6) 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.
- (b) General rule of privilege. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a victim counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect, and to refuse to provide evidence that would identify the name, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.
- (c) Who may claim the privilege. The privilege may be claimed by the victim, the victim's guardian or conservator, or the personal representative of a deceased victim. The person who was the victim counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the victim.
- (d) Exceptions. There is no privilege under this rule:

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- (1) Perjured testimony by victim. If the victim counselor reasonably believes that the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed.
- (2) Physical appearance and condition of victim. In matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime.
- (3) Breach of duty by victim counselor or victim counseling program. As to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim.
- (4) Mandatory reporting. To relieve victim counselors of any duty to refuse to report child abuse or neglect under chapter 350, domestic abuse under chapter 586, or abuse of a dependent adult under part X of chapter 346, and to refuse to provide evidence in child abuse proceedings under chapter 587.
- (5) Proceedings for hospitalization. For communications relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse.
- (6) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise.
- (7) Condition an element of claim or defense. As to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim's claim or defense or, after the victim's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.
- (8) Proceedings against the victim counselor. In any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as necessary to protect the confidentiality of the victim."

SECTION 6. This Act shall not apply to proceedings begun before its effective date.

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

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 218**

S.B. NO. 2288

A Bill for an Act Making an Appropriation to Establish a Statewide Blood and Saliva Testing Program.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling in fiscal year 1992-1993 to be exceeded by \$160,000.00 or .0051 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the following sum, or so much thereof as may be necessary for fiscal year 1992-1993, for the creation of a data bank and the purchase of supplies for the city and county of Honolulu police department to establish a statewide blood and saliva testing program.

Creation of a Data Bank	\$100,000
Supplies for profiling 500 samples at \$200 per sample.	
Supplies	<u>\$ 60,000</u>
For profiling of the 300 criminals per year at \$200 per criminal.	
Total	\$160,000

SECTION 3. The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

**ACT 219**

S.B. NO. 2420

A Bill for an Act Relating to a Voluntary, Consultative, and Educational Food Safety Activity for the Food Service Personnel of Hawaii.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . FOOD SAFETY CONSULTATIVE AND EDUCATION PROGRAM**

**§321- Findings and purpose.** The purpose of this part is to establish a non-enforcement program within the department of health to provide voluntary food safety surveillance and control, and educational activities to assist the food

## **ACT 220**

service industry and foodhandlers. The legislature finds that education is necessary for attaining voluntary compliance in food safety. Informed food managers and foodhandlers are essential for the control of foodborne pathogens in foods served to the public.

Restaurants, catering services, delicatessens, markets, and other food purveyors employ foodhandlers who need continuing education and training in food safety. Foodhandlers work with fresh, uncooked, or prepared foods which may contain foodborne disease microorganisms that can cause severe sickness to large numbers of people at the same time. It is the intent of the legislature to take preventive measures through educational programs and analytical studies of contamination outbreaks.

**§321- Food safety consultative and education program.** (a) There is established the food safety consultative and education program within the department of health. The department may place this program within any appropriate division.

(b) The program shall be managed and staffed by persons who are trained and experienced in public health aspects of food, including food science, foodborne disease epidemiology, food microbiology, and food sanitation.

(c) Generic food safety information gained from studies conducted as part of the program may be shared with foodhandlers in certification workshops and food safety classes.

**§321- Food safety control system.** The department may conduct studies using the hazard analysis critical control points system after foodborne disease outbreak investigations are completed by the department or when requested by food service operators.

**§321- Public information monitoring system.** Within the program, the department of health shall investigate foodhandling practices which appear to represent poor food safety techniques, and shall develop ways in which the public can gain information on food safety and can report practices which appear to represent poor food safety techniques.

**§321- Confidentiality of information.** For purposes of this part, the program shall maintain confidentiality of critical information received from food purveyors and foodhandlers or other persons in the food service industry. Critical information is information, including trade secrets, necessary for the department to prevent food safety problems from occurring and to ensure that potentially hazardous foods are safe for public consumption."

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

(Approved June 12, 1992.)

**ACT 220**

S.B. NO. 2758

A Bill for an Act Making an Appropriation for the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs.

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

SECTION 1. In accordance with section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$125,000 or .004 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 2. There is 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 1992-1993, for payment of consultant fees by the division of consumer advocacy of the department of commerce and consumer affairs.

SECTION 3. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

**ACT 221**

S.B. NO. 3109

A Bill for an Act Relating to Rental Motor Vehicles.

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

SECTION 1. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In order to meet the requirements of a no-fault policy as provided in this article, an insurance policy covering a motor vehicle shall provide:

- (1) Coverage specified in section 431:10C-304; and
- (2) Insurance to pay on behalf of the owner or any operator of the insured motor vehicle using the motor vehicle with the express or implied permission of the named insured, sums which the owner or operator may legally be obligated to pay for injury, death, or damage to property of others, except property owned by, being transported by, or in the charge of the insured, which arise out of the ownership, operation, maintenance, or use of the motor vehicle[.]; provided that in the case of a U-drive motor vehicle, insurance to pay on behalf of the renter or any operator of the insured motor vehicle using the motor vehicle with the express permission of the renter or lessee, sums which the renter or operator may be legally obligated to pay for damage or destruction of property of others (except property owned by, being transported by, or in the charge of the renter or operator) arising out of the operation or use of the motor vehicle unless the motor vehicle is reported stolen by the owner within three days of notification of the incident; provided that the insurer and owner of a U-drive vehicle shall have the right of subrogation against the renter and operator for breach of the rental contract between owner and renter; and provided further that, in the

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event that any motor vehicle offered for rental or lease is involved in an accident, the lessor shall provide all information it has or obtains relevant to the accident to all other involved parties upon their request, including but not limited to information about the lessee, and the driver of the vehicle if other than the lessee.”

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 12, 1992.)

## ACT 222

S.B. NO. 3157

A Bill for an Act Relating to Evidence.

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

SECTION 1. Section 291-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [Subsection (b)] Nothing in this section shall [not] be construed as limiting the introduction, in any criminal proceeding for a violation under section 291-4 or in any proceeding under part XIV of chapter 286, of [any other competent] relevant evidence [bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation.] 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.”

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 12, 1992.)

## ACT 223

S.B. NO. 3179

A Bill for an Act Relating to Animals.

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

SECTION 1. Chapter 143, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§143- Animal desertion.** It shall be unlawful for the owner of any animal or any person in possession of an animal that belongs to another person to leave the animal without the intention of returning to it.

Any person who violates this section shall be guilty of a petty misdemeanor."

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

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

(Approved June 12, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 224**

H.B. NO. 1180

A Bill for an Act Relating to Abandoned Vehicles.

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

**SECTION 1.** Section 290-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall charge not more than [\$35] \$40 for a tow, [\$40] or \$50 for a tow using a dolly, plus [\$1 a mile for any towing mileage over five miles] a mileage charge of \$4 per mile towed<sup>1</sup> and [\$6 for each twenty-four hour period of storage or fraction thereof.] \$10 per day or fraction thereof for storage for the first seven days and \$5 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m. the towing company shall be entitled to an overtime charge of \$10. If the vehicle is in the process of being hooked up to the tow truck and the owner appears on the scene before the vehicle has been moved by the tow truck, the towing company shall be entitled to an "unhooking" fee of not more than \$40. The towing company shall determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

- (1) The maximum towing charges and fees allowed by law;
- (2) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
- (3) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the owners have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. A person who has been charged in excess of the charges permitted under this section may sue for damages sustained, and, if the judgment is for the plaintiff, the court shall award the

## **ACT 225**

plaintiff a sum not to exceed the amount of such damages and reasonable attorney's fees together with the cost of suit."

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 17, 1992.)

### **Note**

1. Prior to amendment "," appeared here.

## **ACT 225**

H.B. NO. 1237

A Bill for an Act Relating to Computer Crime.

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

SECTION 1. It is the intent of the legislature to protect individuals, groups, organizations, financial institutions, businesses, and government agencies from tampering, interference, damage, and unauthorized access to computers, software, data, and computer systems. The legislature finds that the growth in computer use has resulted in a similar growth in unauthorized access to computers, computer systems, software, and data.

The legislature finds and declares that the protection of the integrity and security of computers, computer systems, software, and data is vital to the protection of the privacy and property interests of individuals, groups, organizations, financial institutions, businesses, government agencies, and others who use computers.

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . COMPUTER CRIME**

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

"Access" means to gain entry to or communicate with a computer, computer system, or computer network.

"Computer" means any device which performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities which are connected or related to such a device in a computer system or computer network.

"Computer equipment" or "hardware" means central processing units, microprocessors, data storage and other computer memory devices, and computer terminals or similar devices.

"Computer network" means two or more computer systems connected so as to permit the exchange or sharing of data between or among them.

"Computer program" or "software" means a set of computer-readable instructions or statements which, when executed by a computer system, causes

the computer system or the computer network to which it is connected to perform computer services.

“Computer services” means data input, data output, data processing, or data storage by or in a computer system or computer network.

“Computer system” means computer equipment or hardware connected together and operating under the control of one or more computer programs.

“Data” means information stored in a computer system or on electronic media or processed in a computer system.

“Disruption” means any deviation from normal operations of any computer, computer system, or computer network.

“Injury” includes addition, alteration, damage, deletion, destruction, denial of access with respect to data in, or functions of, a computer system or computer network.

“Property” includes financial instruments, data, computer software, computer programs, documents associated with computer systems and computer programs, or copies, whether tangible or intangible, and data while in transit.

“Without authorization” means without the permission of or in excess of the permission of an owner, lessor, or rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant such permission.

**§708- Computer fraud.** (1) A person commits the offense of computer fraud if:

- (a) The person accesses or causes to be accessed any computer, computer system, computer network, or any of its parts with the intent of devising or executing any scheme or artifice to defraud; or
- (b) The person accesses or causes to be accessed any computer, computer system, computer network, or any of its parts with the intent of obtaining money, property, or services by means of embezzlement or false or fraudulent representations; or
- (c) The person, without authorization, accesses or causes to be accessed any computer, computer system, computer network, or any of its parts with the intent of obtaining credit information on another person; or
- (d) The person accesses or causes to be accessed any computer, computer system, computer network, or any of its parts with the intent of introducing or causing to be introduced false information to damage or enhance the credit rating of any person.

(2) Computer fraud is a class C felony.

**§708- Unauthorized computer use.** (1) A person commits the offense of unauthorized computer use if the person intentionally and without authorization accesses, alters, injures, disrupts, damages, or destroys any computer, computer system, computer network, computer program, computer software, or any data stored therein.

(2) Unauthorized computer use is a class C felony.

**§708- Entry without disruption.** (1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and nature of the attendant circumstances, it finds that the defendant's conduct did not actually cause harm or damage to any computer, computer system, computer network, or any of its data or software.

(2) The court shall not dismiss a prosecution under section (1) without filing a written statement of its reasons.”

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SECTION 3. Part IX of Chapter 708, Hawaii Revised Statutes is repealed.

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

(Approved June 17, 1992.)

## ACT 226

H.B. NO. 1509

A Bill for an Act Relating to Special Improvements and Services.

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

SECTION 1. The purpose of this Act is to grant general powers to the counties to provide, by ordinance, for the establishment of community facilities special tax districts within each county. It is the legislature's intent to allow the counties maximum flexibility in financing necessary special improvements in such areas through the establishment of community facilities special tax districts.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§46- Community facilities district.** (a) Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the creation of community facilities districts to finance special improvements in the county. The special improvements may be provided and financed under the ordinance. The county shall have the power to levy and assess a special tax on property located in a district to finance the special improvements and to pay the debt service on any bonds issued to finance the special improvements. The county may issue and sell bonds to provide funds for the special improvements. Bonds issued to provide funds for the special improvements may be either: bonds secured only by the properties included in the district and/or the special taxes thereon, or bonds payable from general taxes and/or secured by the general taxing power of the county. If the bonds are secured only by the properties included in the district and/or the special taxes thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from general taxes or secured by the general taxing power, the bonds shall be issued according and subject to chapter 47.

(b) There is no requirement that the special tax imposed by ordinance pursuant to this section be fixed in an amount or apportioned on the basis of special benefit to be conveyed on property by the special improvement, or that the special improvement convey a special benefit on any property in the district. It shall be sufficient that the governing body of the county determines that the property to be subject to the special tax is improved or benefited by the special improvement in a general manner or in any other manner. The special improvement may also benefit property outside the district. The special taxes assessed pursuant to this section shall be a lien upon the property assessed. The lien shall have priority over all other liens except the lien of general real property taxes and the lien of assessments levied under section 46-80. The lien of special taxes assessed pursuant to this section shall be on a parity with the lien of general real property taxes and the lien of assessments levied under section 46-80, except to the extent the law or assessment ordinance provides that the lien of assessments levied under section 46-80 shall be subordinate to the lien of general real property taxes.

(c) The ordinance shall describe the types of special improvements that may be undertaken and financed. In addition, the ordinance shall include, but not be limited to, procedures for:

- (1) Creating community facilities districts (and zones therein), including specific time spans for the existence of each district;
- (2) Apportioning special taxes on real properties within a community facilities district;
- (3) Providing notice to and opportunity to be heard by owners of property proposed to be subject to the special tax (the affected owners), subject to waiver by one hundred per cent of the affected owners, including termination of proceedings if the affected owners of more than fifty-five per cent of the property, or if more than fifty-five per cent of the affected owners of the property, in the community facilities district proposed to be subject to the special tax protest in writing at the hearing. The ordinance shall also provide that if a lease requires the lessee to pay the proposed special tax, the ordinance shall state that the affected owner may waive this requirement in writing and that the affected owner refrain from imposing upon any successor lessee the obligation to pay the special tax. The ordinance shall also provide that if the affected owner fails to waive the requirement that the lessee pay the proposed tax, then all the rights for notice, hearing, and protest contained in this paragraph shall inure to the benefit of the original lessee or any subsequent lessee.
- (4) Provide notice to buyers or lessees of the property who would be required to pay the special tax;
- (5) Fixing, levying, collecting, and enforcing the special taxes against the properties affected thereby (including penalties for delinquent payment and sales for default);
- (6) Making changes in the community facilities district, in the special taxes, or in the special improvements to be financed or provided;
- (7) The acquisition or construction of the special improvements;
- (8) The issuance of bonds to pay all or part of the cost of the special improvements (including costs of issuance, reserves, capitalized interest, credit enhancement, and any other related expenses);
- (9) Refunding bonds previously issued;
- (10) The establishment and handling of a separate special fund or funds to pay or secure such bonds or to pay for acquisition or construction of special improvements or any other related expenses; and
- (11) Other matters as the council shall determine to be necessary or proper.

The amount of special taxes may include amounts determined by the council to be necessary or reasonable to cover administration and collection of the assessments, administration of the bonds or of the program authorized by this section, replenishment of reserves, arbitrage rebate, and a reasonable financing fee.

(d) Each issue of bonds shall be authorized by ordinance, separate from the foregoing procedural ordinance, and shall be in such amounts, denominations, forms, executed in such manner, payable at such place or places, at such time or times, at such interest rate or rates (either fixed or variable), with such maturity date or dates and terms of redemption, security (including pledge of proceeds, special taxes and liens therefor), credit enhancement, administration, investment of proceeds and special tax receipts, default, remedy, or other terms and conditions as the council deems necessary or convenient. The bonds shall be sold in the manner and at the price or prices determined by the council.

(e) This section is a special improvement statute which implements section 12 of Article VII of the State Constitution and provides a complete, additional, and alternative method of doing the things authorized herein; and the creation of districts, levying, assessments and collection of special taxes, issuance of bonds and other matters covered by this section, or by the procedural or bond ordinances authorized by this section, need not comply with any other law applicable to these matters. Bonds issued under this section, when the only security for such bonds is the special taxes or liens on the property in the district subject thereto, shall be excluded from any determination of the power of a county to issue general obligation bonds or funded debt for purposes of section 13 of Article VII of the State Constitution.

(f) Notwithstanding any other law, no action or proceeding to question the validity of or enjoining any ordinance, action, or proceeding undertaken pursuant hereto (including the determination of the amount of any special tax levied with respect to any property or the levy or assessment thereof), or any bonds issued or to be issued pursuant thereto or under this section, shall be maintained unless begun within thirty days of the adoption of the ordinance, determination, levy, assessment or other act, as the case may be, and, in the case of bonds, within thirty days after adoption of the ordinance authorizing the issuance of those bonds.

(g) Bonds issued pursuant to this section and the interest thereon and other income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

(h) Properties of entities of the state, federal, or county governments, except as provided in subsection (i), shall be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the ordinance of formation to establish a district adopted pursuant to this chapter or in an ordinance of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in this section.

(i) If a public body owning property, including property held in trust for any beneficiary, which is exempt from a special tax pursuant to subsection (h), grants leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax, notwithstanding subsection (h), shall be levied on the leasehold or possessory interest and shall be payable by the lessee."

SECTION 3. Section 46-80, Hawaii Revised Statutes, is amended to read as follows:

**"§46-80 Improvement by assessment; financing.** Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the making and financing of improvement districts in the county, and such improvements may be made and financed under such ordinance. The county may issue and sell bonds to provide funds for such improvements. Bonds issued to provide funds for such improvements may be either bonds when the only security therefor is the properties benefited or improved or the assessments thereon or bonds payable from taxes or secured by the taxing power of the county. If the bonds are secured only by the properties benefited or improved or the assessments thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from taxes or secured by the taxing power, the bonds shall be issued according and subject to chapter 47. [Any other law to the contrary notwithstanding.] Except as is otherwise provided in section 46- in assessing land for improvements a county shall assess the land within

an improvement district according to the special benefits conferred upon the land by the special improvement; these methods include assessment on a frontage basis or according to the area of land within an improvement district, or any other assessment method which assesses the land according to the special benefit conferred, or any combination thereof."

SECTION 4. Section 47C-1, Hawaii Revised Statutes, is amended by amending the definition of "special assessment bonds" to read:

"Special assessment bonds" shall mean bonds issued under special improvement statutes when the only security for such bonds is the assessments or special taxes levied and assessed under those statutes or properties [benefited or improved or] subject to the assessments [thereon] or special taxes."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1992.

(Approved June 17, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 227**

H.B. NO. 2505

A Bill for an Act Relating to Housing.

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

SECTION 1. Notwithstanding any other law to the contrary, each county, not later than December 31, 1993, shall enact such ordinances as may be necessary to decrease, to not more than twelve months, the total time required by the county to review and, if appropriate, grant, all general plan, development plan, community plan, zone change, and discretionary permit approvals to construct housing in that county. Each county shall also enact such ordinances as may be necessary to decrease to no more than six months the total time to process and approve subdivision, grading, building, and other ministerial development permits.

Notwithstanding any other law to the contrary, each state agency, not later than December 31, 1993, shall adopt such rules as may be necessary to decrease, to not more than six months, the total time required by all state agencies to review and, if appropriate, grant approvals to construct housing in this State. State agencies shall also adopt rules allowing no more than six months to process and approve other state permits required in connection with housing projects such as permits for wastewater treatment facilities; provided that this six month time period shall run concurrently with, not in addition to, county processing time for ministerial permits.

SECTION 2. Not later than December 31, 1992, the mayor of each county shall convene a task force to recommend specific time limits for each county agency to review and, if appropriate, approve requests to construct housing in that

## **ACT 228**

county. The composition and size of each county's task force shall include members of the county council and any agency responsible for policy and technical issues regarding housing issues regarding housing development permits. Each county's task force shall consider, among other matters, the issue of how to accommodate the time taken by applicants to comply with all application requirements in the six month time period for processing all ministerial development permits. The task force shall not be subject to section 26-34, Hawaii Revised Statutes. Task force meetings shall be governed by the applicable provisions of chapter 92, Hawaii Revised Statutes.

Not later than December 31, 1992, the governor shall convene a task force to recommend specific time limits for each state agency to review and, if appropriate, approve requests to construct housing in this State. The task force shall include state government agencies, boards, commissions, or entities responsible for policy or technical issues regarding housing development permits. The task force shall not be subject to section 26-34, Hawaii Revised Statutes. Task force meetings shall be governed by the applicable provisions of chapter 92, Hawaii Revised Statutes.

**SECTION 3.** Not later than January 1, 1993, and January 1, 1994, the mayor of each county shall submit to the legislature a status report on the progress made by that county to implement the applicable provisions of this Act.

Not later than January 1, 1993, and January 1, 1994, the governor shall submit to the legislature a status report on the progress made by the State to implement the applicable provisions of this Act.

**SECTION 4.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before January 1, 1993.

**SECTION 5.** 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 6.** This Act shall take effect upon its approval.

(Approved June 17, 1992.)

## **ACT 228**

**H.B. NO. 2544**

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 utilities providing electric service to the general public 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 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 entire savings resulting from the reduction in capital costs will benefit the ratepayers. 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 the utilities. 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 of the State. The legislature further finds that Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited, are electric utilities serving the general public that qualify 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 \$135,000,000 for the following capital improvement programs which are multi-project programs for the local furnishing of electric energy by electric utilities serving the general public:

<u>Company</u>	<u>Amount of Authorization</u>
Hawaiian Electric Company, Inc. (Oahu) Multi-project capital improvement program, including the acquisition of land, power plant additions, transmission and distribution lines, substations, and other electric systems and facilities, or any combination thereof, for the financing of which special purpose revenue bonds will be issued during the period from July 1, 1992, through December 31, 1995 .....	\$90,000,000
Hawaii Electric Light Company, Inc. Multi-project capital improvement program, including the acquisition of land, generating facilities (including a new fossil fuel generating unit on the island of Hawaii), power plant additions, transmission and distribution lines, substations, and other electric systems and facilities, or any combination thereof, for the financing of which special purpose revenue bonds will be issued during the period from July 1, 1992, through December 31, 1995 .....	\$25,000,000
Maui Electric Company, Limited Multi-project capital improvement program, including the acquisition of land, generating facilities (including two new fossil fuel generating units on the island of Maui),	

power plant additions, transmission and distribution lines, substations, and other electric systems and facilities, or any combination thereof, for the financing of which special purpose revenue bonds will be issued during the period from July 1, 1992, through December 31, 1995 .....\$20,000,000

provided that public utilities commission approval 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 under the revenue bond provision, 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.** Notwithstanding section 39-71(b), the department of budget and finance is authorized to issue from time to time, including times after December 31, 1995, refunding 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 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, and the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department of budget and finance 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.** Section 39A-211, Hawaii Revised Statutes, is repealed.

**SECTION 7.** The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1996.

**SECTION 8.** Statutory material to be repealed is bracketed.<sup>1</sup>

**SECTION 9.** This Act shall take effect upon its approval.

(Approved June 17, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 229

H.B. NO. 2597

A Bill for an Act Relating to Importation.

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

SECTION 1. The legislature finds that the State must be vigilant in preserving its environment, agriculture, and beauty against the unwelcome intrusion of destructive pests. Certain animals have the ability to severely damage Hawaii's natural environment. For example, Guam is suffering greatly from the introduction of the brown tree snake. In order to prevent brown tree snakes and other destructive pests from entering Hawaii, the law must provide for better procedures and stronger penalties to deter the importation of undesirable creatures. This bill, therefore, provides for larger fines and more comprehensive procedures.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§150A- Entry of private property for enforcement.** Whenever any member of the department of agriculture deems it necessary for the protection of animal or public health, agriculture, or the environment, to enter any land, building, vessel or aircraft for the purpose of seizing, capturing, confiscating or removing any living creature that is prohibited or restricted and without a permit, the member may make complaint to the district judge in whose circuit the alleged violation is occurring, and the district judge may thereupon issue a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid, and being accompanied by the member of the department, to go to the place described in the complaint, and to seize, capture, confiscate or remove, under directions of the member, the prohibited or restricted creature.”

SECTION 3. Section 150A-5, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-5 Conditions of importation.** The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil; bacteria, fungus, or virus; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in chapter 142); box, vehicle, baggage, or any other container in which such articles have been transported or any packing material used in connection therewith shall be made in the manner hereinafter set forth:

- (1) Notification of arrival. Any person who receives for transport or brings or causes to be brought to the State as freight, air freight, baggage, or otherwise, for the purpose of debarkation or entry therein, or as ship's stores, any of the foregoing articles, shall, immediately upon the arrival thereof, notify the department, in writing, of the arrival, giving the waybill number, container number, name and address of the consignor, name and address of the consignee or the consignee's agent in the State, marks, number of packages, description of contents of each package, port at which laden, and any other

information that may be necessary to locate or identify the same, and shall hold such articles at the pier, airport, or any other place where they are first received or discharged, in such a manner that they will not spread or be likely to spread any infestation or infection of insects or diseases that may be present until inspection and examination can be made by the inspector to determine whether or not any article, or any portion thereof, is infested or infected with or contains any pest. In addition, the department by rules shall designate restricted articles that shall require a permit from the department in advance of importation. The restricted articles shall include, but not be limited to, fungi, bacteria, virus, or living insects. Failure to obtain the permit in advance is a violation of this section.

- (2) Individual passengers, officers, and crew.
  - (A) It shall be the responsibility of the transportation company to distribute, prior to the debarkation of passengers and baggage, the State of Hawaii plant and animal declaration form to each passenger, officer, and crew member of any aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency in order that the passenger, officer, or crew member can comply with the directions and requirements appearing thereon. [Any passenger, officer, or] All passengers, officers, and crew [member] members, whether or not they are bringing or causing to be brought for entry into the State the articles listed on the form, shall complete the declaration[.], except that one adult member of a family may complete the declaration for other family members. Any person who defaces the declaration form required under this section, gives false information, fails to declare restricted articles in the person's possession or baggage, or fails to declare in cargo manifests is in violation of this section.
  - (B) Completed forms shall be collected by the transportation company and be delivered, immediately upon arrival, to the inspector at the first airport or seaport of arrival. Failure to distribute or collect declaration forms or to immediately deliver completed forms is a violation of this section.
  - (C) It shall be the responsibility of the officers and crew of an aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency to immediately report all sightings of any plants and animals to the Plant Quarantine Branch. Failure to comply with this requirement is a violation of this section.
- (3) Plant and animal declaration form. The form shall include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter.
- (4) Labels. Each container in which any of the above-mentioned articles are imported into the State shall be plainly and legibly marked, in a conspicuous manner and place, with the name and address of the shipper or owner forwarding or shipping the same, the name or mark of the person to whom the same is forwarded or shipped or the person's agent, the name of the country, state, or territory and locality therein where the product was grown or produced, and a statement

of the contents of the container. Upon failure to comply with this paragraph, the importer or carrier is in violation of this section.

- (5) Authority to inspect. Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:

(A) Enter and inspect any aircraft, vessel, or other carrier at any time after its arrival within the boundaries of the State, whether offshore, at the pier, or at the airport, for the purpose of determining whether any of the articles or pests enumerated in this chapter or rules adopted thereto, is present.

(B) Enter into or upon any pier, warehouse, airport, or any other place in the State where any of the above-mentioned articles are moved or stored, for the purpose of ascertaining, by inspection and examination, whether or not any of the articles is infested or infected with any pest or disease or contaminated with soil or contains prohibited plants or animals.

(C) Inspect any baggage or personal effects of disembarking passengers, officers, and crew members on aircraft or vessels arriving in the State to ascertain if they contain any of the articles or pests enumerated in this chapter. No baggage or other personal effects of the passengers or crew members shall be released until the baggage or effects have been passed.

Baggage or cargo inspection shall be made at the discretion of the inspector, on the pier, vessel, or aircraft or in any quarantine or inspection area.

Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may require that any box, package, suitcase, or any other container carried as ship's stores, cargo, or otherwise by any vessel or aircraft moving between the continental United States and Hawaii or between the Hawaiian Islands, be opened for inspection to determine whether any article or pest prohibited by this chapter or by rules adopted pursuant thereto is present. It is a violation of this section if any prohibited article or any pest or any plant, fruit, or vegetable infested with plant pests is found.

- (6) Request for importation and inspection. In addition to requirements of the United States customs authorities concerning invoices or other formalities incident to importations into the State, the importer shall be required to file a written statement with the department, signed by the importer or the importer's agent, setting forth the importer's desire to import certain of the above-mentioned articles into the State and giving the following additional information: the kind (scientific name), quantity, and description; the locality where same were grown or produced; the certification that all animals to be imported are the progeny of captive populations or have been held in captivity for a period of one year immediately prior to importation or have been specifically approved for importation by the board; the port from which the same were last shipped; the name of the shipper; and the name of the consignee. The statement shall also contain:

(A) A request that the department, by its duly authorized agent, examine the articles described;

- (B) An agreement by the importer to be responsible for all costs, charges, or expenses; and
- (C) A waiver of all claims for damages incident to the inspection or the fumigation, disinfection, quarantine, or destruction of the articles, or any of them, as hereinafter provided, if any treatment is deemed necessary.
- Failure or refusal to file a statement, including the agreement and waiver, is a violation of this section and may, in the discretion of the department, be sufficient cause for refusing to permit the entry of the articles into the State.
- (7) Place of inspection. If, in the judgment of the inspector, it is deemed necessary or advisable to move any of the above-mentioned articles, or any portion thereof, to a place more suitable for inspection than the pier, airport, or any other place where they are first received or discharged, the inspector is authorized to do so. All costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or the importer's agent.
- (8) Disinfection or quarantine. If, upon inspection, any article so received or brought into the State for the purpose of debarkation or entry therein is found to be infested or infected or there is reasonable cause to presume that it is infested or infected and the infestation or infection can, in the judgment of the inspector, be eradicated, a treatment shall be given such article. The treatment shall be at the expense of the owner or the owner's agent, and the treatment shall be as prescribed by the department. The article shall be held in quarantine at the expense of the owner or the owner's agent at a satisfactory place approved by the department for a sufficient length of time to determine that eradication has been accomplished. If the infestation or infection is of such nature or extent that it cannot be effectively and completely eradicated, or if it is a potentially destructive pest or it is not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, or if the owner or the owner's agent refuses to allow the article to be treated or to be responsible for the cost of treatment and quarantine, the article, or any portion thereof, together with all packing and containers, may, at the discretion of the inspector, be destroyed or sent out of the State at the expense of the owner or the owner's agent. Such destruction or exclusion shall not be made the basis of a claim against the department or the inspector for damage or loss incurred.
- (9) Disposition. Upon completion of inspection, either at the time of arrival or at any time thereafter should any article be held for inspection, treatment, or quarantine, the inspector shall affix to the article or the container or to the delivery order in a conspicuous place thereon, a tag, label, or stamp to indicate that the article has been inspected and passed. This action shall constitute a permit to bring the article into the State.
- (10) Ports of entry. None of the articles mentioned in this section shall be allowed entry into the State except through the airports and seaports in the State designated and approved by the board."

SECTION 4. Section 150A-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) It is a violation of section 150A-6 to bring to or possess in the State any living creature that is [mentioned in that section or in the lists maintained by the board if the creature is] prohibited, or restricted and without a permit issued by the department, and such a creature shall constitute contraband and shall be seized immediately upon discovery whenever found, and be destroyed, donated to a government zoo, or sent out of the State, at the discretion of the department. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent. The foregoing shall not apply to any snake which is brought into the State by a government agency solely for the purpose of exhibition in a government zoo pursuant to section [150A-6(3).] 150A-6(a)(3)."

SECTION 5. Section 150A-14, Hawaii Revised Statutes, is amended to read as follows:

**"§150A-14 Penalty.** (a) Any person who violates any provision of this chapter other than sections 150A-5(2)(B), 150A-5(2)(C), 150A-6(a)(3) and 150A-6(a)(4) or who violates any rule adopted under this chapter other than those rules involving a plant, animal, or microorganism [on the] that is prohibited [list] or [the] restricted [list] without a permit shall be guilty of a [violation] misdemeanor and fined not less than \$100 [nor more than \$1,000]. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the person or organization shall be fined not less than \$500 and not more than \$25,000.

(b) Any transportation company that violates section 150A-5(2)(B) or section 150A-5(2)(C) shall be guilty of a [petty] misdemeanor[.] and fined not less than \$100. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the company may be fined not less than \$500 and not more than \$25,000.

(c) Any person or organization that violates sections 150A-6(a)(3) or 150A-6(a)(4), or [who] owns or intentionally transports, possesses, harbors, propagates, sells, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), [or any person or importer who violates this chapter more than once] or whose violation involves a plant, animal, or microorganism [on the] that is prohibited [list] or [the] restricted [list] without a permit shall be guilty of a [violation] misdemeanor and fined not less than [\$1,000 nor more than \$10,000.] \$500. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$25,000.

(d) For the purposes of this section:

(1) Convictions under two or more citations issued in connection with the same course of conduct or episode shall be considered a single conviction; and

(2) A conviction occurs on the date judgment is entered.

(e) (d) Whenever a court sentences a person[,] or organization[, or importer] pursuant to subsection (a) or (c) for an offense which has resulted in the escape or establishment of any pest and caused the department to initiate a program to capture, control, or eradicate that pest, the court shall also require that the person or [importer] organization pay to the state general fund an amount of money to be determined in the discretion of the court upon advice of the department, based upon the cost of the development and implementation of the program.

[f] (e) [In addition to the penalties in subsection (a) or (c) and the payment under subsection (e), the] The department may, at its discretion, refuse entry, confiscate, or destroy any prohibited articles or restricted articles [without

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a permit issued by the department,] that are brought [to] into the State without a permit issued by the department, or order the return of any plant, fruit, vegetable, or any other article infested with pests to its place of origin or otherwise dispose of it or such part thereof as may be necessary to comply with this chapter. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

[(g)] (f) Any person [who] or organization that voluntarily surrenders any prohibited [snake, other prohibited animal,] plant, animal, or microorganism or any restricted plant, animal, or microorganism without a permit issued by the department, prior to the initiation of any seizure action by the department, shall be exempt from the penalties of this section."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 17, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 230

H.B. NO. 2680

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for the Rehabilitation Hospital of the Pacific.

*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 \$20,000,000, in one or more series for the purpose of assisting the Rehabilitation Hospital of the Pacific, with the financing or refinancing, or both, of one or more of the following:

- (1) Construction of an addition to the hospital's health care facilities;
- (2) Renovation and repair of the hospital's existing health care facilities;
- (3) Acquisition and purchase of additional capital equipment for use in connection with the hospital's health care facilities;
- (4) Expansion of the hospital's parking facilities;
- (5) Retirement of the outstanding debt on the hospital's existing facilities; and
- (6) Retirement of the outstanding debt on existing capital equipment used in connection with the hospital's health care facilities.

The legislature finds and determines that the activities and facilities of the Rehabilitation Hospital of the Pacific constitutes 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 17, 1992.)

**ACT 231**

H.B. NO. 2720

A Bill for an Act Relating to Activity Providers and Activity Desks.

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

**SECTION 1.** The legislature finds that the visitor industry is the State's single largest industry by far. For the foreseeable future, the visitor industry will remain the primary economic force driving Hawaii's economy as it continually generates directly or indirectly over one-third of the State's total employment. It is imperative that the visitor industry not only remain competitive with other resort areas of the world, but also increase its productivity to keep pace under the currently depressed economic conditions prevalent throughout our country. The continued success of Hawaii's visitor industry, and the State's economy lie largely in its ability to compete and successfully draw visitors to the islands. This, in turn, will depend greatly on the quality of service provided to visitors and the measure of satisfaction visitors experience regarding the services they receive. Of these services, a very great number of visitors to Hawaii avail themselves of various tourist activities offered throughout the State by activity desks and activity providers.

The legislature further finds that it is imperative that visitors receive predictable and a routinely high quality of services, particularly from activity desks and activity providers, to enhance visitor satisfaction in order for Hawaii's visitor industry to remain competitive in the world tourism market. Also, the legislature further finds that activity desks and activity providers should not be burdened unnecessarily in their commercial activities by regulatory requirements ill-suited to the nature of their businesses. The viability of activity desks and activity providers is vital to the health and growth of the entire visitor industry.

In light of this, the legislature finds that both consumers, especially visitors to Hawaii, and activity providers, require protection from potential irregularities in the commercial operation of activity desks. The legislature previously noted in House Standing Committee Report No. 777-90, dated March 2, 1990,

that certain activity desks allegedly covered up the names and telephone numbers of activity providers with their own, thus preventing consumers from dealing directly with activity providers. Conference Committee Report No. 39, dated April 26, 1990, viewed this practice of "stickering" as "deceptive and not in the best interest of consumers." In the following year, Act 240, Session Laws of Hawaii 1991, was enacted to amend Act 214, Session Laws of Hawaii 1990, by requiring client trust accounts to "be established and maintained for the benefit of the consumers paying money to the activity desk."

In addition, the legislature also established various measures to protect activity providers, which included the provision of a "stickering" ban, the prompt payment of fees to activity providers, injunctive relief and damages to injured activity providers, and the maintenance of client trust accounts by activity desks. Although these accounts ensure that activity providers are paid, they also protect consumers who pay for activity services.

While House Standing Committee Report No. 844, dated March 8, 1991, noted that there may be a need for a bonding requirement, the Sixteenth Legislature of 1991 was unable to act accordingly because of time constraints.

The legislature finds that the process of obtaining either a bond or an irrevocable letter of credit will entail a credit check of the applicant. This will further help to ensure that activity desks are financially responsible, and thus protect both the activity providers and the consuming public from irregular commercial practices. In addition, because representatives from activity desks have noted that the maintenance of client trust accounts mandated by Act 240, Session Laws of Hawaii 1991, has placed great hardship on the entire activity desk industry, the legislature finds that the option of obtaining either a bond or a letter of credit would greatly enhance the administrative efficiency of activity desks.

Accordingly, the purpose of this Act is to further protect activity providers and the consuming public by offering activity desks the option to post a bond or a yearly irrevocable letter of credit naming the director of commerce and consumer affairs as the obligee or beneficiary, respectively, in lieu of maintaining client trust accounts.

**SECTION 2.** Act 240, Session Laws of Hawaii 1991, is amended by amending Section 1 to read as follows:

"**SECTION 1.** Act 214, Session Laws of Hawaii 1990, is amended by amending Section 1 to read as follows:

"**SECTION 1.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER ACTIVITY PROVIDERS AND ACTIVITY DESKS**

**§ -1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Activity desk" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination [of such,] thereof, which for compensation or other consideration, acts or attempts to act as an intermediary to sell, contract for, arrange, or advertise that it can or will arrange, or has arranged, activities which are furnished by an activity provider. This chapter shall not apply to any hotel as defined under section 486K-1, or air carrier as

defined by the Federal Aviation Act of 1958 (49 USCS Appx §1301), as amended, for services for which they do not accept consumer moneys for services other than their own.

"Activity provider" means an individual, firm, corporation, association, partnership, or any group of persons, whether incorporated or not, which provides specialized air, land, or sea tour excursions and activities, but does not mean sellers of airline coupons or tickets.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Net sales" means gross sales minus the commission paid to activity desks.

**§ -2 Registration required.** (a) Activity desks shall register with the director prior to engaging in the business of selling, contracting for, arranging, or advertising that it can or will arrange, activities which are furnished by an activity provider. Notwithstanding section -7, any activity desk that violates the provisions of this section or rules promulgated pursuant thereto shall be fined a sum of \$100 for each day the activity desk is in violation. The sum shall be collected in a civil suit brought by the department.

(b) Registration shall expire on December 31 of each odd-numbered year. Before December 31 of each odd-numbered year, the director or the director's authorized delegate shall mail a renewal application for registration to the address on record of the registrant.

(c) The director by rule, shall establish fees and requirements for registration, maintenance of registration, renewal, restoration of registration, of activity desks.

[§ -2] **§ -3 Prohibited acts.** No activity desk shall engage in any of the following practices:

- (1) Covering, concealing, or obscuring the name, address, or telephone number of an activity provider in any card or brochure;
- (2) Placing a telephone number, address, or other information on any card, brochure, or other advertising material produced or published by an activity provider, whether by decal, sticker, stamp, or otherwise, without identifying the activity desk by name and address;
- (3) Using a promotional card or brochure that does not clearly display the name and telephone number of the activity provider whose activity is being sold or booked when the activity is located in this [state; or] State;
- (4) Withdrawing any funds of a consumer from a client trust account, other than a sales commission up to a maximum of fifteen per cent or to make a refund to the consumer, until the activity provider has been paid[.]; or
- (5) Failing to possess a current and valid registration prior to engaging in business or advertising as an activity desk.

[§ -3] **§ -4 Payment provision.** Unless the express written contract has a provision to the contrary, payment [is] shall be due and payable [forty-five] thirty days from the date of invoice.

[§ -4] **§ -5 Legal rate; computation.** Except as otherwise permitted by existing written contract, any activity desk [who] that directly or indirectly receives any interest on the payment due to the activity provider, shall remit the

interest and the payment due to the activity provider; provided that if the interest and payment due are not remitted within [forty-five] thirty days from the date of invoice, interest on the unpaid balance of the interest and payment due shall accrue at the rate of one per cent per month from the due date.

[§ -5] **§ -6 Injunctive relief; suits.** (a) Any activity provider may bring suit to enjoin any violation of this chapter and may sue in the circuit court in the circuit in which the defendant resides or has an agent or in which the violation has occurred.

(b) Any activity providers association may bring suit to enjoin any violation of this chapter and may sue in the circuit court in the circuit in which the [defendant] defendant resides or has an agent or in which the violation has occurred. The relief available to an activity providers association [is] shall be limited to injunctive and declarative relief and [does] shall not include a right to damages. As used in this section, "activity providers association" means a bona fide trade association of activity providers.

(c) The prevailing party, in a civil action brought under [the provisions of] this chapter, shall be entitled to recover the costs of the suit, including reasonable attorney's fees.

[§ -6] **§ -7 Action for damages.** Any activity desk shall be liable to the activity provider for a violation of this chapter for any damages which result from [such] a violation. Damages shall be awarded at the rate of no less than \$1,000 for each violation. Violations shall be calculated [by the following formula:] as follows:

- (1) For violations of section [ -2(1)] -3(1), (2), or (3), by multiplying the number of days the violations occurred by the number of locations of an activity desk where the violations occurred; [or]
- (2) For violations of section [ -2(4)] -3(4), by counting the number of days where the client trust account held funds insufficient to meet the requirements of section [ -2(4).] -3(4); and
- (3) Notwithstanding [the above formula,] paragraphs 1 and 2, not more than \$10,000 shall be awarded if the activity desk has not previously been required to pay damages to an activity provider pursuant to this section.

[§ -7] **§ -8 Requirements for offering discounts.** When a discount offered for any activity is contingent upon any requirement that the recipient of the discount first attend a sales presentation of any kind, the activity desk shall disclose [such] the requirement in writing to the recipient of the discount before any payment is made. Failure to do so shall constitute a false and deceptive business practice subject to a civil fine of not less than \$1,000 per day for each occurrence.

[§ -8] **§ -9 Client trust accounts; maintenance of and withdrawal from such accounts.** (a) Within three business days of receipt, an activity desk shall deposit all sums received from a consumer, for excursions or activities offered by the activity desk in a trust account maintained in a federally insured financial institution located in Hawaii.

(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the activity desk. The activity desk shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except: (1) in partial or full payment for excursion

or activities to the activity provider directly providing the services; or (2) to make refunds as required by this chapter.

(c) This section shall not prevent the withdrawal from the trust account of: (1) the amount of the sales commission, up to a maximum of fifteen per cent; (2) any interest earned and credited to the trust account; (3) refunds; or (4) remaining funds of a consumer once [all excursion or activities have been provided or once tickets or other similar documentation binding upon the ultimate] the activity provider [of the activity have been provided.] has been paid.

(d) At the time of registration, the activity desk shall file with the department the account number and the name of the financial institution at which the trust account is held[,] or submit a bond or letter of credit as provided in section -10. The activity desk shall notify the department of any change in the account number or location within one business day of the change.

(e) The director may, by rule, allow for the use of other types of funds or accounts provided that the protection for consumers is no less than that provided by this section.

**§ -10 Performance bond and irrevocable letter of credit as alternative to client trust account required of activity desks; coverage amount and computation; annual report and option; adjustments; coverage upon transfer.** (a) If a client trust account is not established and maintained as required under section -9, no activity desk shall be permitted to operate in the State unless the activity desk:

- (1) Posts a bond which is a performance or financial guaranty type bond naming the director as the obligee and which may be canceled only if the activity desk gives sixty days prior written notice to the surety or if the surety gives thirty days prior written notice to the director of cancellation of the bond; or
- (2) Obtains an irrevocable letter of credit which is a guarantee of payment for a term of one year naming the director as beneficiary, with a provision for automatic extension for additional annual periods, and which may be canceled only if the activity desk gives prior written notice by certified mail to the director and to the issuer at least ninety days before the letter's expiration date or the date on which the activity desk intends the letter to cease being effective or the issuer gives prior written notice by certified mail to the director at least sixty days before the expiration date.

(b) The bond or letter of credit shall be issued by a surety or federally insured lending institution authorized to do business in the State to indemnify any consumer who may suffer loss as a result of nonperformance by an activity desk.

(c) An activity desk shall not provide the required coverage through multiple bonds or irrevocable letters of credit but shall provide either a single bond or a single irrevocable letter of credit. An activity desk may substitute the bond with an irrevocable letter of credit. An activity desk may substitute the bond with an irrevocable letter of credit and vice versa pursuant to subsection (h), but shall not provide one in addition to the other to reach the required aggregate amount of coverage. If an activity desk has more than one branch desk location, the bond or irrevocable letter of credit shall cover all locations and computations on the coverage amount shall be based on the total net sales revenues of all branch locations.

(d) Upon cancellation or expiration of the bond or letter of credit, the surety or insurer shall remain liable for any claims against the bond or letter of credit for a period of six months; provided that:

- (A) The debts were incurred while the bond or letter of credit was in effect; and
- (B) The director notifies the surety or insurer, as the case may be, of any claims within ninety days of discovery of any claims.

(e) The surety or insurer is not required to release any moneys or collateral to the activity desk during the six months after cancellation of the bond or expiration of the letter of credit.

(f) The amount of coverage shall be equal to the average monthly net sales revenues of the activity desk as determined for the twelve-month period ending on the last sales period ending date of the fifth month prior to the anniversary date of the bond or the irrevocable letter of credit; provided that the amount of coverage of the bond or irrevocable letter of credit shall not be less than \$50,000 and shall not be more than \$100,000. Any activity desk providing a bond or irrevocable letter of credit for the first time during the period beginning on the effective date of this Act and ending on March 31, 1993, shall base its initial coverage amount on the twelve-month period ending on June 30, 1992. If an activity desk does not have a full twelve-month period on which to base the amount, the amount shall not be less than the average monthly net sales revenues as determined for the months available; provided that this amount shall not be less than \$75,000, notwithstanding the minimum amount of \$50,000 for regularly computed coverage.

(g) No later than four months before the anniversary date of coverage, each activity desk shall submit a notarized annual report to the department verifying the monthly net sales revenue figures for the twelve-month period upon which the amount of the bond or irrevocable letter of credit is based. However, each activity desk shall have the option not to submit the annual report if the activity desk provides a bond or an irrevocable letter of credit for the maximum amount of \$100,000.

(h) Each activity desk shall review the desk's coverage at least once each year and shall increase or decrease the amount of the coverage as necessary according to the computation method in subsection (f) at the time coverage is renewed on the anniversary date or on other dates if coverage is reinstated or replaced; provided that any downward adjustment in coverage shall not result in coverage below \$50,000.

A bond shall be accepted as replacement for another bond or an irrevocable letter of credit and an irrevocable letter of credit shall be accepted as replacement for another irrevocable letter of credit or a bond if:

- (1) The effective date of a replacement bond is prior to or on the cancellation date of the bond being replaced;
- (2) Where a letter of credit is about to expire, the effective date of the replacement bond is prior to or on the same date as the date of expiration of the irrevocable letter of credit and the replacement bond is received by the director before that expiration date;
- (3) The replacement irrevocable letter of credit is received by the director at least fifteen days prior to the expiration date of the irrevocable letter of credit being replaced; or
- (4) The replacement irrevocable letter of credit is received by the director on or before the cancellation date of the bond.

(i) An activity desk whose bond or letter of credit has been cancelled or has expired may continue to operate the activity desk provided the desk establishes the client trust account at least two months prior to the cancellation or expiration of the bond or letter of credit, and shall not be allowed to replace the client

trust account with a bond or letter of credit for at least one year.

(j) Failure to have in effect a client trust account, or current bond or letter of credit shall result in automatic forfeiture of the registration. An activity desk whose registration is forfeited shall apply as a new applicant for registration.

[§ -9] § **-11 Violations; fraud.** Any violations by an activity desk of any law relating to client trust accounts or the bond or letter of credit pursuant to section -10 shall constitute a prima facie showing of fraud on the part of the activity desk and may not be dischargeable as a debt to a consumer or an activity provider in any bankruptcy proceeding.

**§ -12 Restitution.** Any person who engages in an act or practice that violates any provision of this chapter or rules adopted pursuant hereto may be ordered by a court of proper jurisdiction to make restitution to all persons injured by the act or practice.

**§ -13 Injunctions.** In any civil proceeding brought pursuant to this chapter, the court may also enjoin any activity that violates this chapter.

**§ -14 Consumer right of action.** Any person who suffers damage as a result of a violation of this chapter shall be entitled to injunctive relief restraining further violations, and may sue to recover damages in any circuit court of the State, and, if successful, shall recover three times the actual damages or \$1,000, whichever is greater. In any action brought under this chapter, the prevailing party shall be entitled to the recovery of costs of suit, including reasonable attorney's fees.

**§ -15 Remedies cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to remedies or penalties available under other laws of this State.

**§ -16 Criminal penalties.** A person commits the criminal offense of theft if the person, being an activity desk or an agent, employee, or independent contractor of an activity desk, knowingly or intentionally violates section -9(a), (b) or (c) of this chapter.

**§ -17 Rules and regulations.** Subject to chapter 91, the director may adopt such rules as the director deems necessary for the effective administration and enforcement of this chapter.””

SECTION 3. Act 240, Session Laws of Hawaii 1991, is amended by amending Section 2 to read as follows:

““SECTION 2. Act 214, Session Laws of Hawaii 1990, is amended by amending Section 2 to read as follows:

“SECTION 2. This Act shall take effect upon its approval, and shall be repealed June 30, [1993.] 1995.””

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

SECTION 5. The director of commerce and consumer affairs shall submit

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a report to the legislature at least twenty days prior to the convening of the Regular Session of 1994 that shall include, but not be limited to:

1. A status report on the incidence of non-compliance by activity desks with the provisions of this Act; and
2. Proposed legislation it deems necessary to effectuate the purposes of this Act.

SECTION 6. This Act shall take effect on September 1, 1992 and shall be repealed on June 30, 1995.

(Approved June 17, 1992.)

## ACT 232

H.B. NO. 2808

A Bill for an Act Relating to County Licenses.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Chapter 446 (Debt Adjusters)
- (2) Chapter 467D (Social Workers)
- (3) Sections 321-13 to 321-15 only as they relate to sanitarians
- [4] Sections 445-21 to 38 (Auctions)]
- [5] (4) Sections<sup>1</sup> 445-131 to 136 (Pawnbrokers)
- [6] Sections 445-171 to 172 (Secondhand Dealers)
- (7) Sections 445-231 to 235 (Scrap Dealers)]”

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)”

SECTION 3. Section 445-2, Hawaii Revised Statutes, is amended to read as follows:

“**§445-2 Treasurer to issue.** The treasurer [shall], upon the application of any person, shall issue to the applicant any license in this chapter [enumerated,] upon the terms and conditions in this chapter set forth[.], provided that the county shall have the option to license those businesses enumerated in section 445-15(1).”

SECTION 4. Section 445-12, Hawaii Revised Statutes, is amended to read as follows:

**"§445-12 Business without license forbidden; not transferable; penalty.** (a) [The carrying on] Where a county requires a license for the conduct of any business, or the [doing] performance of any act in this chapter enumerated, that business or act, except upon obtaining a license [in conformity with the provisions thereof,] from the appropriate county, is forbidden.

(b) No license required and issued by a county under this chapter shall be transferable.

(c) Any person who [engages]:

(1) Engages in or carries on any business, or does any act enumerated in this chapter, the engaging in or doing of which is [therein] required to be licensed[,] in the county in which the business is conducted or act is performed, without first obtaining a license [issued in conformity with the provisions thereof; or who sells] from that county;

(2) Sells any goods, wares, merchandise, produce, or thing of value, contrary to the terms of this chapter; or [who violates]

(3) Violates or fails to observe this chapter;

shall be fined a maximum of \$500 per day, unless otherwise provided in this chapter."

SECTION 5. Section 445-15, Hawaii Revised Statutes, is amended to read as follows:

**"§445-15 Control by ordinance.** Each council has the power by ordinance:

(1) To require, or eliminate the requirement for, the licensing of auctions under part II of this chapter, secondhand dealers under part VII of this chapter, and scrap dealers under part X of this chapter;

(2) To impose annual license fees;

[(1)] (3) To increase, decrease, or waive effective upon the expiration of any existing license, the annual fee for a license issued under this chapter, or to exempt wholly or partially, the payment by any religious, charitable, or educational organization or institution of any license fee imposed in this chapter or any ordinance enacted hereunder with respect to any business which is not regularly engaged in or carried on by such organization or institution; and

[(2)] (4) To adopt rules not inconsistent with law concerning the conduct of the business of all persons licensed under this chapter, as deemed necessary for the public health, safety, or welfare."

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 17, 1992.)

#### Note

- Prior to amendment "section" appeared here.

## ACT 233

H.B. NO. 2811

A Bill for an Act Relating to the Small Claims Division of the District Court.

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

SECTION 1. Section 633-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

- (1) Cases for the recovery of money only where the amount claimed does not exceed [\$2,500] \$3,500 exclusive of interest and costs, except as provided by section 633-30;
- (2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and
- (3) Cases for the return of leased or rented personal property worth [\$1,500] \$3,500 or less where the amount claimed owed for that lease or rental does not exceed [\$2,500] \$3,500 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. No case filed in the small claims division after December 31, 1991, shall be removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff. In cases arising under paragraph (2) the jurisdiction of the small claims division of the district court shall be exclusive. This subsection shall not abrogate nor supersede sections 604-5, 633-30, and 633-31."

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 17, 1992.)

## ACT 234

H.B. NO. 2818

A Bill for an Act Relating to Licensing of Nurses.

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

SECTION 1. 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;
- (2) [Be] 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;
- (2) [Be] 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 2. Section 457-7, Hawaii Revised Statutes, is amended to read as follows:

**"§457-7 Registered nurses; qualifications; licenses; fees; title; existing licensed nurses; verification of licenses; eligibility.** (a) An applicant for a license to practice nursing as a registered nurse shall submit to the board written evidence, verified by oath or affirmation, that the applicant:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
  - (2) Has completed a nursing program approved by the Hawaii board of nursing.
- (b) Licenses shall be granted either:
- (1) By examination: The applicant shall be required to pass a written examination in nursing subjects as the board may determine. Upon successfully passing the examination, the board shall issue to the applicant a license to practice nursing as a registered nurse; or
  - (2) By endorsement: The board may issue a license to practice nursing as a registered nurse by endorsement to an applicant who has been licensed as a registered nurse under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the qualifications required of registered nurses in this State at the time of graduation. Pending verification of a valid, unencumbered license from another state, a temporary permit may be issued for employment with a Hawaii employer.
- (c) The applicant applying for a license to practice as a registered nurse by examination shall pay application and examination fees to the board and a reexamination fee for each reexamination. Each applicant who successfully passes the examination shall pay a license fee. The applicant applying for a license to practice as a registered nurse by endorsement shall pay application and license fees.

(d) Any person who holds a license to practice nursing as a registered nurse in this State shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.". No other person shall assume the title or use the abbreviation or any other words, letters, signs, or devices to indicate that the person using the same is a registered nurse.

(e) Any person holding a license or certificate of registration to practice nursing as a registered nurse issued by the board which is valid on June 12, 1970, shall be deemed to be licensed as a registered nurse under this chapter.

(f) Any person who requests to take the licensing examination to qualify for a license in another state shall pay an examination proctoring fee to the board.

(g) Any person who requests verification of a registered nurse license to a nursing board of another state shall pay a license verification fee.

(h) Applicants applying for a license to practice as a registered nurse by examination shall submit to the board proof of eligibility. Applicants shall be eligible to apply for a license by examination if they:

- (1) [Are] Have graduated from a registered nursing program at an educational institution in the United States or any territory or possession under the jurisdiction of the United States and are qualified as determined by the board through rules adopted pursuant to chapter 91; or
- (2) Have graduated from a registered nursing program at an educational institution in a foreign jurisdiction, [approved by the board and have successfully completed training in Operation Nightingale or a program certified by the board to be equivalent to Operation Nightingale; or
- (3) Have graduated from a registered nursing program approved by the board and are licensed practical nurses who have met the requirements of the board.] and have had their transcripts evaluated by professional evaluators designated by the board and are considered qualified as determined by the board through rules adopted pursuant to chapter 91.

[Applicants applying pursuant to paragraphs (2) or (3)] Graduates of a board-approved registered nursing program at an educational institution in a foreign jurisdiction shall not be required to take the Commission on Graduates of Foreign Nursing Schools examination[.] or an English proficiency examination.

(i) Unless determined to be insufficient or otherwise invalid by the board, all transcripts, diplomas, certificates of graduation, and other credentials submitted by any applicant in compliance with the application procedures for examination and licensure under this section shall be retained by the board and shall suffice as proof of graduation upon subsequent submittals of applications for reexamination by any applicant."

SECTION 3. Section 457-9, Hawaii Revised Statutes, is amended to read as follows:

**"§457-9 Renewal of license.** (a) The license of every person licensed under this chapter shall expire on June 30 of every odd-numbered year and shall be renewed biennially, except as provided in this section. Biennially in each odd-numbered year [on or before July 1], the board shall [mail] make available an application for renewal of license before the deadline set forth by the board to every person to whom a license was issued or renewed during the biennium. The applicant shall [fill in] complete the application [blank] and [return] submit it to the board with a renewal fee and any required documents on or before [June 30.]

the deadline set forth by the board. The applicant shall provide documents from proper agencies or parties relating to any disciplinary action taken or pending in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States within the two years prior to application for renewal of license. Upon receipt of the application and fee the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium [beginning July 1 and] expiring two years hence on [June 30.] the deadline set forth by the board. The renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

(b) Any licensee who [allows a license to lapse by failing] fails to renew [the] a license as provided in subsection (a) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter; provided that the person's license may be reinstated by the board on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee.

[Any person practicing nursing during the time the person's license has lapsed shall be considered an illegal practitioner and shall be subjected to the penalties provided for violations of this chapter.]

A nurse who fails to renew a license as provided in subsection (a) and does not engage in nursing in the State [during the succeeding] for one year after the license has been forfeited shall not be required to pay the renewal or penalty fee [as long as]; provided that the nurse remains inactive[.] during that year. Should the nurse wish to resume nursing at some future time, the nurse shall [so] notify the board and remit the renewal fee [for the current biennial period.] and application form as provided in subsection (a)."

SECTION 4. Section 457-14, Hawaii Revised Statutes, is amended to read as follows:

**“§457-14 Violations of chapter; penalties.** It shall be a misdemeanor for any person, including any corporation, association, or individual to:

- (1) Sell or fraudulently obtain or furnish any nursing diploma, license, renewal, or record or aid or abet therein; or
- (2) Practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently signed or issued unlawfully or under fraudulent representation; or
- (3) Practice nursing as a registered or as a licensed practical nurse unless licensed to practice under this chapter; or
- (4) Use in connection with the person's name any designation tending to imply that the person is a registered nurse or a licensed practical nurse unless licensed to practice under this chapter; or
- (5) Practice nursing as a registered nurse or as a licensed practical nurse during the time the person's license issued under this chapter is suspended or revoked; or
- (6) Conduct a nursing education program not accredited by the board to prepare for a registered nurse or licensed practical nurse unless the program has been accredited by the board; or
- (7) Otherwise violate any provision of this chapter.

Any of these misdemeanors shall be punishable by a fine of not more than \$500 for a first offense. Each subsequent offense shall be [fined] punishable by a fine of not more than \$1,000 or [imprisoned] imprisonment of not more than one year, or both."

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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 17, 1992.)

## **ACT 235**

H.B. NO. 3164

A Bill for an Act Relating to Income Tax Credits.

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

SECTION 1. Section 46-16.7, Hawaii Revised Statutes is amended by amending subsection (c) to read as follows:

“(c) The general excise and use tax surcharges received from the State by each county shall be used as follows:

- (1) The city and county of Honolulu shall use the surcharges to develop a fixed rail rapid transit system. All private source revenues generated or pledged to develop a fixed rail rapid transit system that are received prior to the operation of the system shall be used as county matching funds for moneys requested from the transit capital development fund, pursuant to chapter 51D, before surcharges may be used. The director of finance shall determine whether or not private sources are adequate to meet county matching requirements. The director of finance shall submit a report of the findings to the legislature. Upon legislative acceptance of the findings, within sixty days of the first regular legislative session convened following the submittal of the findings, no additional moneys may be expended from the transit fund; provided that:
  - (A) Such limitation on the expenditure of moneys from the transit fund shall not occur prior to December 31, 1992; and
  - (B) Private source revenues received prior to the operation of the system shall be committed to the funding of the fixed rail rapid transit system prior to any determination regarding the duration of the surcharge.
- (2) All surcharges collected by the State for the city and county of Honolulu but not used for the purpose of developing a fixed rail rapid transit system shall be deposited into the state treasury to be returned to the taxpayers who resided in the city and county of Honolulu for more than two hundred days of the taxable year in the aggregate during the time that the surcharges were collected, in the form of an income tax credit, the amount of the credit to be determined by law.
- (3) The general excise and use tax surcharge shall be repealed upon the determination by the director of finance that all authorized capital costs of the fixed rail rapid transit system or county projects under paragraph (4) have been collected and distributed pursuant to chapter 248.
- (4) The counties of Hawaii, Kauai, and Maui shall use the surcharges

for public transportation systems, including mass transportation, sewage, or water development, and parks, including park operation, maintenance, infrastructure, or purchase.”

SECTION 2. Section 235-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“[ ](a)[ ]” If the collection of the county general excise and use tax surcharge starts on January 1, 1993, as provided in sections 46-16.7, 237-8.5, and 238-2.5, then for taxable years, in each year that the surcharge is in effect, beginning after December 31, 1992, and ending before January 1, 2003, 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 federal or Hawaii state individual income tax purposes, may claim a county surcharge excise tax credit in the amount computed under this section against the resident taxpayer’s individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that a resident individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit. [The amount of the credit shall be computed by multiplying a resident individual’s adjusted gross income by sixty per cent and the product of that multiplication by .006; provided that if an individual is filing jointly with the individual’s spouse their jointly determined adjusted gross income shall be used; provided further that the amount of the credit shall not exceed \$450 nor be less than \$18.]

- (1) Each resident individual taxpayer who resides 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 may claim the tax credit according to the adjusted gross income bracket shown in the following schedule:

TAX CREDIT SCHEDULE

<u>Adjusted Gross Income</u>	<u>Tax Credit</u>
<u>Under \$5,000</u>	<u>\$ 25</u>
<u>\$5,000 under \$10,000</u>	<u>45</u>
<u>\$10,000 under \$15,000</u>	<u>65</u>
<u>\$15,000 under \$20,000</u>	<u>90</u>
<u>\$20,000 under \$30,000</u>	<u>110</u>
<u>\$30,000 under \$40,000</u>	<u>125</u>
<u>\$40,000 under \$50,000</u>	<u>145</u>
<u>\$50,000 under \$75,000</u>	<u>185</u>
<u>\$75,000 under \$100,000</u>	<u>205</u>
<u>\$100,000 and over</u>	<u>210</u>

- (2) Each resident individual taxpayer who resides for more than two hundred days of the taxable year in the aggregate in a county which has not adopted the county general excise and use tax surcharge may claim a tax credit according to the adjusted gross income bracket shown in the schedule below:

TAX CREDIT SCHEDULE

<u>Adjusted Gross Income</u>	<u>Tax Credit</u>
<u>Under \$5,000</u>	<u>\$ 5</u>
<u>\$5,000 under \$10,000</u>	<u>10</u>
<u>\$10,000 under \$20,000</u>	<u>15</u>
<u>\$20,000 under \$30,000</u>	<u>20</u>
<u>\$30,000 under \$40,000</u>	<u>25</u>
<u>\$40,000 under \$50,000</u>	<u>30</u>
<u>\$50,000 under \$75,000</u>	<u>35</u>
<u>\$75,000 and over</u>	<u>40</u>

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.”

SECTION 3. Section 235-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the tax credit is claimed by an individual who does not reside in the appropriate county as set forth in subsection (a)(1) or (a)(2), there shall be added to and become a 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 4. Section 235-55.9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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. 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. The amount of the tax credit claimed on each individual income tax return shall not exceed:

- (1) \$200,
- (2) \$400 for a resident individual sixty-five years of age or over, or
- (3) \$600 for a resident individual and spouse both sixty-five years of age or over,

provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.”

SECTION 5. 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 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 at the rate of four and one-half per cent is claimed in a county which 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 6. Section 235-110.7, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

The amount of the tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. For calendar years beginning after December 31, 1987, the applicable rate shall be three per cent; December 31, 1988, and thereafter, the applicable rate shall be four per cent, except that for the period January 1, 1993, through December 31, 2002, and [if] for eligible depreciable tangible personal property used in a trade or business that is purchased in a county in which the county general excise and use tax surcharge is in effect and placed in service in any county the applicable rate shall be four and one-half per cent. For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii.

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

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax, and for the period January 1, 1993, through December 31, 2002, the amount of the county general excise and use tax surcharge, actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of

## ACT 236

1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.

(b) If the tax credit is claimed by a taxpayer at the rate of four and one-half per cent, and the tangible personal property is purchased in a county in which the county general excise and use tax surcharge is not in effect, there shall be added to and become part of the tax liability of the taxpayer:

- (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 income tax return is being filed,

whichever is greater.

If the capital goods excise tax credit allowed under subsection (a) exceeds the taxpayer's net income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than \$1.

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

SECTION 8. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1992.

(Approved June 17, 1992.)

## ACT 236

H.B. NO. 3277

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 Hawaii has made efforts to become a financial center. The legislature enacted section 241-3.5, Hawaii Revised Statutes, to attract international banking facilities and section 237-24.5, Hawaii Revised Statutes, to attract a stock exchange or board of trade and the concomitant brokerage houses which service those institutions. The State has actively sought to attract insurance companies which would establish major offices in this State in order to better serve the citizens of Hawaii. The State has succeeded in attracting insurance companies, particularly captive insurers. Twenty-two captive insurers have been licensed since the captive insurers law was enacted in 1987. And, there are over eight hundred insurance companies operating or registered to do business in Hawaii. The taxes imposed on premiums from insurance policies sold to Hawaii residents produce substantial revenues to meet the State's public needs and programs.

The legislature finds that the business of insurance is a public necessity that deals in its own credit in exchange for a present cash consideration from the insured. Thus, the insurance industry is inextricably intertwined with the public interest. The legislature only has to consider the recent debacle in the savings and

loan industry and the numerous failures of insurance companies (both of which adversely affected our citizens) to be aware of the public's interest in regulating insurance companies.

By federal mandate, the responsibility for the oversight of the insurance industry rests with the states. The legislature finds that the growth in the number and the size of insurance companies doing business in the State makes it necessary to adopt measures that will facilitate regulation by the insurance commissioner. The legislature finds that the public's interest in insurance companies makes it mandatory for the legislature to act. The legislature finds that the public interest will be served by encouraging insurance companies to conduct their business in a way which will provide less costly, more effective oversight and, perhaps most importantly, more timely state regulation. In addition, the public interest will be served by encouraging insurers to provide better service to their customers through more convenient, accessible service centers staffed by employees resident in the community who are likely to be more sensitive to the needs of their insureds.

In order to encourage insurance companies to engage in business practices conducive to regulation, the legislature is enacting a tax credit against the insurance premium tax. The credit may be claimed by each insurer that conducts its business in the manner specified. At the same time, the premium tax rates are being amended to provide for uniform rates on insurance premiums in order to avoid potential constitutional problems with preferential rates for domestic insurers raised by Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869 (1985). The legislature finds that these amendments will achieve the goal of encouraging insurance companies to conduct their business in a way which will improve regulatory oversight without the need for differential tax rates.

The major purposes of this Act are (1) to raise revenue, (2) to provide uniform tax rates on insurance premiums in order to avoid potential constitutional problems, (3) to improve state regulation of the insurance industry by encouraging insurers to maintain in Hawaii the records and personnel necessary to provide less costly, more effective, and more timely state regulation, and (4) to ensure that insurance companies promptly service their customers.

**SECTION 2.** Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§431:7- Additions to taxes for noncompliance or evasion; interest on underpayments and overpayments.** The provisions of section 231-39 shall apply to taxes under this article.”

**SECTION 3.** Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§431:7- Appeals.** Notwithstanding section 431:2-308, any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in section 235-114, provided the tax so assessed shall have been paid.”

**SECTION 4.** Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§431:7- Limitation period for assessment, levy, collection, or refund.** (a) The amount of insurance 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, and no proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period.

(b) 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.

(c) Where, before the expiration of the period prescribed in subsection (a) or (d), both the commissioner and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection (a) or the credit or refund of the tax after the date fixed by subsection (d), 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.

(d) No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund shall be 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.
- (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 payment of the tax; or
  - (B) Three years after the date prescribed for the filing of the annual return, whichever is later.

Paragraphs (1) and (2) are mutually exclusive. The limitation shall not apply to a credit or refund pursuant to an appeal provided for by section 431:7-202, or to a payment under protest as provided in section 40-35."

SECTION 5. Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431:7- Tax credit to facilitate regulatory oversight.** (a) Each authorized insurer that meets the requirements of subsection (b) may claim a tax credit under this section against the tax imposed by section 431:7-202(a) or (b) for the taxable year for which the credit is properly claimed. The tax credit shall be an amount equal to one per cent of the premiums taxed by section 431:7-202(a) and (b).

(b) An insurer may claim the credit only if, at all times during the taxable year, the insurer:

- (1) Maintains in Hawaii books and records required by the commissioner sufficient to conduct the examination authorized by section 431:2-302;
- (2) Employs in Hawaii personnel knowledgeable about the insurer's financial operations and who are authorized to represent the insurer in all matters pertaining to examination; and
- (3) Maintains in Hawaii a customer service center with employees authorized to promptly adjust, settle, and pay claims and to promptly answer all questions from customers regarding their insurance policies.

(c) The commissioner shall prepare the forms necessary to claim a credit under this section, may require proof of the claim for the tax credit, and may adopt rules pursuant to chapter 91.

(d) All claims for the tax credit 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 credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(e) The tax credit allowed by subsection (a) may be claimed on the interim returns required by section 431:7-202(f)."

SECTION 6. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Each authorized insurer, except with respect to all life insurance contracts and ocean marine insurance contracts, shall pay to the director of finance through the commissioner[, in the case of domestic insurers a tax of 2.9647 per cent, and in the case of other insurers] a tax of [4.2824 per cent,] 4.7 per cent for the period July 1, 1992, to June 30, 1993, and 4.265 per cent on July 1, 1993, and thereafter on the gross premiums received from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31, less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

All premiums written, procured, or received in the State shall be presumed to have been from risks or property resident, situated, or located within the State. This presumption may be rebutted as to any premium:

- (1) By showing that it has been properly allocated or apportioned and reported as a taxable premium of another state or other appropriate taxing authority; or
- (2) By facts as to the residence, situation, or location of the risks or property, conclusively showing the nontaxability of the premium.

(b) Each authorized insurer [shall], with respect to life insurance contracts, shall pay to the director of finance through the commissioner[, in the case of domestic insurers a tax of 1.918 per cent, and in the case of other insurers] a tax of [3.197] 2.75 per cent[,] on the gross premiums received from all risks resident within this State, during the year ending on the preceding December 31, less return premiums, dividends paid or credited to policyholders, and reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

The tax also shall apply to premiums for insurance written on individuals residing outside the State unless the direct writing insurer shall show the payment of a comparable tax to another appropriate taxing authority. Such showing may be required as to any premium written, procured, or received in the State."

SECTION 7. Section 431:7-203, Hawaii Revised Statutes, is amended to read as follows:

**"§431:7-203 [Refunds.] Administrative refunds.** (a) In the event any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner [shall], upon written request made by the person to the commissioner within [six years of the date of the payment,] the time set forth in section 431:7-, shall authorize a refund thereof out of the general funds of this State

by submitting a voucher therefor to the comptroller of this State[.] subject to the following limitations:

- (1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner shall contain clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and
- (2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect to the taxpayer concerned differently than in respect of taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive.

(b) Where a taxpayer is entitled to a refund, the taxpayer, at the taxpayer's election, may apply the amount of the refund as an overpayment credit to taxes subsequently accruing under this code.

(c) This subsection shall apply to a refund for an overpayment of tax.

- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection (a). The interest shall be allowed and paid at the rate of two-thirds of one per cent for each calendar month or fraction thereof, beginning with the first calendar day after the due date of the return or, if the return is filed after the prescribed due date, the first month following the month the return is received, and continuing until the date that the commissioner approves the refund voucher. If the commissioner approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the commissioner's approval, no interest on the overpayment will be allowed or paid. However, if either the commissioner or the comptroller exceeds the time allowed herein, interest will be computed from the first calendar day after the due date of the return or from the first month following the month the return is received by the commissioner if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to the taxpayer.

- (2) If any overpayment of taxes results or arises from
  - (A) the taxpayer filing an amended return, or from
  - (B) a determination made by the commissioner and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first calendar day after the due date of the original return or, if the original return is filed after the prescribed due date, the first month following the month the return is

received, to the date that the commissioner signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the commissioner's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.

- (3) In the case of credit, interest shall be allowed and paid from the first calendar day after the due date of the return, the first month following the month the return is received by the commissioner, or the date of payment, whichever is later, to the date the credit is taken; provided that the commissioner may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

SECTION 8. Section 431:14-101.5, Hawaii Revised Statutes, is amended by amending the definition of "expenses" to read as follows:

""Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees[.]; provided that no tax credit received by any insurer under section 431:7- shall reduce the expenses of the insurer for purposes of determining the insurer's rate under this article for the first year of any insurer's rate which is approved pursuant to this article and for which the insurer submits before July 1, 1993, a filing pursuant to the applicable sections of this code to modify the rate in existence on June 30, 1992.""

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act, shall take effect on July 1, 1992, and shall apply to all gross premiums received after June 30, 1992; provided that notwithstanding anything in this Act to the contrary, the tax credit provisions enacted in Section 5 of this Act shall not apply to reduce the tax imposed on gross premiums received before July 1, 1992; provided further that eligibility for the credit enacted in Section 5 of this Act against taxes on gross premiums received after June 30, 1992, and before January 1, 1993, shall be measured from January 1, 1992.

(Approved June 17, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

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 234-1, Hawaii Revised Statutes, is amended by amending the definition of "director" to read as follows:

- (3) "Director" means the state director of taxation[.] or county director of finance, as appropriate, unless specifically indicated."

SECTION 2. Section 234-4, Hawaii Revised Statutes, is amended to read as follows:

**"§234-4 Tax relief, claim and allowance.** (a) In case of losses due to damage or destruction of real or personal property of a claimant resulting from a natural disaster and certified by the natural disaster claims commission or adjudged by the court, the director [of taxation] may remit, refund, or forgive the taxes hereafter mentioned, due or to become due from the claimant suffering such losses, in the manner provided in subsections (b) and (c) [of this section].

(b) The claimant [shall], 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 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 [as follows:] by deducting:

- (1) [Deduct all] 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) [Deduct the] The portion of the losses resulting from insurable property in excess of \$100,000;
- (3) [Deduct tax] Tax benefits from the Federal Internal Revenue Service; and
- (4) [Deduct any] Any other recoveries.

The balance remaining after the foregoing [deductions] 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 [cases of such appeal,] 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 [may], by proper rules, may prescribe the procedure to be followed in [such] these appeals, and shall give [such] 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[., and 246] 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 [such] 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 [of its political subdivisions.] 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 or the county, as appropriate, or forgive, 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 [chapter 246,] 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 3. Section 234-5, Hawaii Revised Statutes, is amended to read as follows:

**"§234-5 Review of claims, adjustment.** The amount of loss certified by the natural disaster claims commission or adjudged by the court pursuant to section 234-4 shall be subject to review by the commission or the court in the event substantial and new evidence should show more accurately the amount of losses suffered from damage by destruction of real or personal property resulting from the natural disaster, provided that any [such] substantial and new evidence shall only be acceptable if applicable as of the date the losses were incurred. In [such] this event, the taxpayer, within six months from the filing of the original claim, may file an amended claim with the commission, or with the court if an appeal is pending or the court has rendered a judgment, and the commission or the court shall receive further proof of the amount of the loss initially claimed by the taxpayer. The determination of the loss by the commission on the amended claim may be appealed by the claimant to the circuit court in the same manner as an appeal in the case of a determination of loss by the commission on the original claim. The judgment of the circuit court shall be final in all cases. In the event of any change in the amount of the certification or judgment furnished to the director of taxation, the commission or the clerk of the court shall notify the director of taxation of [such] the adjustments, and the director of taxation shall make appropriate adjustments in the remitting, refunding, or forgiveness of taxes [above] provided[; in] in this chapter. In case any adjustments are made, any tax refund which exceeds the amount of adjusted loss recoverable may be collected in the same manner as a tax due and payable under [chapters] chapter 237 or [246.] county real property tax ordinance."

SECTION 4. Section 234-8, Hawaii Revised Statutes, is hereby amended to read as follows:

**"§234-8 Amount of relief, maximum limits.** No claimant shall recover against total losses certified by the natural disaster claims commission or adjudged by the court, remittances, refunds, or forgiveness of taxes in excess of

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\$25,000 for all taxes due under chapter 237, nor shall any claimant recover remittances, refunds, or forgiveness of taxes in excess of \$35,000 for all taxes due under [chapters] chapter 237 and [246.] any real property tax ordinance. Whenever a claimant has deducted in the claimant's chapter 235 returns for any of the five years stated in section 234-4(c) any portion of the losses suffered by reason of the disaster as permitted by section 235-7(f), there shall be deemed as having been due from such claimant under chapter 235 and as having been remitted, refunded, or forgiven an additional amount of tax equal to the difference between the taxes due as returned and the taxes which would have been due if computed without deducting the losses so that the amount of the claimant's recovery shall not exceed that amount recoverable under this chapter if the deduction were not taken. In no event shall any claimant recover through the foregoing taxes any amount whatsoever in excess of the claimant's losses certified by the commission or adjudged by the court, nor recover any amounts in excess of the limits set forth in this section; provided that the claimant may use any one or more of the foregoing taxes as a basis for the claimant's remittance, refund, or forgiveness of the taxes so long as it does not exceed any of the limits as herein set forth, and the taxes became due for real property, trade, or business, conducted on the island on which the losses were incurred."

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 17, 1992.)

## ACT 238

H.B. NO. 3563

A Bill for an Act Relating to Vehicles.

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

SECTION 1. Section 290-1, Hawaii Revised Statutes, is amended to read as follows:

**"§290-1 Disposition by counties of certain abandoned vehicles. (a)**  
The counties may cause vehicles to be taken into custody[,] and [dispose] disposed of, [vehicles] which have been abandoned. A vehicle is "abandoned", for the purposes of this [section,] subsection, if it is defined to be abandoned by an ordinance of the county in which the vehicle is located; in the absence of such an ordinance, a vehicle is "abandoned" if it is left unattended for a continuous period of more than twenty-four hours and it is unlawfully parked on any public highway or other public property. The mayors of the several counties may designate an agency within their counties to carry out the functions and requirements of this section. The term "agency" means any office, department, or other governmental unit of the county.

**(b)** The Hawaii housing authority may cause vehicles which have been abandoned on any property owned, managed, or administered by the Hawaii housing authority, to be taken into custody and disposed of. A vehicle is "abandoned", for the purposes of this subsection, if it is left unattended for a

continuous period of more than twenty-four hours after a notice is conspicuously posted on the vehicle that the vehicle is subject to disposal pursuant to this subsection.”

SECTION 2. Section 290-8, Hawaii Revised Statutes, is amended to read as follows:

**“§290-8 Derelict vehicle.** A vehicle shall be deemed a derelict by the administrative head of the county agency designated to carry out section 290-1, or by the executive director or a representative of the director of the Hawaii housing authority in the case of a vehicle which has been abandoned on property owned, managed, or administered by the authority, if major parts have been removed or material damage to the vehicle has rendered the vehicle inoperable and one of the following conditions exists:

- (1) The vehicle is registered for the current registration period and the registered and legal owners no longer reside at the addresses on record with the county director of finance;
- (2) The vehicle has been registered for the current or previous registration period and the registered and legal owners disclaim ownership;
- (3) The vehicle identification number and license plates have been removed so as to nullify efforts to locate or identify the current registered and legal owners;
- (4) The vehicle has not been registered for the current or previous registration periods;
- (5) The vehicle registration records of the county director of finance contain no record that the vehicle has ever been registered in the county; or
- (6) The vehicle is ten model years old or older.

Prior to authorizing the removal of a derelict vehicle, the administrative head of the county agency designated to carry out section 290-1 [must] or the executive director or a representative of the director of the Hawaii housing authority in the case of vehicles which have been abandoned on property owned, managed, or operated by the authority, shall notify the county chief of police.”

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 17, 1992.)

## ACT 239

H.B. NO. 3643

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

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energy to an electric utility and the water to the existing and planned water systems serving the area. The legislature further finds that Kawaihae Cogeneration Partners 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 water it produces to existing and planned water systems in the area.

The legislature further finds that Kawaihae Cogeneration Partners 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.

**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 Kawaihae Cogeneration Partners, or a partnership in which Waimana Enterprises, Incorporated 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 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 water systems serving the area. The legislature finds and determines that the activity and facilities of Kawaihae Cogeneration Partners 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, 1996.

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

(Approved June 17, 1992.)

## **ACT 240**

H.B. NO. 3838

A Bill for an Act Relating to the Environment.

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

**SECTION 1.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER AIR POLLUTION CONTROL”**

## PART I. DEFINITIONS AND GENERAL PROVISIONS

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“Air pollutant” has the same meaning as in the Clean Air Act, 42 United States Code section 7602 (g), and any substance designated as such by rules adopted under chapter 91.

“Air pollution” means the presence in the outdoor air of substances in quantities and for durations which may endanger human health or welfare, plant or animal life, or property or which may unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as are affected thereby, but excludes all aspects of employer-employee relationships as to health and safety hazards.

“Ambient air” means the general outdoor atmosphere.

“Clean Air Act” means the federal Clean Air Act of 1963 as amended (42 United States Code section 7401 et seq.).

“Compliance plan” means a plan which includes a description of how a source proposes to comply with all applicable requirements pursuant to this chapter and includes a schedule of compliance and a schedule under which the permittee will submit progress reports to the department no less frequently than every six months.

“Council” means the compliance advisory council.

“Covered source” means:

- (1) Any major source;
- (2) Any source subject to a standard of performance for new stationary sources as established in this chapter;
- (3) Any source subject to an emissions standard for hazardous air pollutants as established in this chapter;
- (4) Any source subject to the rules for the prevention of significant deterioration of air quality as established in this chapter; and
- (5) Any source in a source category designated by the director.

“Department” means the department of health.

“Director” means the director of health.

“Draft proposed permit” means the version of a permit for which the department offers public notice and an opportunity for public comment and hearing.

“Emission” means the act of releasing or discharging air pollutants into the ambient air from any source.

“EPA” means the United States Environmental Protection Agency.

“Fugitive dust” means uncontrolled emission of solid airborne particulate matter from any source other than combustion.

“Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

“Hazardous air pollutant” means those hazardous air pollutants listed in section 112 (b) of the Clean Air Act, as amended, 42 United States Code section 7412 (b), and any other hazardous air pollutant designated by rules.

“Major source” means any stationary source, or any group of stationary sources that are located on one or more contiguous properties, and are under common control, belonging to a single major industrial grouping and that emits or has the potential to emit, considering controls:

- (1) Any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more, twenty-five tons per year or more of any combination, or such lesser quantity as the director may establish by rule;
- (2) One hundred tons per year or more of any regulated air pollutant, including fugitive emissions of any such regulated air pollutant as the director may establish by rule; and
- (3) For radionuclides, "major source" shall have the meaning specified by the director by rule.

"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.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

"Party" means each person named as party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to construct, modify, relocate, or operate any regulated air pollutant source. A permit authorizes the permittee to cause or allow the emission of a regulated air pollutant in a specified manner or amount, or to do any act, not forbidden by this chapter or by rules adopted pursuant to this chapter, but requiring review by the department.

"Permit program" means the program established pursuant to part III of this chapter.

"Person" means any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, political subdivision of the State, or, to the extent they are subject to this chapter, the United States or any interstate body.

"Proposed permit" means the version of a permit that the department forwards to the Administrator for review.

"Regulated air pollutant" means:

- (1) A 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.

"SBAP" means the small business assistance program established by section -61.

"Small business ombudsman" means the small business ombudsman for air pollution control established pursuant to section -63.

"Small business stationary source" means a stationary source that:

- (1) Is owned or operated by a person that employs one hundred or fewer individuals;
- (2) Is independently owned and operated and not dominant in its field or as otherwise defined by the federal Small Business Act (42 United States Code section 631 et seq.);
- (3) Is not a major stationary source;
- (4) Does not emit fifty tons or more per year of any regulated air pollutant; and
- (5) Emits less than seventy-five tons per year of all regulated air pollutants.

“Source” means any property, real or personal, which emits or may emit any air pollutant.

“Stationary source” means any piece of equipment or any activity at a building, structure, facility, or installation that emits or may emit any air pollutant.

“Variance” means special written authorization from the director to cause or emit any regulated air pollutant in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules or standards adopted pursuant to this chapter.

**§ -2 Administration.** The department 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 General functions, duties, and powers of the director.** (a) In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate air pollution and the emission of air pollutants in the State.

(b) In the discharge of the duty described in subsection (a) the director may adopt, amend, and repeal state rules controlling and prohibiting air pollution and the release of air pollutants or as otherwise necessary for the purposes of this chapter.

(c) In addition to other specific powers provided in this chapter, the director may appoint, without regard to chapters 76 and 77, hearings officers to conduct contested case hearings and public participation activities, including public hearings and public informational meetings.

**§ -4 Other powers of department and director not affected.** The powers, duties, and functions vested in the department and director under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department and director under any other law. Rules shall be adopted pursuant to chapter 91.

**§ -5 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to air pollutant and air pollution control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to air pollution control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ -6 Short title.** This chapter may be cited as the “Hawaii Air Pollution Control Act.”

**§ -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 enforcement actions.

## PART II. AIR POLLUTION

**§ -11 Prohibition.** No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated air pollutant without first securing approval in writing from the director.

**§ -12 Specific powers of the director.** The director may:

- (1) Establish ambient air quality standards for the State as a whole or for any part thereof;
- (2) Establish and administer any permit program;
- (3) Establish by rule the control of open burning, fugitive dust, and visible emissions;
- (4) Establish by rule the control of vehicular smoke emission and require the installation, use, and proper operation and maintenance of air pollution control equipment for motor vehicles;
- (5) Establish and administer a program of inspection and testing of all modes of transportation except aircraft, to enforce compliance with applicable emission limitations when necessary and practicable, and to control or limit the operation of motor vehicular and other modes of transportation when the director finds pursuant to standards established by rules such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution or when such control is necessary to meet applicable ambient air quality standards;
- (6) Establish by rule other specific areas for control of air pollution, thereby allowing for varying conditions;
- (7) Establish standards of performance or rules for existing, new, or modified stationary sources or adopt standards of performance for existing, new, or modified stationary sources as promulgated by the Administrator;
- (8) Establish maximum achievable control technology standards or rules for the control of hazardous air pollutants from existing, new, or modified sources or adopt maximum achievable control technology as promulgated by the Administrator; and
- (9) Establish rules for the prevention of significant deterioration of air quality or adopt prevention of significant deterioration regulations as promulgated by the Administrator.

**§ -13 Public participation.** (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 newspa-

per 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 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 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.

(b) All rules shall be adopted, amended, and repealed pursuant to chapter 91. The director shall provide written notice to any person, who submitted comments during the comment period or presented testimony during the public hearing, of the final action taken by the department with respect to the rules.

(c) The director shall hold a public hearing when revising the state implementation plan required by the Clean Air Act, and the amendments thereto, and the regulations promulgated thereunder.

**§ -14 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the air quality standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the emission or discharge of an air pollutant in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the discharge of air pollution occurring or proposed to occur by the granting of the variance is in the public interest as determined in section -27;
- (2) The emission or discharge occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which a variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the air pollution involved, it shall be only until the necessary means for prevention, control, or abatement becomes practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the air pollution involved;
- (2) The director may issue a variance for a period not exceeding five years; and
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air or discharge sampling and report the results of such sampling to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for emission or discharge not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Any application for a variance shall be subject to the public participation requirements of section -13. The contents of the public notice on the variance application for a variance shall include at least:

- (1) The name and address of the applicant;
- (2) A brief description of the applicant's activities or operations which result in the emission, or other activity described in the variance application;
- (3) A short description of the location of each emission or discharge indicating whether such emission or discharge is new or existing;
- (4) A brief description of the public participation procedures, including the comment period and other means by which interested persons may comment on the variance application and the department's proposed action; and
- (5) The address and phone number of the state agency at which interested persons may obtain further information and may inspect a copy of the variance application and supporting and related documents.

**§ -15 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints on air pollution, hold hearings in connection with air pollution, and institute legal proceedings in the

name of the State for the prevention, control, or abatement of air pollution; and

- (2) Appoint a master or masters to conduct investigations and hearings.

**§ -16 Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, hazards, or means to monitor or abate sources of air pollution;
- (2) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State or from private sources for the study and control of air pollution; and
- (3) Conduct and supervise statewide educational and training programs on air pollution prevention, control, and abatement, including the preparation and distribution of information relating to air pollution.

### PART III. PERMIT PROGRAM

**§ -21 Specific functions, duties, and powers of the director.** The director shall have the functions, duties, and power to:

- (1) Issue permits for a fixed term not to exceed five years;
- (2) Assure compliance by all sources required to have a permit with each applicable standard, regulation, or requirement provided by federal or state statutes or rules;
- (3) Assure that, upon issuance or renewal, permits incorporate emission limitations and other requirements in an applicable state implementation plan;
- (4) Terminate, modify, or revoke and reissue permits for cause;
- (5) Enforce permits, permit fee requirements, and the requirement to obtain a permit including the recovery of civil penalties; and
- (6) Assure that permits in effect during the establishment and implementation of this new permit program will continue in effect until the permittee has applied for and obtained a permit under the new program.

**§ -22 Permit and permit renewal; requirements.** (a) The owner or operator of a covered source shall obtain a permit from the department. The director may exempt any nonmajor category of covered sources from the permit obligation for a period of five years after the effective date of the rules establishing the permit program.

(b) Within twelve months after the effective date of the rules establishing the permit program, the owner or operator of a covered source shall submit to the department an application for a permit and a compliance plan.

(c) No person shall begin construction, modification, or relocation of any covered source without first obtaining a permit from the director.

(d) The director may require any person who owns, operates, or desires to construct, modify, or relocate a source other than a covered source to obtain a permit prior to the construction, modification, relocation, operation, or continued operation.

(e) Permits being renewed shall be subject to the same procedural requirements that apply to initial permit issuance, including the procedure of federal oversight and public participation.

(f) Permit expiration terminates the source's right to operate unless a timely and complete renewal application is submitted to the department and provided the owner or operator acts consistently with the permit previously granted, the application on which it was granted, and all plans, specifications, and other information submitted as a part thereof.

**§ -23 Application for permit.** (a) An application for a permit required pursuant to this chapter shall be in the form prescribed by the director and for existing sources shall also be accompanied by a compliance plan.

(b) The department may require that permit applications be accompanied by other plans, specifications, meteorological monitoring data, ambient air quality monitoring data, and best available control technology analysis, and any other information necessary to identify the source, the air emissions, and the air quality impacts and to determine whether the proposed installation, modification, or operation will be in accord with applicable rules and standards.

**§ -24 Action on a permit application.** (a) Within sixty days of receipt of an application the department shall give the applicant written notice that the application is complete, or give the applicant written notice of incompleteness outlining additional information requirements.

(b) The department shall take final action on each permit application within eighteen months after the application is determined or deemed to be complete, except that in each of the first three years of the permit program the department need only act on one third of the permit applications submitted during the first year of the permit program. The department may prioritize final action on applications for construction or modification.

(c) Each application for a covered source shall be subject to federal oversight.

(d) For each application for a covered source the director shall provide for public notice, an opportunity for public comments, and an opportunity for public hearing in accordance with section -13.

**§ -25 Approval of permit.** (a) The director shall issue a permit for any term not exceeding five years if it is determined that the source will comply with all requirements of this chapter and the rules and standards adopted pursuant to this chapter.

(b) The permit may be subject to such reasonable conditions as the director may prescribe, including emission limitations or other conditions to assure compliance with all hazardous air pollutant maximum achievable control technology standards or rules adopted pursuant to this chapter.

(c) The director, on application, shall renew a permit for a term not exceeding five years, if it is determined that the source complies with all requirements of this chapter and the rules and standards adopted pursuant to this chapter.

(d) The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

(e) The director shall not issue a permit for a covered source if the Administrator timely objects to its issuance.

**§ -26 General and temporary permits; single permit.** (a) The director, after notice and opportunity for public hearing pursuant to section -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.

(b) The director may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. No permit shall be issued unless it is assured that the source at all authorized locations will be or is in compliance with all requirements pursuant to this chapter and the rules and standards adopted pursuant to this chapter.

**§ -27 Other permit action.** (a) The director, on the director's own motion or the application of any person, may terminate, modify, suspend, or revoke and reissue any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) The permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;
- (2) Permit action is required to assure compliance with the applicable requirements of the Clean Air Act, this chapter, and the applicable standards and rules adopted pursuant to this chapter;
- (3) Permit action is required to address additional applicable requirements of the Clean Air Act, this chapter, and the applicable standards and rules adopted pursuant to this chapter;
- (4) There is a violation of any condition of the permit;
- (5) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
- (6) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- (7) More frequent monitoring or reporting by the permittee is required;
- (8) It is necessary to incorporate into the permit the requirements from pre-construction review permits or exemptions authorized under an approved new source review program in the applicable implementation plan; or
- (9) Such is in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

- (b) The director may revise a permit administratively if the revision:
  - (1) Corrects typographical errors;
  - (2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
  - (3) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department; or
  - (4) Makes any other change that the department determines to be similar to those in paragraphs (1) to (3).

**§ -28 Recordkeeping and monitoring requirements.** The director may require an owner or operator of any source on a continuous, periodic, or one-time basis to:

- (1) Establish, maintain, and submit records;
- (2) Draft reports;
- (3) Install, use, and maintain monitoring equipment, and use audit procedures or methods;
- (4) Sample emissions in accordance with such procedures or methods, at such locations, at such intervals, during periods, and in the manner prescribed by the director;
- (5) Keep records on the source and the control equipment parameters, production variables, or other indirect data when direct monitoring is impractical;
- (6) Sample and analyze the composition of the fuel, waste, or other products being burned or incinerated;
- (7) Submit compliance certifications; and
- (8) Provide other information as the department may require.

**§ -29 Fees.** (a) The director shall establish fees for permits issued pursuant to this chapter to be paid by the applicant prior to the issuance of the permit and thereafter on a schedule established by the department.

(b) Fees for covered sources shall adequately cover the direct and indirect costs required to develop, support, and administer the permit program, including the reasonable costs of:

- (1) Reviewing and acting upon any application for or renewal of a permit;
- (2) Implementing and enforcing the terms and conditions of any permit, including legal support;
- (3) Monitoring emissions and ambient air quality, including resources to audit and inspect source-operated monitoring programs at least once a year;
- (4) Preparing generally applicable rules or guidance;
- (5) Performing or reviewing modeling, analyses, and demonstrations;
- (6) Preparing inventories and tracking emissions;
- (7) Providing support to the small business assistance program; and
- (8) Administering the fund.

(c) Fees for covered sources shall be based on the number of tons of regulated air pollutant, excluding carbon monoxide, allowed or emitted by the permitted source and shall not be less than \$25 per ton per year. A covered source shall not be assessed for emissions of a regulated air pollutant in excess of four thousand tons per year.

(d) Unless changed by rules, fees for covered sources shall be changed in December of each year only by the percentage, if any, by which the consumer price index for that calendar year exceeds the consumer price index for the prior calendar year. The consumer price index for any calendar year is the average of the consumer price index for all urban consumers published by the United States Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(e) Nothing in the cost-per-ton fee provisions of subsections (c) and (d) shall restrict the director from assessing more or less than the amount determined under subsections (c) and (d) from any one covered source or any class or category of covered sources, as designated by the director; provided the department collects a total amount of fees sufficient to cover the costs of the permit program.

**§ -30 Judicial review.** The applicant and any person who participated in the public comment process may obtain judicial review in state court of the final action on a permit issuance or renewal. This is in addition to judicial review otherwise available.

**§ -31 Government records; confidential information.** (a) The department shall make all government records maintained pursuant to this chapter open to public inspection in accordance with chapter 92F unless access is restricted or closed by law.

(b) Except as provided in subsection (c), the following permit program documents are deemed to be government records:

- (1) Permit applications and all supporting information;
- (2) Compliance plans (including schedules of compliance);
- (3) Emissions or compliance monitoring reports;
- (4) Certifications;
- (5) Permits; and
- (6) Any other information submitted to the department pursuant to the permit program.

(c) Upon a showing satisfactory to the director by any person that records, reports, or information, or particular part thereof (other than emission data), to which the director has access pursuant to this chapter, contain information of a confidential nature concerning secret processes or methods of manufacture, these records, reports, or information shall be kept confidential except that such record, report, or information may be disclosed to other officers or employees of the department and EPA concerned with carrying out this chapter or when relevant in any proceeding pursuant to this chapter. The contents of the permit itself shall not be entitled to confidentiality protection.

(d) No records, reports, or information for which confidentiality is claimed by the person from whom they are obtained shall be disclosed until such person has received reasonable notice under the procedures set forth in 40 C.F.R. Part 2, section 2.201 et. seq. and has had the opportunity to demonstrate why these should not be disclosed, including a reasonable opportunity to obtain judicial relief. In any such proceedings, confidentiality shall be accorded to any documents which satisfy the criteria set forth in 40 C.F.R. Part 2 or any rules adopted by the department pursuant to chapter 91.

(e) Any officer, employee, or agent of the department acquiring confidential information from any inspection authorized by section -41 who divulges the information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

(f) The provisions of sections 92F-16 and 92F-17 shall apply to any officer, employee, or agent of the department acquiring any confidential information as defined in this section.

**§ -32 Clean air special fund.** (a) There is created in the state treasury a special fund to be designated as the clean air special fund. The proceeds in the fund shall be used solely to pay for all reasonable direct and indirect costs required to develop, support, and administer the permit program requirements of this chapter including reasonable costs of:

- (1) Reviewing and acting upon any application for or renewal of a permit;

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- (2) Implementing and enforcing the terms and conditions of any permit, including legal support as defined by rules;
  - (3) Monitoring emissions and ambient air quality including resources to audit and inspect source-operated monitoring requirements at least once a year;
  - (4) Preparing generally applicable rules or guidelines;
  - (5) Performing or reviewing modeling, analyses, and demonstrations;
  - (6) Preparing emissions inventories and tracking systems;
  - (7) Providing support to the small business assistance program; and
  - (8) Administering the fund.
- (b) All moneys collected as fees pursuant to section -29 shall be deposited into the clean air special fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund.

**§ -33 Minimum permit conditions.** At a minimum, each permit shall require the permittee to:

- (1) Submit to the director, no less than every six months, the results of any required monitoring and a compliance certification; and
- (2) Disclose the annual emissions of hazardous air pollutants.

**§ -34 Exceptions.** This part does not apply to open burning and fugitive dust which shall be regulated by rules adopted by the department.

## **PART IV. ENFORCEMENT AND PENALTIES**

**§ -41 Inspection of premises.** The director, in accordance with the law, may enter and inspect any building or place to investigate an actual or suspected source of air pollution, to ascertain compliance or noncompliance with this chapter or any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval granted by the department pursuant to this chapter, and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of air pollution shall be disclosed by the official or employee except as it relates directly to air pollution and then only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -42 Enforcement.** (a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit issued or variance granted pursuant to this chapter, the director shall serve written notice by certified mail or personal service upon the alleged violator or violators specifying the alleged violation and may include with the notice:

- (1) An order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports;
- (2) An order imposing penalties provided in section -48; and
- (3) An order that the alleged violator or violators 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.

(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 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 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 -48 by ordering 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.

(c) If the director determines that any person has violated an accepted schedule or an order issued pursuant to this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued pursuant to this chapter shall become final, unless not later than twenty days after the notice of violation and order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed pursuant to this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed pursuant to this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at the time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted pursuant to this section shall be conducted as a contested case under chapter 91. If, after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or emission of air pollutants involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in

the name of the State to recover the administrative penalty which shall be a government realization. In any proceeding to recover the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing has run without such a request;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -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 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 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 the governor or any other officer may have to declare an emergency and act on the basis of such a declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -44 Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted, condition of a permit, or variance issued pursuant to this chapter, without the necessity of prior revocation of the permit or variance, to collect civil penalties, or obtain other relief. The court shall have the power to grant relief in accordance with the Hawaii Rules of Civil Procedure.

**§ -45 Citation.** (a) Any person who violates the vehicular smoke emission rules and open burning control rules adopted by the department pursuant to this chapter may be issued a summons or citation for such violation. Violations of vehicular smoke emission rules and open burning control rules shall be enforced by police officers. The summons or citation shall be printed in the form hereinafter described, warning the person to appear and answer the charge against the person at a certain place and at a time within seven days of the issuance of the summons or citation.

(b) The summons or citation shall be designed to provide for all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

(c) The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copies.

(d) Summons and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

(e) If any person fails to comply with a summons or citation, the person who issued the summons or citation shall cause a complaint to be entered against

the person and secure the issuance of a warrant for the person's arrest. Failure to comply with a summons or citation is a misdemeanor.

**§ -46 Appeal.** If any party is aggrieved by a decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -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 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 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. Each day of each violation constitutes a separate offense.

**§ -48 Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the director is authorized to impose by order the penalties specified in section -47.

(b) Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action.

(c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

(d) In any proceeding to recover the penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing has run without such a request;
- (3) The penalty was imposed; and
- (4) The penalty remains unpaid.

**§ -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 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 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 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 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 imprisonment of 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 person under this subsection, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

**§ -50 Disposition of collected fines and penalties.** Fines and penalties collected under sections -47, -48, and -49 shall be deposited into the environmental response revolving fund established by section 128D-2.

**§ -51 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department.

**§ -52 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -31.

**§ -53 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -54 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter or pursuant to the conditions of a permit issued under this chapter shall in the discretion of the court receive priority in the courts of the State.

**§ -55 Consent orders; settlement agreements.** 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 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 agreement if the comments disclose facts or considerations which indicate that such 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.

**§ -56 Citizen suits.** (a) After June 30, 1995, any person may commence a civil action on that person's own behalf against:

- (1) Any person (including the State and the director) who is alleged to be in violation of this chapter, including any emission standard or limitation or any order issued by the director;
  - (2) The director where there is alleged a failure to perform any act or duty under this chapter which is not discretionary; or
  - (3) Any person who proposes to construct or constructs any new or modified major emitting facility without a required permit or who is alleged to be in violation of any condition of such permit.
- (b) The circuit court shall have jurisdiction to:
- (1) Enforce such an emission standard or limitation, or an order;
  - (2) Order the director to perform such act or duty; and
  - (3) Apply any appropriate civil penalties.
- (c) No action may be commenced:
- (1) Under subsection (a)(1):
    - (A) Prior to sixty days after the plaintiff has given notice of the violation to (i) the director, (ii) the department, and (iii) any alleged violator of the standard, limitation, or order; or
    - (B) If the director or the department has commenced and is diligently prosecuting a civil action to require compliance with the standard, limitation, or order, but in any such action any person may intervene as a matter of right; or
  - (2) Under subsection (a)(2) prior to sixty days after the plaintiff has given notice of such action to the director. Notice under this subsection shall be given in such manner as the director shall prescribe by rule.
- (d) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitations may be brought only in the judicial circuit in which such source is located.
- (e) In any action under this section, the director, if not a party, may intervene as a matter of right at any time in the proceeding.
- (f) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court, if a temporary restraining order or preliminary injunction is sought, may require the filing of a bond or equivalent security in accordance with the Hawaii Rules of Civil Procedure.
- (g) Nothing in this section shall restrict any right which any person may have under any constitutional provision, statute, or common law to seek enforcement of any emission standard or limitation or to seek any other relief.
- (h) Penalties received under subsection (b) shall be deposited into the clean air special fund established by section -32. These amounts shall remain available to finance air compliance and enforcement activities. The court shall have discretion to order that such civil penalties, in lieu of being deposited in the fund, be used in beneficial mitigation, education, or protection projects which enhance public health or the environment.

## PART V. SMALL BUSINESS ASSISTANCE PROGRAM

**§ -61 Small business assistance program.** (a) The director shall establish within the department a SBAP to provide technical support and environmental compliance information to those small business stationary sources subject to the provisions of this chapter. The SBAP shall:

- (1) Develop, collect, and coordinate information concerning compliance methods and technologies for small business stationary sources;
- (2) Assist small business stationary sources with air pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution;
- (3) Assist small business stationary sources in determining applicable requirements and in obtaining permits pursuant to this chapter in a timely and efficient manner;
- (4) Assure that small business stationary sources receive in a timely manner notice of their rights and of any applicable rules or standards proposed or adopted pursuant to this chapter;
- (5) Inform small business stationary sources of their obligations pursuant to this chapter;
- (6) Develop procedures for referring small business stationary sources to qualified consultants in evaluating the operations of such sources and in determining compliance with this chapter; and
- (7) Develop procedures to consider requests from small business stationary sources for modification of:
  - (A) Any work practice or technological compliance methods; or
  - (B) The milestones for implementing such work practice or compliance method;

based on the technological and financial capability of any such small business stationary source. No modification may be granted unless it is in compliance with the applicable requirements of this chapter and the Clean Air Act.

(b) The director, upon petition by a small business stationary source, after notice and opportunity for public comment, may include as a small business stationary source for purposes of this chapter any stationary source which does not meet the criteria for items (3), (4), or (5) of the definition of "small business stationary source" provided the stationary source does not emit more than one hundred tons per year of all regulated air pollutants.

(c) The director, in consultation with the Administrator and the Administrator of the federal Small Business Administration and after providing notice and opportunity for public comment, may exclude from the definition of "small business stationary source" any category or subcategory of sources that the Administrator or the director determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this part.

**§ -62 Compliance advisory council; establishment; appointment, number, and term of members; duties.** (a) There is established within the department, for administrative purposes, an advisory council to be known as the compliance advisory council which shall:

- (1) Render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement;

- (2) Make periodic reports to the Administrator concerning the compliance of the SBAP with the requirements of the federal Paperwork Reduction Act (44 United States Code subsection 3501 et seq.), the Regulatory Flexibility Act (5 United States Code subsection 601 et seq.), and the Equal Access to Justice Act (Public Law 96-354);
  - (3) Review information for small business stationary sources to assure such information is understandable by the layperson;
  - (4) Have the SBAP serve as the secretariat for the development and dissemination of such reports and advisory opinions; and
  - (5) Perform other duties as required by the director.
- (b) The council shall be composed of seven voting members. The members shall be appointed in the manner provided in section 26-34, except as provided otherwise in this section.
- (c) The members of the council shall be selected as follows:
  - (1) Two persons who are not owners, or representative of owners, of small business stationary sources selected by the governor to represent the general public;
  - (2) Two persons who are owners or represent owners of small business stationary sources, with one member selected by the majority leadership of the house of representatives, and one member selected by the minority leadership of the house of representatives;
  - (3) Two persons who are owners or represent owners of small business stationary sources, with one member selected by the majority leadership of the senate and one member selected by the minority leadership of the senate; and
  - (4) One member selected by the director to represent the department.
- (d) The members shall serve for two-year terms. The council shall elect its officers, and four members shall constitute a quorum. The members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

**§ -63 Small business ombudsman for air pollution control; qualifications; duties.** (a) There is created an office of the small business ombudsman for air pollution control in the department which shall be headed by a single executive to be known as the small business ombudsman for air pollution control who shall be appointed by the director for a term of four years. The position of small business ombudsman shall be exempt from the civil service laws pursuant to paragraph (17) of section 76-16. The director may remove or suspend for cause the small business ombudsman after due notice and public hearing.

(b) The person appointed as the small business ombudsman shall be experienced in dealing with both private enterprise and government entities; arbitration and negotiation; interpretation of laws and rules; investigation; record-keeping; report writing; public speaking; and management. All employees of the office shall be hired by the small business ombudsman and shall serve at the small business ombudsman's pleasure. In determining the salary of each employee, the small business ombudsman shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department of personnel services. The small business ombudsman and the small business ombudsman's full-time staff shall be entitled to participate in all state employee benefit plans.

(c) The small business ombudsman shall:

- (1) Assist small businesses which may be affected by air pollution control rules by providing services as necessary such as:

- (A) Assistance in the dissemination of information to small businesses and interested parties;
  - (B) Referral of small businesses to specialists for financial, technological, and operational information and assistance to reduce air pollution and prevent accidental releases;
  - (C) Encouragement of small businesses to participate in the development of air pollution control rules;
  - (D) Assistance in investigations and resolutions of complaints and disputes between small businesses and the department of health concerning air pollution control; and
  - (E) Presentations to trade associations and small businesses to inform them of the air pollution control rules and compliance requirements; and
- (2) Assist in the development and continued operation of the SBAP by participating in meetings and conferences and preparing and providing information as necessary such as:
- (A) Evaluation of the air pollution control rules and their effect on the economy and small businesses;
  - (B) Assistance in preparation of guideline documents;
  - (C) Evaluation of the SBAP and the assistance provided to small businesses;
  - (D) Reports, recommendations, and testimony to various governmental agencies and the legislature if so requested; and
  - (E) Comments and recommendations to EPA and the department of health on proposed air pollution control rules that impact small businesses.
- (d) The small business ombudsman shall submit to the director an annual report discussing the small business ombudsman's activities under this chapter."

**SECTION 2.** Chapter 342B, Hawaii Revised Statutes, is repealed.

**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. Chapters 11-59 and 11-60, Hawaii Administrative Rules (Department of Health), shall remain in effect until they are replaced by rules adopted under the authority of the chapter being enacted by this Act. References in the new chapter to rules shall include rules currently in effect until they are replaced by rules adopted pursuant to the new chapter.

**SECTION 4.** It is not intended, nor should it be inferred, that these changes to the Hawaii clean air provisions have any effect on the interpretation of any other state environmental laws. This Act addresses only the state law providing for controls on air pollution.

**SECTION 5.** 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 6.** This Act shall take effect on July 1, 1992.

(Approved June 17, 1992.)

## ACT 241

H.B. NO. 3946

A Bill for an Act Relating to Environmental Impact Statements.

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

SECTION 1. Section 343-3, Hawaii Revised Statutes, is amended to read as follows:

**“§343-3 Public records and notice.** All statements, environmental assessments, and other documents prepared under this chapter shall be made available for inspection by the public during established office hours.

The office shall inform the public of notices filed by agencies of the availability of environmental assessments for review and comments, of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or nonacceptance of statements. The office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through the office and public libraries.”

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property, which is not a specific type of action declared exempt under section 343-6, that agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a negative declaration is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency determination for the public’s information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept a final statement shall rest with:

- (1) The governor, or the governor’s authorized representative, whenever an action proposes the use of state lands or the use of state funds or, whenever a state agency proposes an action within the categories in subsection (a); or

- (2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) which requires approval of an agency, and which is not a specific type of action declared exempt under section 343-6, the agency receiving the request for approval shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a negative declaration is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency's<sup>1</sup> determination for the public's information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office. The draft statement shall be made available for public review and comments through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement. The authority to accept a final statement shall rest with the agency receiving the request for approval. Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement as<sup>2</sup> pursuant to section 343-3. The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination.

In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

**SECTION 3.** Section 343-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any judicial proceeding, the subject of which is the determination that a statement is [or is not] required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject of which is the determination that a statement is not required for a proposed action, shall be initiated within thirty days after the public has been informed of such determination pursuant to section 343-3. The council or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved."

**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 17, 1992.)

**Notes**

1. Prior to amendment "agency" appeared here.
2. Should be underscored.

**ACT 242**

H.B. NO. 3963

A Bill for an Act Relating to Motor Vehicles.

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

**SECTION 1.** Section 286-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following vehicles shall be certified as provided in subsection (e) once every six months:

- (1) Ambulances;
- (2) Trucks, truck-tractors, semitrailers, and pole trailers having a gross vehicle weight rating of more than 10,000 pounds;
- (3) Buses;
- (4) Rental or U-drive motor vehicles one year of age or older; and
- (5) Taxi cabs."

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

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

(Approved June 17, 1992.)

A Bill for an Act Relating to Traffic Accidents.

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

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291C- Accidents involving substantial bodily injury.** (a) The driver of any vehicle involved in an accident resulting in substantial bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class C felony.”

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291C- Accidents involving bodily injury.** (a) The driver of any vehicle involved in an accident resulting in bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a misdemeanor.”

SECTION 3. Section 291C-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Substantial bodily injury” means bodily injury which causes: (1) a major avulsion, laceration, or penetration of the skin; (2) a chemical, electrical, friction, or scalding burn of second degree severity; (3) a bone fracture; (4) a serious concussion; or (5) a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.”

SECTION 4. Section 291C-12, Hawaii Revised Statutes, is amended to read as follows:

**“[[§291C-12[]] Accidents involving death or [personal] serious bodily injury.** (a) The driver of any vehicle involved in an accident resulting in serious bodily injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith

return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person [failing to stop or to comply with the requirements of subsection (a) shall be fined not more than \$1,000 or imprisoned not more than ten years, or both.] who violates subsection (a) shall be guilty of a class B felony.

(c) The license or permit to drive and any nonresident operating privilege of the person so convicted shall be revoked [as provided in section 286-124]."

**SECTION 5.** Section 291C-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the event that none of the persons specified is in condition to receive the information to which they otherwise would be entitled under subsection (a), and no police officer is present, the driver of any vehicle involved in the accident after fulfilling all other requirements of section 291C-12, 291C-, or 291C-, and subsection (a) of this section, insofar as possible on the driver's part to be performed, shall forthwith report the accident to the nearest police officer and submit thereto the information specified in subsection (a)."

**SECTION 6.** Section 291C-161, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Except as provided in subsection (c) of this section, every person who violates any provision of this chapter for which another penalty is not provided, shall for a first conviction thereof be fined not more than \$100; 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; 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, provided that upon a conviction for a violation of section 291C-12, 291C-, or 291C-, the person shall be sentenced in accordance with [section 291C-12.] that section.

(c) Every person who violates section 291C-13, [291C-14,] 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 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 7.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 8.** This Act shall take effect upon its approval.

(Approved June 17, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 244**

S.B. NO. 1516

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-Profit Corporations that Provide Health Care Facilities.

*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.

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 \$9,000,000, in one or more series, for the purpose of assisting the Castle Medical Center with the financing or refinancing, or both, of one or more of the following:

- (1) Retirement of outstanding debt on the Castle Medical Center's existing health care facilities;
- (2) Retirement of outstanding debt on the existing capital equipment used in connection with the Castle Medical Center's health care facilities;
- (3) Construction of new additions to the Castle Medical Center's existing health care facilities;
- (4) Acquisition and installation of additional capital equipment for use in connection with the Castle Medical Center's health care facilities;
- (5) Renovation and repair of the Castle Medical Center's existing health care facilities;
- (6) Repair and expansion of the Castle Medical Center's parking facilities; and
- (7) Renovation and repair to satellite offices of the Castle Medical Center's health care facilities.

The legislature finds and determines that the activities and facilities of the Castle Medical 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 authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1995.

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

(Approved June 17, 1992.)

**ACT 245**

S.B. NO. 2653

A Bill for an Act Relating to Solid Waste.

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

SECTION 1. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

## **“PART . MUNICIPAL SOLID WASTE LANDFILL CRITERIA**

**§342H- Definitions.** Unless otherwise explicitly stated, the definitions provided in section 342H-1 shall control the meaning of the terms used in this part. As used in this part, unless the context otherwise requires:

“Commercial solid waste” means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

“Existing municipal solid waste landfill unit” means any municipal solid waste landfill unit that is receiving solid waste on October 9, 1993.

“Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

“Household waste” means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

“Industrial solid waste” means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from electric power generation, water treatment, and the manufacture of the following products: fertilizers and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel; leather and leather products; nonferrous metals; organic chemicals; plastics and resins; pulp and paper products; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textiles; and transportation equipment. This term does not include mining waste or oil and gas waste.

“Lateral expansion” means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

“Municipal solid waste landfill unit” means a discrete area of land or an excavation that receives household waste and is not a land application unit, surface impoundment, injection well, or waste pile. A municipal solid waste landfill unit also may receive other types of waste regulated under subtitle D of RCRA, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion.

“New municipal solid waste landfill unit” means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

“Operator” means the person responsible for the overall operation of a facility or part of a facility.

“Owner” means the person who owns a facility or part of a facility.

“RCRA” means the federal Resource Conservation and Recovery Act, as amended, 42 United States Code, §§6901 to 6991i.

**§342H- Prohibition.** No person, including any federal agency, the State, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to such terms and conditions as the director determines are necessary to protect human health or the environment.

**§342H- Applicability and requirements.** (a) The provisions of this part do not apply to municipal solid waste landfill units that do not receive wastes after October 9, 1991.

(b) Municipal solid waste landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this part except the final cover requirement prescribed by rules adopted pursuant to this part. The final cover shall be installed within six months of the last receipt of wastes. Owners and operators of municipal solid waste landfill units subject to this subsection that fail to complete cover installation within six months from the date of the last receipt of wastes shall be subject to all the requirements of this part, and rules adopted pursuant to this part, subject to such exemptions as may be provided by those rules.

(c) The provisions of this part apply to owners and operators of new municipal solid waste landfill units, existing municipal solid waste landfill units, and lateral expansions, except as otherwise provided in this part or otherwise exempted by rules adopted pursuant to this part.

(d) Following closure of a municipal solid waste landfill unit, or a component of a municipal solid waste landfill unit, the owner or operator of the unit shall conduct post-closure care for a period of thirty years. The director may increase the length of the post-closure care period if the director determines that the lengthened period is necessary to protect human health and the environment. The director may decrease the length of the post-closure care period if the owner or operator of the closed municipal solid waste landfill unit demonstrates to the satisfaction of the director that the reduced period is sufficient to protect human health and the environment.

(e) Owners and operators of municipal solid waste landfill units that receive waste on or after October 9, 1993, shall comply with the financial assurance criteria that the director shall establish by rules adopted pursuant to this part. Such rules shall be effective no later than April 9, 1994.

(f) Municipal solid waste landfill units containing sewage sludge shall comply with the provisions of this part and the rules adopted pursuant to this part.

(g) In addition to compliance with the provisions of this part and rules adopted pursuant to this part, owners and operators of a municipal solid waste landfill unit shall comply with any other applicable state and federal law.

**§342H- Public participation.** The director may adopt rules providing for public participation in the process of reviewing applications for permits, permit renewals, permit modifications, selection of corrective action remedies, and related matters. Such rules may require applicants and permittees to be responsible for the publication of notices, making documents and relevant information available to the public for public review and comment and conducting public hearings. The rules may also include public participation provisions similar to any promulgated by the United States Environmental Protection Agency for municipal solid waste landfill permit programs. Public notices shall be given of the director's final determination on permit applications, renewals, modifications, and selection of corrective action remedies. A public hearing may be held before the director rules on a permit application, renewal, modification, or selection of corrective action remedies if the director determines that a public hearing would be in the public interest.

**§342H- Rules; specific.** The director may establish by rule the criteria, standards, and requirements relating to the location, design, construction, operation, maintenance, expansion, closure, and post-closure care of municipal solid

waste landfill units. In addition, the director may establish by rule assessment monitoring, ground-water monitoring, ground-water protection, landfill gas monitoring, landfill gas collection, detection monitoring, corrective measure, remedial action, preventive action, response action, manifest, record keeping, notification, public meeting, deed notation, and financial assurance requirements, standards, or criteria for municipal solid waste landfill units.

**§342H- Other powers.** In addition to any other power or duty prescribed by law or this part, the director may establish by rule a municipal solid waste landfill program that meets or exceeds the standards, criteria, and requirements set forth in the federal municipal solid waste landfill regulations, 40 C.F.R. Part 258.

**§342H- Intervention.** Any person shall have the right to intervene in any civil action to enforce the provisions of this part if the person has an interest that is, or may be, adversely affected.”

SECTION 2. Section 342H-1, Hawaii Revised Statutes, is amended by amending the definition of “solid waste” as follows:

““Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants[.], or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923).”

SECTION 3. Section 342H-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, except for all federally delegated permit programs[.] and federally approved programs, shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.”

SECTION 4. Section 342H-5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§342H-5]] Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted

upon the request of the department, and the effect or probable effect upon the standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the disposal of solid waste in nonconformance with applicable standards or rules. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the disposal occurring or proposed to occur by the granting of the variance is in the public interest as defined in section 342H-4;
- (2) The disposal occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the solid waste pollution involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the solid waste pollution involved[.];
- (2) The director may issue a variance for a period not exceeding five years[.]; and
- (3) Every variance granted under this section may be subject to such conditions as the director may prescribe.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for a variance not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Any application for a variance submitted pursuant to this chapter, shall be subject to the following public participation requirements [listed below.]:

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed disposal or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

- (A) Notice shall be circulated within the geographical areas of the proposed disposal or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
- (B) Notice shall be mailed to any person or group upon request; and
- (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area[.];
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director[.];
- (3) The contents of public notice of applications for variances shall include at least the following:
  - (A) Name, address, and phone number of agency issuing the public notice;
  - (B) Name and address of each applicant;
  - (C) Brief description of each applicant's activities or operations which result in the disposal or other activity described in the variance application;
  - (D) A short description of the location of each disposal or activity indicating whether such disposal or activity is new or existing;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this subsection and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents[.]; and
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed disposal or other proposed activity, or other appropriate area, at the discretion of the director.

(i) Variances shall not be granted to owners or operators of municipal solid waste landfill units except where specifically provided for in the rules adopted pursuant to this part.”

SECTION 5. Section 342H-7, Hawaii Revised Statutes, is amended to read as follows:

**“§342H-7 Enforcement.** [(a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
  - (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
  - (3) May impose penalties as provided in section 342H-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:
- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
  - (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
  - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
  - (4) May impose penalties as provided in section 342H-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (c) If the director determines that any person has violated an accepted schedule or an order issued pursuant to this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.]
- (a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter, the director may do any one or more of the following:
- (1) Issue an order assessing a civil penalty for any past or current violation;
  - (2) Require compliance immediately or within a specified time period; and

(3) Commence a civil action in the circuit court in the circuit in which the violation occurred or the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a permit issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any penalties assessed in the order shall be in accordance with section 342H-9.

[(d)] (c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

[(e)] (d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or disposals involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or disposals.

[(f)] (e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

[(g)] (f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties."

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 17, 1992.)

**ACT 246**

S.B. NO. 2674

A Bill for an Act Relating to Child Support Enforcement Agency.

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

**SECTION 1.** Section 576D-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The family court, in consultation with the agency, [may] shall update the guidelines [when the family court deems it necessary.] at least once every four years.”

**SECTION 2.** Section 576D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency shall collect and disburse child support payments when a court order requires the collection and disbursal. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from the account shall be used for related costs of the maintenance and operation of the account and the balance shall be deposited into the state treasury to the credit of the general fund.”

**SECTION 3.** Section 576D-11, Hawaii Revised Statutes, is amended to read as follows:

**“[§576D-11] Staff.** The head of the appropriate department shall appoint, pursuant to chapters 76 and 77, an administrator and such other personnel as may be required to discharge the functions of the child support enforcement agency. The head of the appropriate department shall commission child support enforcement investigators who shall have and may exercise all the powers and authority of a police officer or a deputy sheriff to fulfill their official responsibilities[,]; provided that persons so appointed and commissioned shall not carry firearms. The duties of the commissioned investigators shall be to locate absent parents, to establish paternity, and to obtain and enforce court orders of support. The child support enforcement investigators shall have access, including automated inquiry access, to the records of any agency, board, commission, authority, court, or committee of the State or its political subdivisions notwithstanding any provisions for confidentiality[.] except that the child support enforcement agency shall be subject to the same restrictions on disclosure of the records as the originating agency pursuant to section 92F-19(b).”

**SECTION 4.** Section 576D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency and its agents shall keep such records as may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant for support services or recipient of public assistance shall

be confidential. The use or disclosure of information concerning any applicant or recipient shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or program approved by Title IV-A through D, or under Titles II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
- (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
- (3) Disclosure to consumer reporting agencies as provided in section 576D-6(a)(6);
- (4) Other agencies or persons connected with the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
- (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency; and
- (6) Purposes directly connected with any investigation, enforcement, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program in [subsection (a)(1).] paragraph (1); and
- (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5."

SECTION 5. Section 576E-9, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-9 Hearings in contested cases.** Hearings in contested cases shall be conducted in accordance with this chapter, and when otherwise applicable, chapter 91, and shall be presided over by a hearings officer appointed and commissioned by the attorney general pursuant to section 576E-10. The attorney general may adopt such administrative rules pursuant to chapter 91, as may be necessary to carry out [the provisions of] this section. In any hearing conducted under this section, the responsible parent shall have the right to confront and cross-examine witnesses, to present witnesses and evidence, to be represented by counsel or other person, and to be notified of these rights in writing. Hearings may be conducted by telephone or other electronic telecommunications methods [upon the consent of all parties to the hearing.] at the discretion of the hearings officer."

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 17, 1992.)

A Bill for an Act Relating to Exemption for New Vehicles and Official Vehicles.

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

SECTION 1. Section 249-4, Hawaii Revised Statutes, is amended to read as follows:

**“§249-4 Exemptions for new vehicles and official vehicles.** All new vehicles, otherwise taxable under sections 249-1 to 249-13, in stock for purposes of sale, shall be exempt from the tax herein provided, and number plates for all these vehicles may be issued as now and hereafter provided by ordinance of the county. All motor vehicles owned or leased for twelve months or longer by the State or any county and all motor vehicles and motorcycles owned or leased for twelve months or longer by police officers of the State or any county that actually are used by them in their travel on official business shall be exempt from the tax herein provided, and number plates for all these vehicles may be issued as provided by ordinance of the county[.]; provided that the director of finance may charge the State an amount equal to the cost to the county of the number plates issued to the State.”

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

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

(Approved June 17, 1992.)

A Bill for an Act Relating to Rental Assistance.

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

SECTION 1. Section 201E-134, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) When an eligible project is not owned by the corporation, the corporation shall be entitled to share in the appreciation in value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation’s share shall be calculated by multiplying the appreciation in value of units maintained for eligible tenants realized upon refinancing or prepayment by the ratio of the owner’s equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.

The corporation shall exempt projects owned by a county from the shared appreciation requirement set forth in this section if all of the following requirements are met:

(1) The funds derived by the county as a result of appreciation in value

- of the units are used for housing projects wherein:
- (A) At least sixty per cent of the project is affordable to families earning one hundred per cent or below of the applicable area median income; and
  - (B) At least half of the foregoing sixty per cent is affordable to families earning eighty per cent or below of the applicable area median income; and
  - (2) The project from which the appreciation in value is derived remains as affordable as it was prior to the refinancing or prepayment of the eligible project loan.”

SECTION 2. New statutory material is underscored.

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

(Approved June 17, 1992.)

## ACT 249

S.B. NO. 2851

A Bill for an Act Relating to the Protection and Advocacy System.

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

SECTION 1. Chapter 333F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§333F- Advocacy agency for developmentally disabled and mentally ill persons.** (a) The purpose of this section is to comply with federal law, which mandates the states to provide advocacy services to developmentally disabled and mentally ill persons in order to receive federal funds.

(b) The governor may designate an entity or agency to carry out the purposes of this section.

(c) The entity or agency designated by the governor shall have access to all records of any developmentally disabled or mentally ill person, to the extent required by federal law.

(d) The entity or agency so designated by the governor shall provide those advocacy services to developmentally disabled and mentally ill persons as required by federal law. All departments and agencies of the State, and the judiciary, shall cooperate with the entity or agency so designated to carry out the purposes of this section.”

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

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

(Approved June 17, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Housing.

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

**SECTION 1.** The purpose of this Act is to return to the Hawaii housing authority former development advantages it held until 1987. In order for the Hawaii housing authority to maintain its status as a public housing agency with the federal Department of Housing and Urban Development (“HUD”), the Hawaii housing authority must be able to develop low income rental projects. To expedite the development of rental housing, the Hawaii housing authority would like to have returned some of the development advantages it held until 1987 under former Hawaii Revised Statutes section 359G-6 and section 359G-4.1. The Act returns to the Hawaii housing authority an exemption from competitive bidding laws when developing housing and returns application to the Hawaii housing authority the requirement that projects or petitions be deemed approved by county councils and the land use commission forty-five days after they are submitted where the councils and land use commission do not disapprove them during that period of time.

**SECTION 2.** Chapter 359, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§359- Housing development; approval time limit.** (a) A county council shall approve or disapprove an authority project within forty-five days after the authority has submitted the preliminary plans and specifications for the project to it. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the county council. The final plans and specifications for the project shall be deemed approved by the county if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the authority or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar.

(b) The land use commission shall approve or disapprove a boundary change within forty-five days after the authority has submitted a petition to the commission as provided in section 205-4. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission.

Notwithstanding the provisions of section 205-4, notices of the hearing shall be published not less than 15 days in advance of the hearing on the petition.

**§359- Exemption from competitive bidding laws.** In selecting the eligible developers or in contracting any services or materials for the purposes of this chapter or chapter 356, the authority shall not be subject to the competitive bidding laws.”

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 17, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 251**

S.B. NO. 3100

A Bill for an Act Relating to the Recodification of the Financial Institutions Laws.

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

SECTION 1. Chapter 401, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§401- Administrative penalty.** (a) The commissioner may impose administrative penalties on any financial institution and any institution-affiliated party as provided in this section.

(b) Except as provided in subsections (c), (d), and (e), any financial institution or institution-affiliated party that commits any of the following violations shall be subject to an administrative penalty of not more than \$1,000 for each day the violation continues:

- (1) A material violation of any statute or rule;
- (2) A material violation of any order issued by the commissioner;
- (3) 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) A material violation of any written agreement between the financial institution and the commissioner.

(c) Any financial institution or institution-affiliated party that commits any violation specified in subsection (b), recklessly engages in an unsafe or unsound practice in conducting the affairs of the financial institution, or breaches any fiduciary duty, shall be subject to an administrative penalty of not more than \$15,000 for each day the violation, practice, or breach continues if the violation, practice, or breach:

- (1) Is part of a pattern of misconduct;
- (2) Causes or is likely to cause more than a minimal loss to the financial institution; or
- (3) Was committed by an institution-affiliated party and results in pecuniary gain or other benefit to the institution-affiliated party.

(d) Notwithstanding subsections (b) and (c), any financial institution or institution-affiliated party that knowingly commits any violation specified in subsection (b), engages in any unsafe or unsound practice in conducting the affairs of the financial institution, or breaches any fiduciary duty, and knowingly or recklessly causes a substantial loss to the financial institution, or in the case of an institution-related party, a substantial pecuniary gain or other benefit to the institution-related party results by reason of the violation, practice, or breach, shall be subject to an administrative penalty in an amount not to exceed the maximum amount provided under this subsection, for each day the violation, practice, or breach continues. The maximum daily amount of any administrative penalty

which may be assessed pursuant to this subsection for any violation, practice, or breach described in this subsection is as follows:

- (1) In the case of any person other than a financial institution, an amount not to exceed \$500,000; or
- (2) In the case of any savings institution, an amount not to exceed the lesser of \$500,000 or one per cent of the total assets of the institution.

(e) Any administrative penalty imposed under this section may be assessed and collected by the commissioner by written notice. If with respect to any assessment a hearing is not requested pursuant to subsection (h) within the period of time allowed, the assessment shall constitute a final and unappealable order.

(f) The commissioner may compromise, modify, or remit any administrative penalty which may be assessed or which has been assessed pursuant to this section.

(g) In determining the amount of any administrative penalty imposed under this section, the commissioner shall take into account the appropriateness of the penalty 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;
- (4) Whether a federal regulatory agency has imposed or is threatening to impose a penalty for similar conduct pursuant to federal law; and
- (5) Such other matters as justice may require.

(h) The financial institution or other person against whom any administrative penalty is assessed under this section shall be afforded a hearing if the financial institution or person submits a request for a hearing within twenty days after the issuance of the notice of assessment.

(i) If any financial institution or institution-affiliated party fails to pay an assessment after any administrative penalty assessed under this section has become final, the commissioner shall recover the amount assessed by action in circuit court, in which case, the commissioner shall be entitled to an award of reasonable attorney's fees and costs.

(j) "Institution-affiliated party" as used in this section means any director, officer, employee, controlling stockholder, or agent of a federally insured bank, savings and loan, credit union, financial services loan company, or state-chartered trust company. The term includes any independent contractor, including any attorney, appraiser or accountant, joint venturer, consultant, or agent."

SECTION 2. Section 401-11, Hawaii Revised Statutes, is amended to read as follows:

**"§401-11 Semiannual and special reports; publication; penalty.** Every bank, trust company, [building] savings and loan association, fiduciary company, industrial loan and investment company<sup>1</sup>, financial services loan company, or licensee under chapter 409 shall submit to the commissioner semiannual reports as of June 30 and December 31. The reports shall be filed within thirty days after these dates; provided that the commissioner [may], for good cause shown, may grant a reasonable extension of not more than forty-five days for making and filing [such] the report. The reports shall be made in the form prescribed by the commissioner and shall show the assets and liabilities, all losses sustained,

expenses and taxes paid, gross earnings and profits, losses recovered since last reported, payments made by stockholders, and all amounts carried to surplus, undivided profits, or dividends paid.

Every [such] bank, association, licensee, or company shall furnish in writing to the commissioner any special or supplementary reports, covering all or any of the items or matters or classes thereof which are or might be required to be covered by a semiannual report, in such form, at such time or times, and within such reasonable period or periods after request therefor, as the commissioner deems necessary or expedient in the interest of the public [and requires in writing].

Every bank, trust company, [building] savings and loan association, fiduciary company, [or] industrial loan and investment company<sup>1</sup>, or financial services loan company with deposits that are federally insured, shall publish in the English language on or before the last Monday of January and July in every year, a statement of its assets and liabilities as of December 31 and June 30, respectively, in a form prescribed by the commissioner, or as soon thereafter as circumstances will permit.

Failure of any bank, banker, trust company, [building] savings and loan association, fiduciary company, industrial loan and investment company<sup>1</sup>, financial services loan company, or licensee under chapter 409 to make and submit any of the reports required by this section shall subject the bank, banker, company, association, or licensee to a penalty of [\$10] \$1,000 for each day the reports are delayed beyond the time allowed by this section."

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.<sup>2</sup>

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

(Approved June 17, 1992.)

#### Notes

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

## ACT 252

S.B. NO. 3186

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

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

SECTION 1. Section 237-24.7, 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 15 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 the owner where the property contains an area sufficient to make the undertaking economically feasible."

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

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved June 17, 1992.)

## ACT 253

H.B. NO. 602

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 77-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Salary ranges SC-1, SC-2, and SC-3 shall be utilized in the following manner:

- (1) Salary ranges SC-1, SC-2, and SC-3 may be utilized by the State, the judiciary, and counties for [physicians] physician and [psychiatrists] psychiatrist positions[.];
- (2) No position shall be classified and paid in salary ranges SC-1, SC-2, and SC-3 unless specifically recommended by the director of personnel services and approved by the governor, recommended by the administrative director of the courts and approved by the chief justice, or recommended by the personnel director of a county and approved by the respective council and mayor[.];
- (3) There shall be at any given period not more than sixteen positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the State, not more than [one position] two positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the judiciary, and not more than eight positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by any county. [Psychiatrists] Psychiatrist and [physicians] physician<sup>1</sup> positions shall be excluded from the above-mentioned totals[.]; and
- (4) The director of personnel services, the administrative director of the courts, and the personnel directors of each county shall report annually to the legislature as to the manner in which the positions assigned to salary ranges SC-1, SC-2, and SC-3 are being used."

SECTION 2. Section 602-51, Hawaii Revised Statutes, is amended to read as follows:

**“§602-51<sup>1</sup> How constituted.** The intermediate appellate court shall consist of a chief judge and [two] three associate judges. The chief judge, who shall be specifically selected, shall supervise the administrative duties of the court.”

SECTION 3. Section 603-3, Hawaii Revised Statutes, is amended to read as follows:

**“§603-3 First circuit court judges.** Effective July 1, 1992, the [The] circuit court of the first circuit shall consist of [seventeen] twenty-five judges, who shall be styled as first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth [and], seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, and twenty-fifth judge, respectively.”

SECTION 4. Section 604-8, Hawaii Revised Statutes, is amended to read as follows:

**“§604-8 Criminal, misdemeanors, generally.** District courts shall have jurisdiction of, and their criminal jurisdiction is limited to, criminal offenses punishable by fine, or by imprisonment not exceeding one year whether with or without fine. They shall not have jurisdiction over any offense for which the accused cannot be held to answer unless on a presentment or indictment of a grand jury.

In any case cognizable by a district court as aforesaid in which the accused has the right to a trial by jury in the first instance, the district court, upon demand by the accused, for such trial by jury, shall not exercise jurisdiction over such case except violations under section 291-4, but shall examine and discharge or commit for trial the accused as provided by law, but if in any such case the accused does not demand a trial by jury on the date of arraignment or within ten days thereafter, the district court may exercise jurisdiction over the same, subject to the right of appeal as provided by law. Trial by jury for violations under section 291-4 may be heard in the district court.

SECTION 5. The legislature notes, with concern, that there is a pattern of judicial assignments which seems to be inconsistent with Article VI of the Hawaii State Constitution. Specifically, the equivalent of four divisions of the circuit court of the first circuit are run with district court judges. In turn, those district court judges' normal responsibilities are handled by per diem judges.

The effect is that four circuit courts are operated by judges who are not subjected to the judicial selection commission's screening process for circuit court judges, were not appointed by the governor and whose appointments have not been consented to by the Senate. This problem is compounded by the operation of district courts by per diem judges who have not been selected from a list of names provided after scrutiny by the judicial selection commission.

The legislature recognizes that this pattern of judicial assignments is grounded in the exigencies of meeting a greatly increased workload with a relatively static number of judicial positions. It is not objective to assign blame for the current situation. In any event, we would probably find ourselves among those at the nub of any finger pointing. It is, however, the legislature's intent to end such use of per diem judges in the near future.

To that end, the Judiciary is respectfully requested to submit to the legislature, prior to convening of the 1993 regular session, a comprehensive plan for the

reduction of the use of per diem judges to the minimum level necessary for the operation of the Judiciary. It is further requested that the Judiciary include in the plan an analysis of the benefits and problems that would occur if per diem judges were selected from lists presented by the judicial selection commission, in the same manner as regularly appointed district court judges.

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

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

(Approved June 18, 1992.)

**Note**

1. So in original.

**ACT 254**

H.B. NO. 2313

A Bill for an Act Relating to Driver Education.

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

**SECTION 1.** Chapter 299, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§299- 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 from the special drivers education fund account pursuant to section 431:10C-115.”

**SECTION 2.** Section 299-1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The department of education may establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State, [after regular school hours, on Saturdays, and during the summer recess.]”

2. By amending subsection (c) to read:

“(c) The department may [promulgate] adopt rules [and regulations], in conformance with chapter 91, necessary for the purposes of this section and section 299-2.”

**SECTION 3.** Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

- (1) Fifty per cent to the commissioner to be expended for the operation of the drivers education program provided in section 286-128(m); and
- (2) Fifty per cent to the superintendent of education to [support]:  
(A) Support the drivers education program administered by the department of education for high school students[.]; and  
(B) Support the traffic safety education program established and administered by the department of education pursuant to section 299-"

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 18, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 255

H.B. NO. 2319

A Bill for an Act Relating to the Conservation of Energy.

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

SECTION 1. The legislature finds that solar water heating is particularly suitable for the climate conditions that exist in Hawaii.

The purpose of this Act is to promote the use of solar energy for water heating, thereby reducing the State's reliance on imported fuels.

SECTION 2. After January 1, 1993, the housing finance and development corporation shall require, as a condition of approval of any residential development project constructed with state funds, located on state lands, or otherwise subsidized by the State, the installation of solar water heating equipment to heat residential water according to the following percentages of units approved between 1993 and 1995: thirty per cent in 1993, forty per cent in 1994, and fifty per cent in 1995; provided that this requirement to install solar water heating equipment shall not apply:

- (1) To projects developed by the corporation on behalf of the Hawaii housing authority;
- (2) When the corporation determines that the proximity of buildings, ridges, trees, or other local conditions will render solar water heating equipment ineffective or impracticable; or
- (3) To multi-unit buildings.

SECTION 3. The department of business, economic development, and tourism shall adopt rules pursuant to chapter 91 with respect to alternate water heating systems that shall be installed in the remaining units not required in section 2 to have solar water heating equipment.

**SECTION 4.** Not less than twenty days prior to the convening of the regular session of 1996, the department of business, economic development, and tourism shall submit a report to the legislature evaluating the overall life-cycle cost as well as energy efficiency of all types of water heating systems and solar water heating equipment installed in projects approved by the corporation between 1993 and 1995. This evaluation shall take into consideration a variety of factors that affect overall energy needs including, but not limited to, the size of units and occupancy levels.

**SECTION 5.** This Act shall take effect upon its approval and shall be repealed on January 1, 1996.

(Approved June 18, 1992.)

**ACT 256**

H.B. NO. 2780

A Bill for an Act Relating to Tourism.

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

**SECTION 1.** The legislature finds that changing market conditions of tourism in Hawaii require constant observation and quick, decisive action on the part of those directing the state marketing effort. The legislature further finds that the Hawaii tourism marketing council, which assists in the direction of state tourism marketing, should meet quarterly, rather than semi-annually.

**SECTION 2.** Section 201-94, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The council shall meet [semiannually.] quarterly. The council may meet more frequently at the discretion of the deputy director in response to changing market needs.”

**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, 1992.)

**ACT 257**

H.B. NO. 2784

A Bill for an Act Relating to Public Contracts.

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

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

**“§103- Construction, renovation or repair of school facilities; county permit exemption.** Any contracts under this chapter for the construction,

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renovation, or repair of public school facilities shall be exempt from any requirement of a county that related off-site improvements be made by the contracting government agency as a condition to the issuance of any permit."

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

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

(Approved June 18, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 258

H.B. NO. 3022

A Bill for an Act Relating to Contractors License Board.

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

SECTION 1. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

"**§444-2 Exemptions.** This chapter shall not apply to:

- (1) [An officer or employee] Officers and employees of the United States, the State, or any political subdivision while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, and all other items is less than [\$100.] \$1,000. This exemption shall not apply in any case wherein the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts less than [\$100] \$1,000 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person's professional capacity;
- (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person's sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing work, which must be performed only by persons or entities licensed under this chapter or the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or

- offering for sale or lease, of the structure within one year after completion is *prima facie* evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1; [or]
- (8) Any [copartnership or] joint venture if all members thereof hold licenses issued under this chapter[.];
  - (9) Any project or operation where it is determined by the board that less than ten persons are qualified to perform the work in question and that such work does not pose a potential danger to public health, safety, and welfare; or
  - (10) Any public works project that requires additional qualifications beyond those established by the licensing law and which is deemed necessary and in the public interest by the contracting agency.”

SECTION 2. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

**“§444-9.1 Issuance of building permits; owner-builder registration.** Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant [is] and all specialty contractors are licensed under this chapter, giving the [number of the] license numbers and stating that [it is] the licenses are in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), the applicant shall also be required to certify that the building or structure is for the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; (4) the approximate dates of construction activity; and (5) whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work. The absence of such registration is *prima facie* evidence that the exemption in section 444-2(7) does not apply.

The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or the contractor's duly authorized agent.”

SECTION 3. Section 444-11, Hawaii Revised Statutes, is amended to read as follows:

- “§444-11 No license issued when.** No license hereunder shall be issued to:
- (1) Any person unless the person has filed an application therefor;

- (2) Any person unless the person meets the experience requirement as prescribed in the board's rules;
- [(2)] (3) Any person who does not possess a [good reputation for] history of honesty, truthfulness, financial integrity, and fair dealing; provided that any person who during the six years prior to application has failed to satisfy an undisputed debt or a judgment relating to services or materials rendered in connection with operations as a contractor shall be presumed not to possess a [good reputation for] history of financial integrity;
- (4) Any person unless the person has successfully passed a written examination as prescribed by the board;
- [(3)] (5) Any individual unless the individual is age eighteen years or more;
- [(4)] (6) Any [copartnership or] joint venture which is not exempt under section 444-2(8) unless the contracting business thereof is under the direct management of a partner or employee thereof, and unless such partner or employee holds an appropriate license;
- [(5)] (7) Any individual who is unable to qualify as a contractor or any corporation, unless the contracting business of such individual or corporation is under the direct management of an officer or employee thereof, and unless such officer or employee holds an appropriate license; or
- [(6)] (8) Any person unless the person submits satisfactory proof to the contractors license 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) The provisions of this section shall not apply when it is determined by the contractors license board that less than ten persons are qualified to perform the work in question. The provisions also shall not apply with respect to public works projects which require additional qualifications beyond those established by the licensing law, and which are deemed necessary and in the public interest by the contracting agency].

In addition, any license issued hereunder shall not be renewed if the licensee no longer meets any one or more of the foregoing qualifications."

SECTION 4. Section 444-16, Hawaii Revised Statutes, is amended to read as follows:

**"§444-16 Action on applications.** Within one hundred and twenty days after the filing of a proper application for a license and the payment of the required fees, the [contractors license] board shall (1) conduct an investigation of the applicant, and in such investigation may post pertinent information, including but not limited to, the name and address of the applicant, and if the applicant is associated in any partnership, corporation, or other entity, the names, addresses, and official capacities of the applicant's associates; and (2) either issue a license to the applicant or [else] notify the applicant in writing by registered mail of the board's decision not to grant the license and specifically notify the applicant of the applicant's right to [have] submit a request for a contested case hearing pursuant to chapter 91 within [fifteen] sixty days [on] of the board's decision. The hearing shall be conducted in accordance with section 444-18."

SECTION 5. Section 444-28, Hawaii Revised Statutes, is amended by

amending subsection (a) to read as follows:

“(a) No action for an arbitration award or for a judgment which may subsequently result in an order for collection from the contractors recovery fund shall be commenced later than six years from the accrual of the cause of action thereon. When any injured person commences action for an arbitration award or for a judgment which may result in collection from the contractors recovery fund, the injured person shall notify the [contractors license] board in writing to this effect at the time of the commencement of such action. The [contractors license] board shall have the right to intervene in and defend any such action. Nothing in this section shall supersede the statute of limitations as contained in section 657-8.”

SECTION 6. Section 444-28, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [Should the contractors license board pay from the contractors recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed contractor, the] The license of the contractor shall be automatically terminated upon execution of a settlement agreement requiring payment from the contractors recovery fund or the issuance of a court order authorizing payment from the contractors recovery fund. No contractor shall be eligible to receive a new license until the contractor has repaid in full, plus interest at the rate of [six] ten per cent a year, the amount paid from the contractors recovery fund on the contractor’s account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.”

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, 1992.)

## ACT 259

H.B. NO. 3084

A Bill for an Act Relating to Underground Storage Tanks.

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

SECTION 1. Chapter 342L, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§342L- Record maintenance.** The department, pursuant to chapter 91, shall adopt requirements for the establishment and maintenance of records relating to underground storage tanks and tank systems.

**§342L- Intervention.** Any person may intervene in any civil action to enforce this chapter if the person has an interest that is, or may be, adversely affected.

**§342L- Directory of underground storage tank service providers.**  
(a) The director shall develop and maintain a directory of service providers who

are identified in paragraph (c). Information submitted by service providers shall be made readily available to owners and operators of underground storage tanks and tank systems and the public for review and inspection upon request.

- (b) The directory shall consist of service providers who are:
- (1) Individuals, engaged in types of services in paragraph (c), having signatory authority and responsibilities; and
  - (2) Persons, representing firms engaged in types of services in paragraph (c), who have signatory authority and responsibilities.
- (c) Categories of service providers include the following:
- (1) Installation of underground storage tanks or tank systems;
  - (2) Retrofitting underground storage tanks or tank systems for corrosion protection, spill and overfill prevention, and release detection;
  - (3) Operating and maintaining corrosion protection systems;
  - (4) Repairing underground storage tanks and tank systems;
  - (5) Testing and monitoring underground storage tanks and tank systems for releases of petroleum and hazardous substances;
  - (6) Assessment of an underground storage tank site for the nature and extent of contamination of soil and waters by released substances;
  - (7) Procurement of product, soil, and water samples;
  - (8) Preparation and analysis of product, soil, and water samples;
  - (9) Procurement of field measurements to screen for and characterize contaminants;
  - (10) Abatement and remediation of contaminants at the site to levels protective of human health and the environment;
  - (11) Cleaning of underground storage tanks or tank systems;
  - (12) Excavating and removing underground storage tanks or tank systems, and contaminated soils and debris;
  - (13) Transporting underground storage tanks or tank systems, contaminated soils and debris; and
  - (14) Treatment, storage, and disposal of uncleared underground storage tanks or tank systems, contaminated soils and debris.

(d) Effective on the date of approval of this Act, service providers wishing to be listed in the directory may submit to the director, at a minimum, the following types of information:

- (1) Full name of the individual or person in a firm with signatory authority and responsibilities;
- (2) Current job title and description of responsibilities;
- (3) Name of the firm or company currently employing the person, if applicable;
- (4) Identification of the specific category or categories of services provided in paragraph (c) to be provided;
- (5) List the number, types, and qualifications of personnel reporting to the person with signatory authority and responsibility, if any;
- (6) For the individual or person with signatory authority and responsibility, formal education, including specific copies of diplomas from high schools, vocational schools, colleges, and universities;
- (7) For the individual or person with signatory authority and responsibility, registrations and certifications, including copies of registered professional engineering license, plumbers license, tank or tank system installer certification by manufacturer, tank or tank system testing certifications, commercial haulers license, etc. (including registrations and certifications from other states);

- (8) For the individual or person with signatory authority and responsibility, formal training, including description of courses and seminars and certificates of completion thereof;
- (9) For the individual or person with signatory authority and responsibility, related work experience, including type of work, and identification and telephone number(s) of any references;
- (10) For the individual or person with signatory authority and responsibility, memberships and affiliation with professional and work organizations; and
- (11) For the individual or person with signatory authority and responsibility, statement(s) attesting to coverage of financial liability relating to the applicable categories of work in paragraph (c)."

SECTION 2. Section 128D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created 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, and moneys allotted to the fund from other sources; provided that when deposits of fines and penalties pursuant to sections 342B-11.5, 342D-39, 342F-11.5, 342H-10.5, 342J-10.5, [342L-11.5,] 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."

SECTION 3. Section 342L-1, Hawaii Revised Statutes, is amended:

1. By adding four new definitions to be appropriately inserted and to read as follows:

"Existing underground storage tank" or "existing tank" or "existing underground storage tank system" or "existing tank system" means an underground storage tank or tank system for which installation commenced not later than December 22, 1988. Installation is considered to have commenced if:

- (1) The owner or operator has obtained all federal, state, and county approvals or permits necessary to begin physical construction of the site or installation of the underground storage tank or tank system; and
- (2) Either a continuous onsite physical construction or installation program has begun or the owner or operator has entered into contractual obligations (which cannot be canceled or modified without substantial loss) for physical construction at the site or installation of the underground storage tank or tank system to be completed within a reasonable time.

"Provider of financial assurance" means a person that provides evidence of financial responsibility for one or more underground storage tanks or tank systems.

"Soil remediation site" means designated state-owned land set aside for the purpose of remediating contaminated soils.

"Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any."

2. By amending the definition of "complaint" to read as follows:

"Complaint" means any written charge filed with or by the department that a person is violating or has violated any provision of this chapter or any rule [or order] adopted pursuant to this chapter[.], or a permit, variance, or order issued pursuant to this chapter."

3. By amending the definition of "owner" to read as follows:

"Owner" means:

- (1) In the case of [an] a particular underground storage tank or tank system in use or brought into use on or after [May 19, 1986,] November 8, 1984, any person who owns an underground storage tank [used for the storage, use, or dispensing of regulated substances;] or tank system; and
- (2) In the case of [an] a particular underground storage tank or tank system in use before [May 19, 1986,] November 8, 1984, but no longer in use after that date, any person who owned such a tank or tank system immediately before the discontinuation of its use."

4. By amending the definition of "permit" to read as follows:

"Permit" means written authorization from the director to install or operate an underground storage tank[.] or tank system. A permit authorizes the owner or operator to install and operate an underground storage tank or tank system in a manner, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department."

5. By amending the definition of "person" to read as follows:

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the State[.] or a [political subdivision of the State,] county, the United States government, federal agency, interstate body, or any other legal entity."

6. By amending the definition of "regulated substance" to read as follows:

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to [the public] human health, welfare, or the environment. The term includes:

- (1) Any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under [subtitle] Subtitle C of the federal Resource Conservation and Recovery Act); [or]
- (2) Petroleum; and
- (3) Any other substance as designated by the department."

7. By amending the definition of "release" to read as follows:

"Release" includes, but is not limited to, any spilling, leaking, emitting,

discharging, escaping, leaching, or disposing from an underground storage tank [into ground water, surface water, or subsurface soils.] or tank system."

8. By amending the definition of "underground storage tank" to read as follows:

"Underground storage tank" or "tank" means any one or combination of tanks (including pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten per cent or more beneath the surface of the ground. [Exemptions from this definition and rules adopted under this chapter include:] This term does not include any:

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines) regulated under:
  - (A) The federal Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended; or
  - (B) The federal Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor."

9. By amending the definition of "variance" to read as follows:

"Variance" means special written authorization from the director to own, install, or operate an underground storage tank or tank system in a manner deviating [from applicable standards], or to do an act that deviates, from the requirements of rules adopted under this chapter."

10. By deleting the definition of "guarantor".

[“Guarantor” means any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.”]

SECTION 4. Section 342L-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

(a) The director may [make,] adopt, amend, and repeal state rules controlling and regulating underground storage tanks[.] and tank systems. All rules shall be adopted pursuant to chapter 91. [Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.]"

SECTION 5. Section 342L-4, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The director shall issue a permit for any term, not exceeding five years, if the director determines this to be protective of [public] human health and the environment[.]; provided that the permit may be subject to conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not to exceed five years if the director determines this to be protective of [public] human health and the environment. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director’s own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; [or]
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to [public] human health [and] or the environment.

(d) No applicant for a modification or renewal of a permit shall be held in violation of [this chapter] the requirement to obtain a permit during the pendency of the applicant’s application so long as the applicant acts in compliance with the permit previously granted[, the application and all plans, specifications, and other information submitted as a part thereof].”

SECTION 6. Section 342L-5, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-5[]] Variances allowed.** Provisions under this chapter deemed more stringent than the federal rules established under Subtitle I of the federal Resource Conservation and Recovery Act, as [amended] added by the federal Hazardous and Solid Waste Amendments of 1984, may be varied by the department, when the variance results in an equivalent degree of [public] human health and environmental protection and does not present a greater danger to [public] human health [and] or the environment.”

SECTION 7. Section 342L-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever an application is approved, the department shall issue a variance authorizing the installation or operation of an underground storage tank or tank system in a manner deviating from full compliance with applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The [continuation of the function or operation involved in the] installation or operation of an underground storage tank or tank system occurring or proposed to occur by the granting of the variance [is protective of public] does not present a greater danger to human health [and] or the environment[.] than the installation or operation of what would have been allowed by the federal rules established under Subtitle I of the federal Resource Conservation and Recovery

Act, as added by the federal Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§6991-6991;

- (2) The installation or operation of an underground storage tank or tank system occurring or proposed to occur does not imminently and substantially endanger human health [and] or the environment or the public's safety; and
- (3) Compliance with the rules or standards from which variance is sought would produce serious financial hardship to the owner and operator."

SECTION 8. Section 342L-6, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed activity. Procedures for the circulation of public notices shall include at least the following:
  - (A) Notice shall be circulated within the geographical areas of the proposed activity; [such] this circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
  - (B) Notice shall be mailed to any person or group upon request; and
  - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons or groups may submit their written comments with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
- (3) The contents of public notice of applications for variances shall include at least the following:
  - (A) Name, address, and [phone] telephone number of the agency issuing the public notice;
  - (B) Name and address of each applicant and other involved parties including the landowner, facility owner, underground storage tank or tank system owner, facility operator, and underground storage tank or tank system operator;
  - (C) Brief description of all applicant activities or operations [which] that result in the activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each underground storage tank[; or tank system];
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) [of this subsection] and any other

- means by which interested persons may influence or comment upon those determinations; and
- (F) Address and [phone] telephone number of the state agency or other location at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed activity, or other appropriate area, at the discretion of the director."

SECTION 9. Section 342L-7, Hawaii Revised Statutes, is amended to read as follows:

"[§342L-7] Investigations; inspections; corrective action.] Authority to obtain information and data, inspect, and require and conduct activities; penalties for disclosure. (a) For the purpose of developing or assisting in the development of any rule, conducting any study, taking any [corrective] release response action, or enforcing this chapter, any owner or operator of an underground storage tank[,] or tank system, and any person involved in response actions relating to any releases from these tanks or tank systems, upon the request of any duly authorized representative of the department, shall [furnish]:

- (1) Furnish information relating to [such] the tanks[,] or tank systems, including tank equipment and contents[; conduct] and any response actions relating to releases from the tanks or tank systems;
- (2) Conduct monitoring or testing; and [permit]
- (3) Permit the designated representative at all reasonable times to have access to, and to copy all records relating to [such] the tanks[.] or tank systems.

(b) For the purpose of developing or assisting in the development of any rule, conducting any study, investigating an actual or suspected release, monitoring for compliance or noncompliance with this chapter, any rule or standard adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, taking [corrective] release response action, or enforcing this chapter, any duly authorized representative of the department [is authorized:] may:

- (1) [To enter] Enter at reasonable times any establishment or place;
- (2) [To inspect] Inspect and obtain samples from any person of any regulated substances contained in any underground storage tank[;] or tank system;
- (3) [To conduct] Conduct monitoring or testing of the tanks[,] or tank systems, associated equipment, contents, or [surrounding] soils, air, surface water, or groundwater; and
- (4) [To take corrective] Take release response action.

Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, or information obtained from any persons under this section shall be available to the public except as provided in this subsection. Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department representative has access under this section would divulge [commercial or financial] information entitled to protection under [state or federal law,] chapter 92F, the department shall consider [such] the information or a particular portion thereof to be confidential. No such confidential information secured pursuant to this section

by any official or employee of the department within the scope and cause of the official's or employee's employment in the prevention, control, or abatement of releases from underground storage tanks or tank systems shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including local government entities, who have been charged with carrying out this chapter or Subtitle I of the federal Resource Conservation and Recovery Act, or when relevant in any proceeding under this chapter.

(d) Any representative of the department, acquiring confidential information pursuant to this section, who intentionally or knowingly divulges or discloses information, upon conviction, shall be fined not more than \$5,000 or be imprisoned for a period not to exceed one year, or both, unless the disclosure is authorized in this chapter or ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter."

SECTION 10. Section 342L-8, Hawaii Revised Statutes, is amended to read as follows:

**"§342L-8 Enforcement.** (a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter the director[:]

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (3) May impose penalties as provided in section 342L-10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted

pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.

(4) May impose penalties as provided in section 342L-10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that any person has violated an accepted schedule or an order issued pursuant to this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.] may do one or more of the following:

(1) Issue an order assessing a civil penalty for any past or current violation;

(2) Issue an order requiring compliance immediately or within a specified time period; or

(3) Commence a civil action in the circuit court in the circuit in which the violation occurred, the person resides, or the principal place of business exists for appropriate relief, including a temporary, preliminary, or permanent injunction.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit or variance issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any penalties assessed in the order shall be in accordance with sections 342L-10 and 342L-11.

[(d)] (c) Any order issued under this chapter shall become final, unless not later than twenty days after the [notice of] order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the [notice of penalty] order is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

[(e)] (d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If, after a hearing held pursuant to this section, the director finds that [a violation or] one or more violations have occurred[,] or are occurring, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or release involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order [or penalty contained in a notice], the director finds that no violation has occurred or is occurring, the director shall rescind the order [or penalty]. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or release.

[(f)] (e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil

action in the name of the State to recover the civil penalty [which shall be a government realization].

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

[g] (f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

(g) All penalties shall be deposited to the credit of the leaking underground storage tank fund established in section 342L-51."

SECTION 11. Section 342L-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to [the public] human health and safety [and] or the environment is or will be caused by a release, or by any action taken in response to a release from an underground storage tank or tank system, or by the installation or operation of an underground storage tank[,] or tank system, which requires immediate action, the director, with the approval of the governor and without [public] any hearing, may order any person causing or contributing to the peril to immediately reduce or stop [such] the release or activity or the director may take any and all other actions as may be necessary. [Such] The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director."

SECTION 12. Section 342L-10, Hawaii Revised Statutes, is amended to read as follows:

**"§342L-10 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than [\$10,000] \$25,000 for each individual tank for each day of each violation. Each day of each violation shall constitute a separate offense. [Any] In addition, any person who fails to comply with an order issued under this chapter within the time specified in the order shall be fined not more than \$25,000 for each day of [continued] noncompliance[.] with the order. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who [denies,]:

- (1) Denies, obstructs, or hampers the entrance [and], inspection, or conduct of release response activities by any duly authorized [officer or employee] representative of the department [of] at any building, place, site, facility, vehicle, or structure that the [officer or employee] representative is authorized to enter, [and] inspect, or at which the representative is authorized to conduct release response activities; or
- (2) Fails to provide information requested by the representative as required under section 342L-7;

shall be fined not more than \$500 per day of denial, obstruction, [or] hindrance[.], or failure. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

## ACT 259

SECTION 13. Section 342L-11, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-11] Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director [is authorized to] may impose by order the penalties specified in section [342L-10(a).] 342L-10. Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of [corrective action.] compliance. It [is] shall be presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary [is] shall be on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held, or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.”

SECTION 14. Section 342L-12, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-12] Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent or stop any violation of this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court [shall have power to] may grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 15. Section 342L-13, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-13] Appeal.** If any party is aggrieved by [the decision] an order of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of [a cease and desist] an order [will] shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.”

SECTION 16. Section 342L-14, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-14] Fees.** [The] Notwithstanding section 342L-36.5 to the contrary, the director may establish reasonable fees for the registration of underground storage tanks[,] or tank systems, for the issuance, renewal, and modification of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances including inspections and necessary site visits (not including court costs or other costs associated with any formal enforcement action), and for the review, evaluation, and approval of plans [submitted] regarding [corrective action and site visit] release response activities. The fees shall be deposited to the credit of the general fund.”

SECTION 17. Section 342L-15, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-15[]] Public records; confidential information; penalties for disclosure.** Reports and records submitted to the department by any person on the ownership, installation, or operation of underground storage tanks or tank systems shall be made available for inspection by the public during established office hours [unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section 342L-7 who knowingly and wilfully divulges or discloses information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall, upon conviction, be fined not more than \$5,000 or shall be imprisoned not to exceed one year, or both.] except as provided in this section. Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department's representative has access to under this section would divulge information entitled to protection under chapter 92F, the department shall consider the information or a particular portion thereof to be confidential. No confidential information secured pursuant to this section by any official or employee of the department within the scope of and cause of the official's or employee's employment in the prevention, control, or abatement of releases from underground storage tanks or tank systems, shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including county government entities, who have been charged with carrying out this chapter or Subtitle I of the federal Resource Conservation and Recovery Act, or when relevant in any proceeding under this chapter.”

SECTION 18. Section 342L-16, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-16[]] Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section [342L-15.] 342L-7(d).”

SECTION 19. Section 342L-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any county may adopt ordinances and rules governing any matter relating to underground storage tanks [which] or tank systems that are [not] governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to underground storage tanks or tank systems shall be void and of no effect [as to any matter regulated by] if inconsistent with a rule of the department upon the adoption thereof.”

SECTION 20. Section 342L-30, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-30[]] Notification requirements.** (a) [The] Except as provided in subsection (c), the owner of an existing underground storage tank or existing

tank system shall notify the department by December 31, 1989, of the existence of [such] the tank or tank system and specify the age, size, type, location, and uses of [such] the tank[.] or tank system. Notice shall be made on an approved form of notice provided by the department.

(b) The owner of an existing underground storage<sup>1</sup> tank or existing tank system taken out of operation between January 1, 1974, and May 19, 1986, shall notify the department by December 31, 1989, of the existence of the tank[,] or tank system, unless the [owner knows the] tank or tank system [subsequently] was removed from the ground[.] prior to May 8, 1986. Notices shall include, to the extent known to the owner, at least the following specifications:

- (1) The date the tank or tank system was taken out of operation;
- (2) The age of the tank or tank system on the date taken out of operation;
- (3) The size, type, and location of the tank[,] or tank system; and
- (4) The type and quantity of substances left stored in the tank or tank system on the date taken out of operation.

(c) Any owner who brings into use an underground storage tank or tank system after May 19, 1986, shall notify the department within thirty days after the installation of the tank[,] or tank system, specifying the age, size, type, location, and uses of the tank[,] or tank system.

(d) Subsections (a) to (c) shall not apply to tanks or tank systems for which notice was given pursuant to section 103(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-516, as amended.

(e) Any person who acquired ownership of an underground storage tank or tank system after December 31, 1989, shall notify the department within thirty days of the effective date of this Act whether or not the person still owns the underground storage tank or tank system. Any person who acquires ownership of an underground storage tank or tank system after the effective date of this Act shall notify the department within thirty days of acquiring ownership. If there is a change of operator of an underground storage tank or tank system, the owner shall notify the department within thirty days of the change of operator. Notification of any of the above changes in the owner or operator of an underground storage tank or tank system shall be made on a form provided by the department.

[(e)] (f) The owner of an underground storage tank or tank system taken out of operation on or before January 1, 1974, [is] shall not be required to notify the department.

[(f)] (g) Any person who sells a tank or tank system intended to be used as an underground storage tank or tank system shall notify the purchaser of [such] the tank or tank system of the owner's notification requirements established under this section.

[(g)] (h) Beginning on June 7, 1989, and for eighteen months thereafter, any person who deposits regulated substances into an underground storage tank or tank system shall notify the owner of [such] the tank or tank system of the owner's notification requirements established under this section.

(i) Any failure to comply with the requirements of this section, including any submission of false information, shall be subject to the penalties set forth in sections 342L-10 and 342L-11 for each day of each violation."

SECTION 21. Section 342L-31, Hawaii Revised Statutes, is amended to read as follows:

"[§342L-31] Tank permit requirements and transfer of

**permit.** (a) No person shall install or operate an underground storage tank or tank system brought into use after the effective date of the [new] tank or tank system standards established in section 342L-32 unless a permit is obtained from the department and upon payment of a fee.

(b) No permit to own or operate an underground storage tank or tank system shall be transferred to any person without prior written approval of the director.

[(b)] (c) The department shall prepare a form [which provides for the acceptance of] for an application to request the director's approval to transfer a permit of ownership or operation of an underground storage tank or tank system. A person wishing to accept the obligations of a transferred permit [by any person who is to assume the ownership of] to own or operate an underground storage tank or tank system from the previous owner[.] That person shall complete the form accepting the obligations of the permit and submit the completed form within thirty days after the date of transfer of ownership of the underground storage tank.] or operator shall complete an application form and submit the form to the director. The director shall review the application and issue an approval of the transfer if the applicant proves to the satisfaction of the director that the applicant is able to comply with the conditions of the permit.”

SECTION 22. Section 342L-32, Hawaii Revised Statutes, is amended to read as follows:

**[[]§342L-32[] New tank standards.] Standards for tanks and tank systems.** (a) The department shall adopt [performance] standards under chapter 91 which shall apply to underground storage tanks [brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.] and tank systems.

(b) [New tank construction] Underground storage tank and tank system standards shall include, but are not limited to the following specifications:

- (1) The tank [will] and tank system shall be designed, constructed, installed, upgraded, maintained, repaired, and operated to prevent releases of the stored regulated substances [due to corrosion or structural failure] for the operational life of the tank[;] or tank system;
- (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
- (3) (2) The material used in the construction or lining of the tank or tank system is compatible with the substance to be stored[.]; and
- (3) Existing underground storage tanks or existing tank systems shall be replaced or upgraded not later than December 22, 1998, to prevent releases for their operating life.”

SECTION 23. Section 342L-33, Hawaii Revised Statutes, is amended to read as follows:

**[[]§342L-33[] Leak] Release detection [and record maintenance].**

[(a) The department, pursuant to chapter 91, shall adopt [under chapter 91] standards of performance for maintaining a [leak] release detection system, [an]

including, but not limited to, inventory control [system, and tank], tightness testing [system, or a comparable system or method], and any other methods designed to identify releases from the underground storage tank or tank system in a manner consistent with the protection of human health and the environment. [In addition, the department shall adopt requirements for owners and operators to maintain records of any such monitoring, leak detection, inventory control, and tank testing system.

(b) The requirements for the leak detection and record maintenance system shall include, but are not limited to:

- (1) Directing the owner or operator of an underground storage tank to keep accurate regulated substance inventory records for the purpose of detecting leaks. Records shall be kept for each tank on each day a regulated substance is added to or withdrawn from the tank and shall include, as a minimum, a record of the amount of stored regulated substance withdrawn and received and the amount of stored regulated substance in the tank.
- (2) Inventory measurements shall be made by gauge or gauge stick or by readout from an automatic monitoring system.
- (3) Inventory records shall be maintained on a regular basis; provided that daily inventory records need not be maintained on those days when a tank is not used if such period does not exceed seven days.
- (4) Losses or gains from each day's inventory period shall be averaged for each five consecutive readings or once a week.
- (5) Records required to be maintained by the owners and operators, pursuant to this section, shall be retained for a minimum of two years.]"

SECTION 24. Section 342L-34, Hawaii Revised Statutes, is amended to read as follows:

"[[§342L-34]] Reporting of releases. The department, pursuant to chapter 91, shall adopt [under chapter 91] requirements for reporting [regarding] suspected or confirmed releases and [corrective] action taken in response to a suspected or confirmed release from an underground storage tank[.] or tank system."

SECTION 25. Section 342L-35, Hawaii Revised Statutes, is amended to read as follows:

"[[§342L-35]] Corrective action.] Response to suspected or confirmed releases. The department, pursuant to chapter 91, shall adopt [under chapter 91] requirements for investigating a suspected release and taking [corrective] action in response to a confirmed release from an underground storage tank or tank system, which [should] shall include at least the following:

- (1) Requirement that when a [leak] release is found, the substances in the tank or tank system be emptied if emptying the substances does not present a greater danger to [public] human health [and] or the environment;
- (2) Requirement for [the removal or] proper closure of the tank[,] or tank system, following the requirements established under section 342L-37, or repair and testing of the tank or tank system before placing it back into operation;
- (3) Requirement that the owner and operator of the [leaking] underground storage tank or tank system that had a release restore the

- environment to a condition and quality acceptable to the department; and
- (4) Requirement to [conduct public participation activities.] notify those members of the public directly affected by the release and the proposed response to the release."

SECTION 26. Section 342L-36, Hawaii Revised Statutes, is amended to read as follows:

**"[§342L-36] Financial responsibility.** (a) The department pursuant to chapter 91, shall adopt [under chapter 91] requirements for maintaining evidence of financial responsibility for taking [corrective] response action and compensating third parties for bodily injury and property damage caused by [sudden and nonsudden] any accidental releases arising from operating an underground storage tank[,] or tank system. Evidence of financial responsibility may be established [by rule] by any one, or any combination of the following: insurance, [corporate guarantees,] guarantee, surety bond, letter of credit, [or] qualification as a [self insurer,] self-insurer, or any other method satisfactory to the department. In prescribing requirements under this subsection, the department may specify policy or other contractual terms, conditions, or defenses [which] that are necessary or acceptable to establish evidence of financial responsibility.

(b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the [guarantor providing the evidence of financial responsibility.] provider of financial assurance. In the case of action pursuant to this subsection, the [guarantor is entitled to] provider of financial assurance may invoke all rights and defenses [which] that would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the [guarantor] provider of financial assurance if an action had been brought against the [guarantor] provider of financial assurance by the owner or operator.

(c) The total liability of a [guarantor] provider of financial assurance shall be limited to the aggregate amount [which] that the [guarantor] provider of financial assurance has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a [guarantor] provider of financial assurance to [its] the owner or operator, including, but not limited to, the liability of the [guarantor] provider of financial assurance for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or [either] other applicable law.

(d) The department may establish the amount of required coverage for particular classes or categories of underground storage tanks or tank systems containing petroleum, which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(e) The department may establish amounts lower than the amounts required by subsection (d) for underground storage tanks or tank systems containing petroleum, which are at facilities not engaged in petroleum production,

refining, or marketing, and which are not used to handle substantial quantities of petroleum.

(f) The department may consider the following factors in establishing the amount of coverage:

- (1) The size, type, location, storage, and handling capacity of underground storage tanks or tank systems in the class or category and the volume of petroleum handled by [such] the tanks[.] or tank systems;
- (2) The likelihood of release from underground storage tanks or tank systems in the class or category[.];
- (3) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry[.];
- (4) The availability of methods of financial responsibility in amounts greater than the amount established by this section[.]; and
- (5) Such other factors as the department deems pertinent.

(g) The department may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or tank systems if the department determines that methods of financial responsibility satisfying the requirements of this section are not generally available for underground storage tanks or tank systems in that class or category, and:

- (1) Steps are being taken to form a risk retention group for [such] the class of tanks[.] or tank systems; or
- (2) The State is taking steps to establish a fund to be implemented by the department or local agencies and departments for [corrective] response action and compensation for [such] the class of tanks[.] or tank systems.

The initial suspension by the department pursuant to this subsection may be for a period not to exceed [180] one hundred eighty days. A determination to continue suspension may be made with respect to the same class or category at the end of [such] the period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the department finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund described in paragraph (2)."

SECTION 27. Section 342L-36.5, Hawaii Revised Statutes, is amended to read as follows:

**"§342L-36.5 Underground storage tank fees.** (a) The department shall collect underground storage tank fees that, after the deduction of administrative expenses necessary for the implementation of this chapter, are to be placed into a separate account of the Hawaii capital loan revolving fund for the purpose of making loans to businesses to replace, upgrade, close, take remedial action relating to, and clean up releases from, their underground storage tanks.

(b) The department may deduct up to \$50,000 of fees collected to educate tank owners as to the requirements of this chapter.

(c) The department of business, economic development, and tourism may deduct up to \$100,000 of these funds to identify available state-owned lands on the islands of Oahu, Hawaii, Maui, and Kauai for the purpose of remediating contaminated soils.

[((b)) (d)] The director may suspend the collection of fees at any time<sup>2</sup> the director determines[, on both actuarial and environmental grounds, that the

account has a sufficient balance to meet actual and projected loans.] that the fund has met its purpose.

[(c)] (e) Beginning October 1, [1991,] 1992, every owner who has complied with the notification requirements of section 342L-30 and whose tank is [currently in use,] in operation, shall pay a registration fee of \$250 to the director for each petroleum underground storage tank[.] owned and in operation. Every year thereafter, every owner who has complied with the notification requirements of section 342L-30 and whose tank is [currently in use,] in operation, shall pay an annual registration fee of \$250 to the director for each petroleum underground storage tank[.] owned and in operation.

[The director may increase or decrease the amount of the fee pursuant to rules adopted under chapter 91 in order to maintain an adequate level in the account.]

[(d)] The department may adopt rules pursuant to chapter 91 to establish the conditions and eligibility requirements related to tank replacement, upgrade, closure, and remediation, and the clean up of releases, necessary for persons to utilize the Hawaii capital loan program established under chapter 210.

(e) As used in this section:

“Account” means the separate account established in the Hawaii capital loan revolving fund that, after deduction for administrative expenses needed for the implementation of this chapter, is to be used for the purpose of making loans to businesses replacing, upgrading, closing, taking remedial action relating to, or cleaning up releases from, their underground storage tanks.

“Hawaii capital loan revolving fund” means the revolving fund established pursuant to section 210-3.]”

SECTION 28. Section 342L-37, Hawaii Revised Statutes, is amended to read as follows:

**“[§342L-37[]] Underground storage tank and tank system change in service and closure requirements. Nothing in this chapter shall be construed to relieve the owners and operators of underground storage tanks and tank systems that have been removed from the ground of any responsibility to comply with the release response provisions in this chapter and any other requirements applicable to these owners and operators prior to the removal of the underground storage tanks or tank systems. The department, pursuant to chapter 91, shall adopt [under chapter 91] requirements for the change in service and temporary or permanent closure of underground storage tanks[,] and tank systems, including [the removal and disposal of underground tanks and pipings] requirements to prevent future releases of regulated substances into the environment.”**

SECTION 29. Section 342L-50, Hawaii Revised Statutes, is amended:

1. By amending the definition of “exposure assessment” to read as follows:

““Exposure assessment” means a determination regarding the extent of [an individual’s] exposure [to,] of, or potential for exposure [to,] of, individuals to petroleum from a release from an underground storage tank[.] or tank system. This assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil

ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, [a comparison] an analysis of expected human exposure levels with respect to [the] short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for [such] the contaminants.”

2. By amending the definition of “facility” to read as follows:

““Facility” means, with respect to any owner or operator, a single parcel of property (or any contiguous or adjacent property), including improvements, in or upon which all underground storage tanks or tank systems used for the storage of petroleum [which] that are owned or operated by [such] the owner or operator [and located on a single parcel of property (or on any contiguous or adjacent property).] are located.”

3. By amending the definition of “owner” to read as follows:

““Owner” means any person who falls within the definition of owner contained within part I [of this chapter who] but excluding a person who does not participate in the management of an underground storage tank or tank system and is otherwise not engaged in petroleum production, refining, and marketing[,] but holds indicia of ownership primarily to protect a security interest in the tank[.] or tank system.”

SECTION 30. Section 342L-51, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys from the fund shall be expended by the department for the sole purpose of [corrective action activities in response] responding to petroleum [leaks] releases from underground storage tanks or tank systems in a manner consistent with this chapter.”

SECTION 31. Section 342L-52, Hawaii Revised Statutes, is amended to read as follows:

“[[§342L-52]] Corrective action.] Response to suspected or confirmed releases. (a) In the event of a petroleum release from an underground storage tank[,] or tank system, which occurs prior to the adoption of rules for [corrective action] response to suspected or confirmed releases pursuant to section 342L-35, the department may:

- (1) Issue an order requiring the owner or operator of an underground storage tank or tank system to undertake [corrective] response action as is necessary to protect human health [and] or the environment and fixing a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director; or
- (2) Undertake [corrective] response action by itself or by contract as is necessary to protect human health [and] or the environment.

The department shall use moneys from the fund to pay for costs incurred in undertaking or compelling [corrective] a response action pursuant to this subsection.

The department shall assign priority in undertaking [corrective] response actions, pursuant to this subsection, to cases in which the department cannot identify, within the time necessary to protect human health [and] or the environment,

a solvent owner or operator of the tank[,] or tank system, or even if able to identify such a person, has cause to believe that the person cannot or will not properly undertake [corrective] a response action.

(b) In the event of a petroleum release from an underground storage tank or tank system, which occurs after the adoption of rules for [corrective action] response to suspected or confirmed releases pursuant to section 342L-35, the department may take all actions and issue such orders as are described in subsection (a), which are in conformity with [such] the rules[,]; provided[,] that[,] the department may undertake [corrective action] response actions with respect to any release of petroleum into the environment from an underground storage tank or tank system only if the department finds [such] the action to be necessary to protect human health [and] or the environment and one or more of the following conditions exists:

- (1) No person can be found, within [90] ninety days or such shorter period as may be necessary to protect human health [and] or the environment[,] who is:
  - (A) An owner or operator of the tank[;] or tank system;
  - (B) Subject to [such corrective] the response action rules; and
  - (C) Capable of carrying out [such corrective] the response action properly;
- (2) Prompt action by the department is required to protect human health [and] or the environment;
- (3) Anticipated costs of [corrective] the response action at a facility will exceed the amount of financial responsibility coverage required by the department and, considering the class[,] or category[, or] of [tanks] tank or tank system from which the release occurred [necessitate, in the opinion of], the director[,] determines that expenditures from the fund are necessary in order to assure effective [corrective] response action; or
- (4) The owner or operator [for] of the tank or tank system has failed or refused to comply with a federal order issued pursuant to [sections 9003 and 9006] either section 9003 or 9006 of the federal Resource Conservation and Recovery Act or with an order issued pursuant to this section or section 342L-8 [of this chapter] or 342L-9 to comply with the [corrective action] rules[.] on response to suspected or confirmed releases.

The department shall assign priority in undertaking [corrective] response actions pursuant to this subsection and in issuing orders requiring owners or operators to undertake [corrective] response actions[,] to those cases involving releases of petroleum from underground storage tanks [which] or tank systems that<sup>1</sup> pose the greatest threat to human health [and] or the environment.

(c) The department is authorized to issue orders to the owner or operator of an underground storage tank or tank system to comply with rules adopted under section 342L-35.

(d) [Corrective] Response actions undertaken by the department may include the temporary or permanent relocation of residents and the provision of alternative household water supplies.

(e) In connection with the performance of any [corrective] response action, the department may undertake an exposure assessment. [Corrective] A response action to abate immediate hazards or reduce exposure shall not be delayed in order to complete any exposure assessment. The costs of any such assessment may be deemed to have been incurred in undertaking the [corrective] response action.

(f) Except as provided in this subsection, in order to protect human life, at any facility whose owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established pursuant to section 342L-36, the department shall expend no moneys from the fund to [clean up] respond to releases at [such] the facility pursuant to subsections (a) and (b). At [such] these facilities the department may use the authority provided in this chapter to order [corrective] a response action to [clean up such] these releases. [However, the] The department may use moneys from the fund to take [corrective] a response action if necessary to protect human health at [such] these facilities and shall seek full recovery of the costs of all such actions. Nothing in this subsection shall prevent the department from taking [corrective] a response action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment."

SECTION 32. Section 342L-53, Hawaii Revised Statutes, is amended to read as follows:

"[§342L-53] **Cost recovery.** (a) Whenever costs have been incurred by the department in the undertaking of [corrective] a response action or enforcement action with respect to the release of petroleum from an underground storage tank[,] or tank system, the owner or operator of [such] the tank or tank system shall be liable to the federal government or the department for [such] these costs. The liability under this subsection shall be construed to be the standard of liability [which] that obtains under section 311 of the Federal Water Pollution Control Act.

(b) In seeking cost recovery, the department may consider the amount of financial responsibility required to be maintained pursuant to section 342L-36 and the factors considered in establishing the amount of financial responsibility pursuant to section 342L-36.

(c) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or tank system or from any person who may be liable for a release or threat of release under this section, to any other person, the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such an agreement for any liability under this section. Nothing in this chapter shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a [guarantor,] provider of financial assurance, has or would have, by reason of subrogation or otherwise against any person.

(d) Moneys collected by the department as part of the cost recovery efforts pursuant to this section shall be deposited in the leaking underground storage tank fund established in section 342L-51.

SECTION 33. Act 267, Session Laws of Hawaii 1991, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval; provided that this Act shall be repealed on January 1, [1993,] 1994; provided further that on January 1, [1993,] 1994, section 210-3 [and section 342L-36.5,] Hawaii Revised Statutes, [are] is reenacted in the form in which [they] it read on the day before the approval of this Act[.], provided further that on January 1, 1994, section 342L-36.5, Hawaii Revised Statutes, is repealed."

SECTION 34. Section 342L-11.5, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 342L-22, Hawaii Revised Statutes, is repealed.

SECTION 36. Amendment of conflicting laws. All Acts passed during this regular session of 1992, whether enacted before or after the passage of this Act, shall be amended to conform to this Act.

SECTION 37. 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 38. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 39. This Act shall take effect upon its approval; except that section 27 of this Act shall take effect on October 1, 1992.

(Approved June 18, 1992.)

Notes

1. Should be underscored.
2. Prior to amendment "that" appeared here.
3. Edited pursuant to HRS §23G-16.5.

ACT 260

H.B. NO. 3121

A Bill for an Act Relating to Criminal Injuries Compensation.

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

SECTION 1. Section 351-11, Hawaii Revised Statutes, is amended to read as follows:

**"§351-11 Criminal injuries compensation commission.** There shall be a criminal injuries compensation commission [that shall be] composed of three members [to be] appointed and [be] removable in the manner prescribed by section 26-34. [One member of the commission shall be an attorney who has been admitted to practice before the supreme court of the State for at least five years.] No officer or employee of the State or any [political subdivision thereof] county shall be eligible for appointment to the commission. The commission is placed within the department of public safety for administrative purposes."

SECTION 2. Section 351-12, Hawaii Revised Statutes, is amended to read as follows:

**"§351-12 Tenure and compensation of members.** (a) The term of office of each member of the [criminal injuries compensation] commission shall be four years or until the member's successor is appointed, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which

the member's predecessor was appointed[,] shall be appointed for the remainder of the term. Each member [of the commission] shall be eligible for reappointment, subject to section 26-34. A vacancy in the commission shall not affect its powers. If any member [of the commission] is unable to act because of absence, illness, or other sufficient cause, the governor may make a temporary appointment, and the appointee shall have all the powers [and duties of a] accorded the regular member [of the commission] for the period of the [appointee's] temporary appointment.

(b) Each member [of the commission] 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 commission] Members shall be paid [their] necessary traveling and subsistence expenses incurred in the discharge of their duties."

SECTION 3. Section 351-13, Hawaii Revised Statutes, is amended to read as follows:

**"§351-13 Powers and procedures of commission.** (a) Upon an application made to the criminal injuries compensation commission under this chapter, the commission shall fix a time and place for a hearing on 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 [the commission] it may deem advisable. Any two members shall constitute a quorum[.] but [in this case] the concurring vote of the two members shall be necessary to take any action. Any member [of the commission] may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have the same powers of subpoena and compulsion of attendance of witnesses and production of documents, and of examination of witnesses as [are conferred upon] a circuit court. Subpoenas shall be issued under the signature of the 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.

SECTION 4. Section 351-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The [criminal injuries compensation] commission [may], at any time, on its own motion [or on the application of any person aggrieved by an order or decision of the commission], may reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the findings of the commission. Any applicant aggrieved by an order or decision may request reconsideration; provided that, to be considered, the request shall be received by the commission within thirty days after service of a certified copy of the order or decision."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

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

(Approved June 18, 1992.)

**ACT 261**

H.B. NO. 3332

A Bill for an Act Relating to the Dispersal Review Council.

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

SECTION 1. Chapter 321E, Hawaii Revised Statutes, is repealed.

SECTION 2. All officers and employees whose functions are repealed by this Act shall be transferred to the state health planning and development agency.

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 transferred or appointed; and provided 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 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.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the dispersal review council shall be transferred to the state health planning and development agency.

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved June 18, 1992.)

A Bill for an Act Relating to the Rule Against Perpetuities.

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

SECTION 1. The purpose of this Act is to supersede the common law rule against perpetuities by installing a workable wait-and-see element, as formulated by the National Conference of Commissioners on Uniform State Laws.

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

**"CHAPTER  
UNIFORM STATUTORY RULE AGAINST PERPETUITIES**

**§ -1 Statutory rule against perpetuities.** (a) A nonvested property interest is invalid unless:

- (1) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
- (2) The interest either vests or terminates within ninety years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

- (1) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one years after the death of an individual then alive; or
- (2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

- (1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or
- (2) The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument either seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

- (1) The expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or
- (2) The expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;

that language is inoperative to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the specified lives.

**§ -2 When nonvested property interest or power of appointment created.** (a) Except as provided in subsections (b) and (c) and in section -4(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For the purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section -1(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. For the purposes of this chapter, a joint power with respect to community property under chapter 510 held by individuals married to each other is a power exercisable by one person alone.

(c) For the purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

**§ -3 Reformation.** Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by section -1(a)(2), (b)(2), or (c)(2) if:

- (1) A nonvested property interest or a power of appointment becomes invalid under section -1;
- (2) A class gift is not but might become invalid under section -1 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
- (3) A nonvested property interest that is not validated by section -1 (a)(1) can vest but not within ninety years after its creation.

**§ -4 Exclusions from statutory rule against perpetuities.** Section -1 shall not apply to:

- (1) A fiduciary's power to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
- (2) A discretionary power of a trustee to distribute principal before termination of a trust;
- (3) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;
- (4) A property interest in or a power of appointment with respect to a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses; or
- (5) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by any other applicable law.

**§ -5 Prospective application.** (a) Except as extended by subsection (b), this chapter applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this chapter. For the purposes of this section, a nonvested property interest or a power of appointment created

by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before the effective date of this chapter and is determined in a judicial proceeding, commenced on or after the effective date of this chapter, to violate this State's common law rule against perpetuities as that rule existed before the effective date of this chapter, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

**§ -6 Short title.** This chapter may be cited as the "Uniform Statutory Rule Against Perpetuities".

SECTION 3. Section 407-66, Hawaii Revised Statutes, is amended to read as follows:

**"§407-66 Savings or share accounts as legal investments and as security for bonds; multiple trust accounts.** Any personal representative, custodian, guardian, trustee, or other fiduciary, insurance company, business or manufacturing company, bank, escrow company, credit union, or other financial institution, and any charitable, educational, or eleemosynary corporation or organization, may invest funds held by [him or it] that person or organization without any court order, in savings or share accounts of any insured savings association under state supervision, or in accounts of any federal savings and loan association organized under federal law and under federal supervision, and these investments shall be considered legal investments. The investments may be made directly or through a trustee appointed by the entity under a trust agreement naming such entity as sole beneficiary thereunder. The entity may establish a trust and each trust established under a trust agreement authorized by this section shall be valid from the date of its establishment, provided that it does not violate the statutory rule against perpetuities[.] under chapter.

If a deposit of security is required for any purpose, legal investments under this section shall be acceptable as such deposit.

If a bond is required with security, the bond may be furnished, and the legal investments under this section in the amount of the bond, when deposited therewith, shall be acceptable as such security.

This section is supplemental to any law relating to legal investments for any person, corporation, or organization referred to in this section and to any law relating to the deposit of securities and the making or filing of bonds with security."

SECTION 4. Section 555-2, Hawaii Revised Statutes, is amended to read as follows:

**"§555-2 Trust not in violation of rule against perpetuities.** Any employees trust may continue for such time as may be necessary to accomplish the purposes for which it has been created and its income may be accumulated for such time as may be necessary to accomplish such purposes. No employees trust shall be deemed to be subject to or in violation of any principle of law against perpetuities under chapter or at common law, or restraints on alienation or perpetual accumulations or perpetual trusts.

The enactment of this chapter shall not in itself give rise to any implication that trusts of this nature have been subject to or in violation of any principle of law against perpetuities under chapter or at common law, or restraints on alienation or perpetual accumulations or perpetual trusts."

**SECTION 5.** This Act shall supersede the common law rule against perpetuities in this State and shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

**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 June 18, 1992.)

## ACT 263

H.B. NO. 3533

A Bill for an Act Relating to Public Contracts.

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

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

**"§103- Substandard work, disqualification of contractors.** The director of any department or the chairperson of any board or commission which lets State contracts may issue a written notice to any contractor, banning the contractor from receiving any State contracts for two years following the issuance of the notice if the director or chairperson determines in a hearing that the contractor has performed substandard work, including consistent failure to meet contract completion schedules, that disqualifies the contractor in advance as a responsible bidder for any State contract. The notice shall set forth the reasons for the director's or chairperson's decision and shall also inform the contractor that the contractor has a right to appeal the decision to the circuit courts for judicial review under the standard set forth in section 91-14(g) for contested cases. The appeal shall not act as a stay of the director's or chairperson's decision."

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

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

(Approved June 18, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 264

H.B. NO. 3843

A Bill for an Act Relating to the Regulation of Chlorofluorocarbons, Halons, and Other Synthetic Compounds that Destroy the Earth's Protective Ozone Layer.

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

SECTION 1. The legislature finds and declares that:

- (1) The stratospheric ozone layer shields the Earth's surface from dangerous ultraviolet radiation;
- (2) The release of ozone-depleting compounds, such as chlorofluorocarbons (CFCs) and halons, into the atmosphere is responsible for a breakdown of the ozone layer, not only in the polar regions and the mid-latitudes, but also over Hawaii and other subtropical regions;
- (3) A decrease in this stratospheric defense shield increases the exposure of humans and other organisms to dangerous doses of ultraviolet radiation, causing an increased risk of skin cancer, cataracts—the leading cause of blindness in this country—suppression of the human immune system, reduction of photosynthesis in food crops, and declines in oceanic phytoplankton productivity. Increased exposure to ultraviolet radiation could severely affect Hawaii's sun-oriented visitor industry, raise the State's already high health and insurance costs, damage crop productivity, and cause declines in regional fishery production;
- (4) The Montreal Protocol on Substances that Deplete the Ozone Layer, an international agreement in force since January 1989, called for cutting CFC emissions in half (based on 1986 production) by 1996, and freezing the production of halons by 1992. Worse than predicted ozone layers depletion measurements reported during meetings in London in June 1990, led to a revised agreement for a complete and total phase-out of CFCs and halons not later than the year 2000;
- (5) The 1990 amendments to the Federal Clean Air Act likewise call for a phase-out of CFCs and halons by the year 2000. Additionally, section 606(a)(1) of the Clean Air Act requires this target date to be moved up in light of evidence that "a more stringent schedule may be necessary to protect human health and the environment". Despite recent scientific evidence that ozone layer depletion is occurring more rapidly than previously thought, and that a more rapid phase-out may be necessary, the United States Environmental Protection Agency has rejected petitions advocating such a schedule change;
- (6) The United States is the world's largest producer and user of ozone-depleting compounds, responsible for approximately thirty per cent of the world's total production, output, and consumption. Recognizing that present control measures at the federal level do not go far enough, it becomes the responsibility of state and local governments to take the initiative in eliminating the unnecessary release of ozone-depleting compounds by banning nonessential uses, recovering and recycling essential compounds until nonozone-depleting substitutes can be found;
- (7) On January 1, 1991, the State of Hawaii implemented the nation's first ozone layer protection law designed to regulate the release of CFCs into the atmosphere. Act 77, Session Laws of Hawaii 1989, as

- amended by Act 316, Session Laws of Hawaii 1990, prohibits over-the-counter sales of CFC refrigerants in containers smaller than fifteen pounds, and requires the use of refrigerant recovery and recycling equipment when making repairs to air conditioners;
- (8) The State recognizes and supports all international and federal regulations designed to prevent further depletion of the ozone layer. The State also recognizes that, until international and federal regulations are fully implemented, additional unnecessary releases of ozone-depleting compounds present an unacceptable hazard to the long-term health, safety, and welfare of the general public;
  - (9) Measures adopted by the State to protect the stratospheric ozone layer have, to date, focused on CFCs. The State, however, recognizes that halons also pose a significant threat to the ozone layer because they contain bromine, a significantly more potent ozone depleter than the chlorine in CFCs. Halon-1211 is three times more destructive to ozone than CFC-11 and CFC-12, while Halon-1301 is 10 times more destructive than either CFC-11 or CFC-12;
  - (10) The State considers the testing and use of portable halon fire extinguishers to be an unnecessary release of ozone-depleting compounds. Adequate, thoroughly tested, nonozone-depleting substitutes for these halons are currently available; and
  - (11) To protect the environment and the health, safety, and welfare of its citizens, the State intends to take whatever action it can to significantly reduce the unnecessary release of halons and other ozone-depleting chemicals into the Earth's atmosphere.

## SECTION 2. Section 342C-1, Hawaii Revised Statutes, is amended by:

1. Adding five new definitions to be appropriately inserted and to read as follows:

“Director” means the director of health.

“Halon” means any fully halogenated carbon compound containing bromine, chlorine, or fluorine, including, without limitation, those compounds known as Halon-1301, Halon-1211, and Halon-2402.

“Ozone-depleting compound” means any chlorofluorocarbon or halon, including those compounds known as methyl chloroform and carbon tetrachloride, or any other compound designated by the United States Environmental Protection Agency as being an ozone-depleting compound pursuant to Title 40, Part 82, Code of Federal Regulations, or any other compound designated by the department as being an ozone-depleting compound.

“Person” includes any individual, firm, association, partnership, or corporation, whether domestic or foreign, whether acting as a principal, agent, employee, or otherwise, and includes any governmental entity or charitable organization.

“Portable” means capable of being carried in hand by one individual.”

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

“Chlorofluorocarbon” or “CFC” means any member of the [chlorofluorocarbon chemicals] family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, [CFC-112,] CFC-14, CFC-113, CFC-114, [and] CFC-115[. The terms “chlorofluorocarbon” and “CFC” do not include any hydrofluorocarbon (“HFC”)]

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or hydrochlorofluorocarbon ("HCFC") compounds], CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds."

SECTION 3. Section 342C-2, Hawaii Revised Statutes, is amended to read as follows:

"[§342C-2] **Prohibited acts.** [(1)] (a) Effective January 1, 1991, no person in this State shall sell or offer for sale any CFC refrigerant suitable for use in air conditioners or mobile air conditioners in containers [which] that are smaller than fifteen pounds net.

[(2)] (b) No person in this State shall wilfully cause or allow CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.

(c) Effective July 1, 1993, no person in this State shall:

- (1) Purchase, distribute, manufacture, import, sell, or offer for sale, any portable fire extinguisher that contains a halon or other ozone-depleting compound; or
- (2) Repair, service, or perform maintenance on any portable fire extinguishing system or unit without using a reclamation system to recapture, recycle, or properly dispose of unspent halons or other ozone-depleting compounds.

Exempted from this prohibition is the sale of portable halon fire extinguishers for use in aircraft, which may be sold to purchasing agents of airline companies, or to private individuals upon presentation of a pilots license."

SECTION 4. Section 342C-5, Hawaii Revised Statutes, is amended to read as follows:

"[§342C-5] **Penalties.** (a) Any person who violates the provisions of this chapter pertaining to ozone layer protection or any rule adopted by the department pursuant to this chapter shall be fined not more than [\$100] \$1000 for each separate offense.

(b) Each unit of CFC refrigerant sold or offered for sale, and each wilful release of CFCs into the air, shall constitute a separate offense.

(c) Each portable fire extinguisher, containing a halon or other ozone-depleting compound, that is purchased, distributed, manufactured, imported, sold, or offered for sale, shall constitute a separate offense.

(d) Each portable fire extinguishing system or unit that is repaired, serviced, or upon which maintenance is performed, without using a reclamation system to recapture, recycle, or properly dispose of unspent halons or other ozone-depleting compounds, shall constitute a separate offense.

(e) Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action."

SECTION 5. Section 437B-1, Hawaii Revised Statutes, is amended by:

1. Adding a new definition to be appropriately designated and to read as follows:

**“‘Hydrochlorofluorocarbon’ or ‘HCFC’ means any member of the family of substances containing hydrogen, carbon, fluorine, and chlorine, including, without limitation, those compounds known as HCFC-22 and HCFC-123, and any combination or mixture containing any of these hydrochlorofluorocarbon compounds.”**

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

**“‘Chlorofluorocarbon’ or ‘CFC’ means any member of the [chlorofluorocarbon chemicals] family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, [CFC-112,] CFC-14, CFC-113, CFC-114, [and] CFC-115[. The term “CFC” does not include any hydrofluorocarbon (“HFC”) or hydrochlorofluorocarbon (“HCFC”) compounds]., CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds.”**

3. Amending the definition of “refrigerant recovery and recycling equipment” to read as follows:

**“‘Refrigerant recovery and recycling equipment’ means a device used to recover and to purify CFCs[.] for later reuse.”**

SECTION 6. Section 437B-11, Hawaii Revised Statutes, is amended to read as follows:

**“§437B-11 Prohibited practices.** The following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 437B-12:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring the customer's signature, as soon as the customer signs the document;
- (4) Any other conduct which constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or rules adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted practices or workmanship;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other

- than stated on the registration except that mobile repair facilities may be permitted if the registration so indicates;
- (11) Rebuilding or restoring of rebuilt vehicles as defined in section 286-2 in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year;
- (12) Subcontracting, recommending, or referring motor vehicle repair work to, or in any way assisting, a motor vehicle repair dealer or mechanic whose registration or certification is not in full compliance with this chapter;
- (13) Failure to directly supervise a motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper; [and]
- (14) Servicing mobile air conditioners without using refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated or was in use by the motor vehicle repair industry prior to December 31, 1989[.];
- (15) Performing service on any motor vehicle or mobile air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated; and
- (16) Violating chapter 342C."

SECTION 7. Section 437B-12, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- "(f) Each [mobile]:
- (1) Mobile air conditioner serviced without using refrigerant recovery and recycling equipment[,];
- (2) Motor vehicle or mobile air conditioner serviced after January 1, 1994, without successful completion of an appropriate training course dealing with the recovery and recycling of CFC and HCFC refrigerants[;<sup>1</sup> and each instance of wilfully causing or allowing CFCs to be released into the air from any source or process regulated under this chapter, other than through common use of a product or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules,]; and<sup>2</sup>
- (3) Violation of chapter 342C; constitutes a separate offense for which fines may be imposed under subsection (b).<sup>3</sup>"

SECTION 8. Section 444-1, Hawaii Revised Statutes, is amended by:

1. Adding a new definition to be appropriately designated and to read as follows:

"Hydrochlorofluorocarbon" or "HCFC" means any member of the family of substances containing hydrogen, carbon, fluorine, and chlorine, including, without limitation, those compounds known as HCFC-22 and HCFC-123 and any combination or mixture containing any of three<sup>1</sup> hydrochlorofluorocarbon compounds."

## 2. Amending the definition of "CFC" to read as follows:

**"[0](9)[1]** "Chlorofluorocarbon" or "CFC" means any member of the [chlorofluorocarbon chemicals] family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, [CFC-112,] CFC-14, CFC-113, CFC-114, [and] CFC-115[. The term "CFC" does not include any hydrofluorocarbon ("HFC") or hydrochlorofluorocarbon ("HCFC") compounds.] CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds."

SECTION 9. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**"§444-17 Revocation, suspension, and renewal of licenses.** The contractors license board may revoke any license issued [hereunder,] pursuant to this section, or suspend the right of [the] a licensee to use [such licenses,] a license, or refuse to renew [any such] a license for any of the following causes:

- (1) Any dishonest [or], fraudulent, or deceitful act as a contractor [which] that causes a substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with [such] the plans and specifications;
- (6) Wilful violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule [or regulation] of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of [such] those records by the board;
- (8) When the licensee being a copartnership or a joint venture permits any member or employee of [such] the copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of [such] the corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;

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- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if [such] the failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules [and regulations promulgated] adopted pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for [the] a licensee, the licensee's employer, or other person, any discount of [such] the debt or with intent to hinder, delay, or defraud the person to whom [such] the debt is due;
- (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (17) Knowingly entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
- (18) [Servicing an air conditioning unit] Performing service on a residential or commercial air conditioner, utilizing CFCs, without using refrigerant recovery and recycling equipment;
- [19) Disposing of an air conditioning unit utilizing CFCs without first removing the CFCs with refrigerant recovery and recycling equipment; and
- (20) Wilfully causing or allowing CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.]
- (19) Performing service on any air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated; and
- (20) Violating chapter 342C.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 10. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any licensee who violates, or whose employee violates, sections 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and \$300 to \$1000 for each subsequent offense[,];

provided that each unit serviced in violation of section 444-17(18) or [disposed of in violation of] section 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense.”

**SECTION 11.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 18, 1992.)

**Notes**

1. So in original.
2. “; and” should be underscored.
3. “Constitutes a separate offense for which fines may be imposed under subsection (b).” should not be underscored.

**ACT 265**

H.B. NO. 3937

A Bill for an Act Relating to Psychology.

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

**SECTION 1.** Chapter 465, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§465- Public service employment.** (a) Notwithstanding other provisions in this chapter the director of health may certify that there is an absence or shortage of licensed psychologists for government employment in a particular locality. Upon receiving certification of the absence or shortage, the board shall authorize the director to hire and retain persons currently in government employment to fill the absence or shortage; provided persons hired or retained have been duly licensed as a psychologist by written examination under the laws of another state or territory of the United States prior to 1977.

(b) Persons hired and retained under this section shall be exempt from the requirements of this chapter for no more than eighteen months while employed in a government position that the director continues to certify as subject to an absence or shortage.

(c) In no case shall persons hired and retained under the provisions of this section provide private patient care for a fee.”

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

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

(Approved June 18, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 266

S.B. NO. 2296

A Bill for an Act Relating to Motor Vehicle Advertising.

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

SECTION 1. Section 437-4, Hawaii Revised Statutes, is amended to read as follows:

**"§437-4 Advertising.** (a) Motor vehicle, availability of. No new or used motor vehicle dealer shall advertise or offer for sale or exchange in any newspaper, or through any other medium, any motor vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer, or authorized new car distributor of such automobile at the time the advertisement or offer is made.

(b) False advertising.

- (1) False advertising by a motor vehicle dealer shall be punishable as provided by statute or ordinance.
  - (2) [The term "wholesale" shall not be used in retail automobile advertising.] Terms that are deceptive or misleading regarding pricing shall not be used in any retail motor vehicle advertising, including but not limited to the following terms:
    - (A) "Wholesale;"
    - (B) "Free;"
    - (C) "Cost," as in but not limited to "at cost," "below cost," a certain number of dollars "off cost," or other terms of similar import;
    - (D) "Invoice price," "manufacturer's invoice price," "factory invoice price," "dealer invoice price," a certain number of dollars "over invoice," or other terms of similar import;
    - (E) "Fleet," in connection with defining prices or a sale;
    - (F) "Factory sale," "manufacturer's sale," "factory authorized sale," "factory outlet," or other terms of similar import; and
    - (G) "No credit rejected," "everyone financed," or terms of similar import.
  - (3) Any advertised product must be available on the stated terms from inventory, or by order with delivery within a reasonable period of time.
  - (4) Where a discount or savings is featured, whether by price comparison of dollars, fractions, percentages, or otherwise, the discount or savings must be calculated with reference to the manufacturer's suggested retail price in accordance with the Monroney Act, 15 U.S.C. §1231, et. seq., as amended.
  - (5) If the term "guarantee" or words of similar import are used in advertising, the guarantee, and all of its material terms, must be in writing and made part of the contract of sale of any motor vehicle sold by the seller during the period covered by the advertisement.
  - [3] (6)<sup>1</sup> No motor vehicle shall be advertised or offered for sale or exchange or offered to be purchased under the representation that it is a new motor vehicle, unless the motor vehicle conforms to the definition of "new motor vehicle" contained in section 437-1.1.
- (c) Procedure relative to advertising of a specific motor vehicle.

- (1) No new or used motor vehicle dealer shall advertise the sale of a specific motor vehicle without setting forth:
  - (A) The year;
  - (B) The make of the motor vehicle; and
  - (C) In the case of a used car, the license plate number of the motor vehicle.
- (2) If a motor vehicle has been advertised as set forth above and has been sold, the motor vehicle dealer shall have in the dealer's office a copy of the retail sale contract or a copy of a bill of sale for the motor vehicle which shows the buyer's signature thereon.
- (3) No new or used motor vehicle dealer shall in any advertisement designate the price of a motor vehicle without stating the make, the body type, and the manufacturer's classification or series of the motor vehicle, except that the classification or series need not be designated for used cars, and whether or not other charges in addition to the quoted price will be assessed; provided that the gross income tax and transfer of title fees may be excluded from such other charges.
- (d) Display of motor vehicle at unlicensed premises. All dealers or [salesmen] salespersons shall obtain prior approval of the board to display motor vehicles for advertising purposes at or on any place other than the licensed premises.
- (e) Advertising by [salesman] salesperson prohibited. No [salesman] salesperson shall advertise the sale of a motor vehicle in or through any advertising medium without designating the name of the [salesman's] salesperson's employer; provided that this provision shall not apply when a [salesman] salesperson advertises to dispose of a motor vehicle registered under the [salesman's] salesperson's name."

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

**SECTION 3.** This Act shall take effect sixty days after its approval.

(Approved June 18, 1992.)

**Note**

1. Paragraph redesignated.

**ACT 267**

S.B. NO. 2900

A Bill for an Act Relating to the Authority to Transfer Hawaii State Inmates.

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

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

**“§353- Transfer of inmates to out-of-state Hawaii correctional facilities.** (a) The director may transfer any Hawaii inmate to any out-of-state correctional facility that:

- (1) Has been developed on land owned or leased by the State utilizing public funds; and

## ACT 268

(2) Is under the direct supervision of department personnel and meets department standards for Hawaii correctional facilities.

(b) Notwithstanding any other provision to the contrary, the governor, with the assistance of the director, is authorized to negotiate with any appropriate out-of-state jurisdiction for the development of Hawaii correctional facilities to carry out the purpose of subsection (a); provided that any agreement negotiated pursuant to this subsection shall be subject to legislative approval by concurrent resolution in any regular or special session.”

SECTION 2. Section 353-16, Hawaii Revised Statutes, is amended to read as follows:

**“§353-16 Transfer of committed felon to federal institution.** The director[, with the approval of the governor, shall] may effect the transfer of a committed felon to any federal correctional institution for imprisonment, subsistence, care, and proper employment of such a felon.”

SECTION 3. Section 353-16.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 18, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 268

S.B. NO. 3098

A Bill for an Act Relating to Solar Energy.

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

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

**“§ - Placement of solar energy devices.** (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, term, provision, condition, codicil, or contract, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void.

(b) For the purposes of this section, “solar energy device” means any

identifiable facility, equipment, apparatus, or the like, including a photovoltaic cell application, that is applicable to a single family residential dwelling or town-house and makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for generation."

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

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

(Approved June 18, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 269**

S.B. NO. 3271

A Bill for an Act Relating to Unlicensed Activity in Contracting.

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

SECTION 1. Chapter 481C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§481C- Unlicensed contracting.** If the contract referred to in section 481C-1 is for activities subject to chapter 444 and the seller does not possess the license required by that chapter, the cancellation period to be provided in section 481C-2 shall be extended to thirty calendar days."

SECTION 2. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

**"§444-2 Exemptions.** This chapter shall not apply to:

- (1) [An officer or employee] Officers and employees of the United States, the State, or any political subdivision while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, taxes, and all other items is [less than \$100.] equal to or less than \$1,000. This exemption shall not apply in any case wherein a building permit is required regardless of the aggregate contract price, nor where the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts [less than \$100] equal to or less than \$1,000 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person's professional capacity;

- (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person's sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing work, which must be performed only by persons or entities licensed under this chapter or the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of the structure within one year after completion is *prima facie* evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1[; or]. Any owner or lessee of property found to have violated the provisions of this paragraph shall not be permitted to engage in any activities pursuant to this paragraph or to register under section 444-9.1 for a period of three years; or
- (8) Any copartnership or joint venture if all members thereof hold licenses issued under this chapter."

SECTION 3. Section 444-11, Hawaii Revised Statutes, is amended to read as follows:

**"§444-11 No license issued when.** (a) No license hereunder shall be issued to:

- (1) Any person unless the person has filed an application therefor;
- (2) Any person unless the person meets the experience requirements as prescribed in the board's rules; provided that the board may accept experience acquired on a self-employed basis if the experience can be verified;
- [2] (3) Any person who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing; provided that any person who during the six years prior to application has failed to satisfy an undisputed debt or a judgment relating to services or materials rendered in connection with operations as a contractor shall be presumed not to possess a good reputation for financial integrity;
- [3] (4) Any individual unless the individual is age eighteen years or more;
- [4] (5) Any copartnership or joint venture which is not exempt under section 444-2(8) unless the contracting business thereof is under the direct management of a partner or employee thereof, and unless such partner or employee holds an appropriate license;
- [5] (6) Any individual who is unable to qualify as a contractor or any corporation, unless the contracting business of such individual or corporation is under the direct management of an officer or employee thereof, and unless such officer or employee holds an appropriate license; or

[6] (7) Any person unless the person submits satisfactory proof to the contractors license 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] (b) The provisions of this section shall not apply when it is determined by the contractors license board that less than ten persons are qualified to perform the work in question. The provisions also shall not apply with respect to public works projects which require additional qualifications beyond those established by the licensing law, and which are deemed necessary and in the public interest by the contracting agency.

In addition, any license issued hereunder shall not be renewed if the licensee no longer meets any one or more of the foregoing qualifications."

SECTION 4. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**"§444-17 Revocation, suspension, and renewal of licenses.** The contractors license board may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:

- (1) Any dishonest or fraudulent or deceitful act as a contractor which causes [a] substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with such plans and specifications;
- (6) Wilful violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
- (8) When the licensee being a copartnership or a joint venture permits any member or employee of such copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of such corporation who does not hold a license to have the direct management of the contracting business thereof;

- (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules and regulations promulgated pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) 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 such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
- (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (17) [Knowingly entering] Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
- (18) Servicing an air conditioning unit utilizing CFCs without using refrigerant recovery and recycling equipment;
- (19) Disposing of an air conditioning unit utilizing CFCs without first removing the CFCs with refrigerant recovery and recycling equipment; and
- (20) Wilfully causing or allowing CFCs to be released into the air from any source or process regulated by this chapter, other than through common use of a product, or in the course of attempting to recover, recycle, or safely dispose of CFCs while exercising due care to prevent unnecessary releases of CFCs into the air to the extent practicable and in compliance with applicable rules.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 5. Section 444-23, Hawaii Revised Statutes, is amended to read as follows:

**"§444-23 Violation; penalties.** (a) Any licensee who contracts outside the appropriate scope of classification for which the licensee is licensed [under or who violates section 444-9.3 or 444-17(17)] shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Any licensee who violates section 444-9.3 or 444-17(17) shall be fined up to \$25,000 or up to the full amount of the contract price for each offense, whichever is greater.

[ (b) ] (c) Except as provided in [subsection] subsections (a)[,] and (b), any person who violates or fails to comply with any of the provisions of this chapter shall be fined not less than \$100 and not more than \$5,000 for each violation;

provided that persons who violate section 444-9 shall be fined \$500 or forty per cent of the total contract price, whichever is greater, for the first offense; \$1,000 or forty per cent of the total contract price, whichever is greater, for the second offense; and \$5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense.

[c] (d) Any licensee who violates, or whose employee violates, sections 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and \$300 to [\$1000] \$1,000 for each subsequent offense, provided that each unit serviced in violation of section 444-17(18) or disposed of in violation of section 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense."

**SECTION 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 18, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 270**

S.B. NO. 3278

A Bill for an Act Making an Appropriation to Review the Laws Relating to Financial Institutions.

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

**SECTION 1.** Act 128, Session Laws of Hawaii 1990, was enacted to update, clarify, and strengthen the State's regulatory framework applicable to financial institutions. In order to accomplish this end, a project including a study of the issues surrounding deregulation and its consequences, a review of national and local laws, and the drafting of revised laws applicable to financial institutions was undertaken at the direction of the legislature.

The sum of \$150,000 was originally appropriated for the comprehensive review of laws in fiscal year 1990-1991. Act 245, Session Laws of Hawaii 1991, appropriated an additional \$200,000 for fiscal year 1991-1992.

Since the second appropriation, there have been significant changes in federal law which affect Hawaii's financial institutions and may affect the laws of our State. These changes necessitate further research and analysis as part of the project.

Additionally, since the commencement of the project, there has been a steady flow of comments and suggestions regarding the proposed revisions of the laws from banks, savings and loan associations, trust companies, financial services loan companies, and credit unions requiring further review, analysis, and assimilation.

The legislature finds that the study and recodification of Hawaii's laws applicable to financial institutions will require more time to complete. Accordingly, the purpose of this Act is to generate funds to complete this project by providing statutory authority to collect funds from those institutions that will benefit and be impacted by this project. The authority to assess financial institutions and to

collect an assessment fee will be exercised by the commissioner of financial institutions in accordance with the formula established in this Act. The formula seeks to apportion the costs involved in this project based upon the asset size of particular institutions within particular industries.

**SECTION 2.** In order to complete the changes proposed to the code of financial institutions, mandated by Act 128, Session Laws of Hawaii 1990 and Act 245, Session Laws of Hawaii 1991, the commissioner of financial institutions is hereby authorized to assess and collect funds from the following financial institutions in the sums set forth below:

- (1) State-chartered banks. Based upon asset size as of June 30, 1991, banks with less than \$5,000,000,000 in assets shall pay an assessment of not more than \$7,500; banks with assets equal to or more than \$5,000,000,000 and less than \$10,000,000,000 shall pay an assessment of not more than \$15,000; and banks with assets equal to or more than \$10,000,000,000 shall pay an assessment fee of not more than \$22,500;
- (2) State-chartered savings and loan associations. Based upon asset size as of June 30, 1991, savings and loan associations with less than \$500,000,000 in assets shall pay an assessment of not more than \$2,000; and savings and loan associations with assets equal to or more than \$500,000,000 shall pay an assessment of not more than \$4,000;
- (3) Financial services loan companies. Based upon asset size as of June 30, 1991, financial services loan companies with less than \$5,000,000 in assets shall pay an assessment of not more than \$500; companies with assets equal to or more than \$5,000,000 and less than \$10,000,000 shall pay an assessment of not more than \$750; companies with assets equal to or more than \$10,000,000 and less than \$20,000,000 shall pay an assessment of not more than \$1,000; companies with assets equal to or more than \$20,000,000 and less than \$40,000,000 shall pay an assessment of not more than \$1,250; and companies with assets equal to or more than \$40,000,000 shall pay an assessment of not more than \$1,500;
- (4) State-chartered credit unions. Based upon asset size as of June 30, 1991, credit unions with assets equal to or more than \$10,000,000 and less than \$20,000,000 shall pay an assessment of not more than \$1,000; credit unions with assets equal to or more than \$20,000,000 but less than \$40,000,000 shall pay an assessment of not more than \$1,250; and credit unions with assets equal to or more than \$40,000,000 shall pay an assessment of not more than \$1,500; and
- (5) Trust companies. Based upon asset size as of June 30, 1991, a state-chartered trust company with assets equal to or greater than \$200,000 shall pay an assessment fee of not more than \$1,200.

The assessment formulas set forth in this section may be exercised and assessment fees collected on or after July 1, 1992 upon written notification by the commissioner to each financial institution; provided that fees may not be collected and these provisions shall be void if not exercised by the commissioner before October 1, 1992. In determining whether an assessment is necessary, the commissioner shall consider the consensus achieved among the various financial industries, the resources and time committed by the financial industries and the degree of cooperation and support for passage of the code of financial institutions.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,<sup>1</sup> or so much thereof as may be necessary for fiscal year 1992-1993, for the purpose of completing the code of financial institutions mandated by Act 128, Session Laws of Hawaii 1990 and Act 245, Session Laws of Hawaii 1991.

SECTION 4. The sums collected pursuant to and appropriated under this Act shall be expended by the department of commerce and consumer affairs for the purpose of completing the code of financial institutions mandated by Act 128, Session Laws of Hawaii 1990 and Act 245, Session Laws of Hawaii 1991. Funds collected and appropriated pursuant to this Act shall not revert to the general fund.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 1992.

(Approved June 18, 1992.)

**Note**

1. Item vetoed and initialed "JW".

**ACT 271**

S.B. NO. 2997

A Bill for an Act Making an Appropriation for Implementation of the Kahuku Flood Relief Master Plan.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$250,000, or 0.0080316 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 meets the need provided for by this Act.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1992-1993, to plan and design the implementation of the Kahuku flood relief master plan; provided that no funds shall be made available under this Act unless the city and county of Honolulu provides \$250,000, and the federal government provides \$500,000, for the purpose for which this sum is appropriated.

SECTION 3. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

**ACT 272**

S.B. NO. 3247

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.** 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 \$350,000 or .00112443 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** There is 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 1992-1993, for administrative costs associated with the development of a self-help affordable housing subdivision in Hana, Maui and for the design and construction of site improvements and infrastructure for a self-help affordable housing subdivision to be developed in Hana, Maui, on land donated by Hana ranch.

**SECTION 3.** The sums appropriated shall be expended by the housing finance and development corporation for the purposes of this Act.

**SECTION 4.** This Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

**ACT 273**

H.B. NO. 3303

A Bill for an Act Relating to the Investigating Powers of the Attorney General and the County Prosecuting Attorneys.

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

**SECTION 1.** Section 28-2.5, Hawaii Revised Statutes, is amended to read as follows:

**“§28-2.5 Investigations.** (a) The attorney general shall investigate alleged violations of the law when directed to do so by the governor, or when the attorney general determines that an investigation would be in the public interest.

(b) The attorney general, when conducting a civil, administrative, or criminal investigation, or the county prosecuting attorneys, when conducting a criminal investigation in their respective jurisdictions, may, subject to the privileges enjoyed by all witnesses in this State, subpoena witnesses, examine them under oath, and require the production of any books, papers, documents, or other objects designated therein or any other record however maintained, including those electronically stored, which are relevant or material to the investigation.

(c) A subpoena issued under subsection (b):

- (1) Shall state the name of the issuing authority and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein, and may also command the person to whom it is directed to produce books, papers, documents, or other objects specifically designated therein;
  - (2) May be served by any police officer or by any employee of the issuing authority who has the powers of a police officer at any place within the jurisdiction of the issuing authority;
  - (3) Shall require attendance of the witness only in the county wherein he is served with the subpoena or at such other place as is agreed upon by the witness and the issuing authority; provided that if the subpoena is served in a county other than that in which the witness resides or is employed or transacts his business in person, the issuing authority shall bear the expense of travel by the witness to and attendance at the place named in the subpoena to the same extent as provided by the rules of court; and
  - (4) Shall contain a short, plain statement of the recipient's rights and the procedure for enforcing and contesting the subpoena.
- (d) The issuing authority shall pay to a financial institution which is served a subpoena issued under this section a fee for reimbursement of such costs as are necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, documents, or other objects designated by the subpoena. Reimbursement shall be paid at the rate of \$15 per hour for research time and 50 cents per page for reproduction.

[(d)] (e) Upon application by the attorney general or the county prosecuting attorney who issued the subpoena, a circuit court of the county wherein the witness resides or is found may compel obedience to the subpoena; provided that the court, on motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or violate any privilege the witness may be entitled to exercise in a court proceeding.

[(e)] (f) Compliance with a subpoena issued pursuant to this section shall not give rise to a civil action for damages by an individual or entity as to whom testimony has been given or documents or other things provided in compliance with the subpoena."

**SECTION 2.** The legislative auditor shall conduct a study on the actual costs incurred by financial institutions in securing for, reproducing, or transporting books, papers, documents, or other objects in compliance with subpoenas issued pursuant to section 28-2.5, Hawaii Revised Statutes. The legislative auditor shall report its findings to the legislature twenty days prior to the convening of the 1994 legislative session.

**SECTION 3.** A financial institution complying with a request for information by the legislative auditor pursuant to this Act shall be immune from liability for damages resulting from its compliance.

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

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

(Approved June 19, 1992.)

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. The legislature finds that there is a need to improve and update the state's law relating to government procurement. Current findings in a study by the firm of Lallatin & Associates identified the need for immediate updating in the area of utilizing competitive sealed proposals as an alternate method to competitive sealed bidding. The legislature believes that the drafting of a comprehensive procurement code by the legislative reference bureau based on recommendations of the auditor will bring about economic benefits to the State as well as promote fair competition among all government suppliers.

The legislature further finds that requiring deposit instruments to be issued by appropriately insured banks, savings institutions, or credit unions ensures that bid deposits for public contracts are secure. The legislature further finds that, currently, only certificates of deposit, cashier's checks, or certified checks are accepted when drawn from federally insured banks or savings institutions. Similarly, only share certificates, cashier's checks, certified checks, or teller's checks are accepted from appropriately insured credit unions. The legislature believes that the addition of official bank checks to the list of acceptable bid instruments will serve to broaden the bid requirements for public contracts while maintaining the need for security.

SECTION 2. Section 102-6, Hawaii Revised Statutes, is amended to read as follows:

**“§102-6 Deposits of legal tender, etc., to accompany bid.** All bids shall be accompanied by a deposit of legal tender[,] or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check [on] accepted by, a bank [that is], savings institution, or credit union insured by the Federal Deposit Insurance Corporation or [by a share certificate, cashier's check, certified check, or teller's check issued by a credit union that is insured by] the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the [legal tender, certificate of] deposit[, share certificate, cashier's check, certified check, or teller's check] shall be in a sum not less than \$2,500 plus two per cent of the amount in excess of \$50,000.

A bid deposit for a bid requiring a deposit may be in the form of a surety bond conforming to the requirements of section 103-31.”

SECTION 3. Section 102-8, Hawaii Revised Statutes, is amended to read as follows:

**“§102-8 Bond may be substituted for deposits.** In lieu of the [deposit of legal tender, certificate of deposit, share certificate, cashier's check, certified check, or teller's check,] deposits prescribed by section 102-6, a bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal[,] and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety and doing business in the State under the laws of the United States

or of the State, if a foreign corporation, and under the laws of the State, if a Hawaii corporation, as surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract."

SECTION 4. Section 103-28, Hawaii Revised Statutes, is amended to read as follows:

**"§103-28 Deposits of legal tender, etc., to accompany bid.** [All] The comptroller shall determine on a case-by-case basis which bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check [on] accepted by, a bank [or on a], savings institution, or credit union insured by the Federal Deposit Insurance Corporation[,] or [by a share certificate, cashier's check, certified check, or teller's check issued by a credit union insured by] the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the [legal tender, certificate of] deposit[, share certificate, cashier's check, certified check, or teller's check] shall be in a sum not less than \$2,500, plus two per cent of the amount in excess of \$50,000. Notwithstanding the foregoing, in solicitations for price-term, open-end, and requirements contracts a maximum deposit of \$2,500 shall apply; provided that a standing deposit of \$2,500 may be furnished to the comptroller and held [by a comptroller] for a period convenient to the bidder. During the period held by the comptroller, the standing deposit shall be sufficient for all bids submitted by the bidder for price-term, open-end, or requirements contracts. A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check[, or teller's check] may be utilized only to a maximum of \$100,000.

A bid deposit for a bid requiring a deposit in excess of \$100,000 shall be in the form of legal tender or a surety bond conforming to the requirements of section 103-31."

SECTION 5. Section 103-31, Hawaii Revised Statutes, is amended to read as follows:

**"§103-31 Bond may be substituted for deposits, etc.** In lieu of the [deposit of legal tender, certificate of deposit, share certificate, cashier's check, certified check, or teller's check] deposits prescribed by section 103-28, a bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal[,] and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety, and doing business in the State under the laws of the United States or of the State, if a foreign corporation, and under the laws of the State, if a Hawaii corporation, as surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract."

SECTION 6. The office of the auditor shall conduct a study to provide information and recommendations to enable the legislative reference bureau to draft proposed legislation to enact a comprehensive procurement policy for the

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State to be called the "Hawaii Procurement Code". The auditor shall address all recommendations specified in the Lallatin and Associates study of procurement practices in the State which was completed in 1990. The code shall be intended to serve as a comprehensive procurement code for all state agencies purchasing items, goods, or services or engaging in construction with state funds. In addition to these duties, the auditor shall:

- (1) Review the American Bar Association Model Procurement Code, Council on State Government's and National Organization Of State Purchasing Agents' State and Local Government Purchasing, and the Lallatin and Associates study;
- (2) Consult with the attorney general, the department of accounting and general services, the University of Hawaii, the department of education, and any other agency the auditor deems necessary to determine the existence of special circumstances or conditions that may necessitate exemptions to the code or special provisions in state government. The agencies listed in this paragraph shall provide full cooperation and assistance to the auditor;
- (3) Review a selection of state procurement codes, and interview a selection of procurement officials in other states to apply the benefits of other state procurement systems to Hawaii's system;
- (4) Review the federal procurement code, and interview federal procurement officials in an effort to benefit from the federal government's experience and expertise in selected areas of civilian procurement activities;
- (5) Develop draft rules to implement the proposed code; and
- (6) Develop a guidebook incorporating the rules of procurement activities that shall serve as a comprehensive instructional and informational manual on the procurement methods for items, goods, services, or construction for state agencies.

**SECTION 7.** The office of the auditor shall transmit all findings, recommendations, and information compiled pursuant to section 6 as of January 20, 1993, to the 1993 legislature for review and consideration. Thereafter, the auditor shall transmit all findings, recommendations, and information as they are compiled, on an incremental basis, to the legislature.

**SECTION 8.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 9.** This Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

**ACT 275**

H.B. NO. 2131

A Bill for an Act Relating to Employment Practices.

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

**SECTION 1.** Section 378-3, Hawaii Revised Statutes, is amended to read as follows:

**"§378-3 Exceptions.** Nothing in this part shall be deemed to:

- (1) Repeal or affect any law [or], ordinance, or government rule having the force and effect of law;
- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and [which] that have a substantial relationship to the functions and responsibilities of the prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or [a] labor organization from refusing to hire or refer or from discharging any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, [which] that is not intended to evade the purpose of this chapter; provided that:
  - (A) This] exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age; [and]
  - (B) Any existing bona fide retirement, pension, employee benefit, or insurance plan or existing bargaining agreement shall be exempt from this paragraph for two years after April 30, 1984, or until the termination of the plan or agreement, whichever occurs first;]
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, [which] that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making [such] a selection [as is] calculated by the organization to promote the religious principles for which it is established or maintained;
- (6) Conflict with or affect the application of security regulations in employment established by the United States or the State;
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a handicapped person;
- (8) Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children; [or]
- (9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person[.]; or
- (10) Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court."

SECTION 2. Section 386-5, Hawaii Revised Statutes, is amended to read as follows:

**“§386-5 Exclusiveness of right to compensation[.]**; exception. The rights and remedies herein granted to an employee or the employee's dependents on account of a work injury suffered by the employee shall exclude all other liability of the employer to the employee, the employee's legal representative, spouse, dependents, next of kin, or anyone else entitled to recover damages from the employer, at common law or otherwise, on account of the injury[.], except for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto, in which case a civil action may also be brought.”

SECTION 3. Section 386-8.5, Hawaii Revised Statutes, is amended to read as follows:

**“§386-8.5 Limits of third party liability.** (a) Section 386-8 and any other law to the contrary notwithstanding, when a work injury for which compensation is payable under this chapter has been sustained, the discussion or furnishing of, or failure to discuss or furnish, or failure to enforce any safety [or], health, or personal conduct provision to protect employees against work injuries, in any collective bargaining agreement or in negotiations thereon, shall not subject a labor organization representing the injured employee to any civil liability for the injury.

As used in this section, the terms:

- (1) “Labor organization” means any organization which exists and is constituted for the purposes, in whole or in part, of collective bargaining or dealing with employers, concerning grievances, terms, or conditions of employment, or of other mutual aid or protection and includes both private industry and public employment labor organizations.
- (2) “Safety [or health] provision” includes, but is not limited to, safety [or health] inspections and advisory services[.]; “health provision” includes, but is not limited to, health inspections and advisory services; “personal conduct provision” includes, but is not limited to, contractual language covering sexual harassment or assault and related infliction of emotional distress or invasion of privacy.

(b) No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury on the construction project resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter unless the responsibility for the compliance of safety practices is specifically assumed by contract or by other conduct of the construction design professional or any employee of the construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project. The limitation of liability provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.”

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 19, 1992.)

**ACT 276**

H.B. NO. 2318

A Bill for an Act Relating to Legislative Vacancies.

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

SECTION 1. Section 17-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever any vacancy in the membership of the state senate occurs, the term of which ends at the next succeeding general election, the governor shall make an appointment within sixty calendar days following the first day of vacancy to fill the vacancy for the unexpired term and the appointee shall be of the same political party or nonpartisanship as the person the appointee succeeds.”

SECTION 2. Section 17-4, Hawaii Revised Statutes, is amended to read as follows:

“**§17-4 State representatives.** Whenever any vacancy in the membership of the state house of representatives occurs, the governor shall make an appointment within sixty calendar days following the first day of vacancy to fill the vacancy for the unexpired term and the appointee shall be of the same political party or nonpartisanship as the person the appointee succeeds.”

SECTION 3. New statutory material is underscored.

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

(Approved June 19, 1992.)

**ACT 277**

H.B. NO. 2320

A Bill for an Act Making an Appropriation for the Collection and Disposal of Household Hazardous Wastes.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$350,000, or 0.011 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

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**SECTION 2.** The legislature finds that the household hazardous waste collection and disposal projects conducted by the department of health in the past several years have proved to be tremendously successful. While it has been the intent of the State to work with the counties to establish a permanent solution to the problem of household hazardous waste collection and disposal, these interim collection projects have been extremely popular with the general public. In addition to providing a mechanism to protect Hawaii's landfills from further contamination, these projects have served to elevate the public's awareness of the dangers of improperly storing and discarding wastes generated in the household. The purpose of this Act is to appropriate funds to conduct a statewide household hazardous waste collection project.

**SECTION 3.** 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 1992-1993, to conduct a statewide household hazardous waste collection project.

**SECTION 4.** The sum appropriated shall be expended by the department of health for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

## **ACT 278**

H.B. NO. 2431

A Bill for an Act Relating to Culture and the Arts.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$50,000, or 0.0016 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** The legislature finds that since the arrival of the first Korean immigrants to Hawaii in January 13, 1903, the Korean people have made many significant contributions to the well-being and development of the State. The strong traditions of perseverance and hard work, and the rich culture and proud heritage of the Koreans have been, and continue to be, positive influences upon Hawaii's unique lifestyle and people. It is appropriate to recognize the invaluable contributions and rich history of the Korean people in 1993, on the celebrated occasion of the ninetieth anniversary of the arrival of the first Korean people in Hawaii.

The purpose of this Act is to establish an executive committee to recognize and to provide for the celebration of the ninetieth anniversary of the arrival of the first Korean people in Hawaii.

**SECTION 3. Creation of the Korean celebration executive committee.**

There is established a temporary executive committee to be known as the Korean celebration executive committee, which shall have charge of all arrangements for the commemoration of the ninetieth anniversary of the arrival of the first Koreans in Hawaii. The executive committee shall be placed within the office of the governor for administrative purposes and shall cease to exist after June 30, 1994.

**SECTION 4. Membership; compensation.** The executive committee shall consist of seventeen members to be appointed by the governor without regard to section 26-34, Hawaii Revised Statutes. Members shall represent the community at-large. The governor shall designate the chair of the executive committee from among the appointed members. The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

**SECTION 5. Powers and duties.** The executive committee shall prepare an overall program to celebrate the ninetieth anniversary of the arrival of the first Korean people in Hawaii, their significant contributions to the development of the State, their achievements, and their culture and heritage. The executive committee shall develop, plan, and coordinate the various program activities scheduled throughout the year of the celebration, as well as encourage the participation of all segments of the Korean community. The executive committee shall consider any related plans and programs developed by Korean community organizations and other interested private and public organizations or agencies from whose members the executive committee may designate special committees to plan, develop, or coordinate specific projects or activities.

The executive committee shall submit to the governor a comprehensive report for the ninetieth anniversary celebration, which shall include, but not be limited to:

- (1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Koreans in Hawaii;
- (2) Conferences, convocations, lectures, and seminars; and
- (3) Ceremonies, theatrical productions, and other special events commemorating the anniversary.

**SECTION 6. Cooperation.** In fulfilling its responsibilities, the executive committee shall consult, cooperate with, and seek the advice from Korean community organizations and other appropriate organizations or agencies.

**SECTION 7. Trust fund established.** There is hereby created a trust fund to be known as the ethnic celebration trust fund that shall consist of payments made to the trust fund as provided in this Act. All moneys received by the executive committee shall be deposited by the director of finance into the trust fund and expended by the executive committee for the purposes of this Act. Disbursement of the moneys shall be by state warrants issued in accordance with applicable laws and rules and shall be based on vouchers signed by the chair of the executive committee.

The executive committee may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the ninetieth anniversary celebration.

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All property acquired by the executive committee shall be deposited for preservation in the state library system, museums, or public archives or shall otherwise be disposed of as directed by the executive committee.

**SECTION 8. Final report.** At the end of its term, the executive committee shall submit to the governor a final report of all its activities, including an accounting of all money received and disbursed.

**SECTION 9.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1992-1993, to carry out the purposes of this Act.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

**SECTION 10.** This Act shall take effect upon its approval and shall be repealed on June 30, 1994; provided that section 8<sup>1</sup> of this Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

### Note

1. So in original.

## ACT 279

H.B. NO. 2719

A Bill for an Act Relating to Homeless Programs.

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

**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 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 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 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 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 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 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 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 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 interim report on the status of the Hale Kokua project during the first 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 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.** There is established a homeless assistance coordinating committee consisting of eleven members to provide advisory assistance to the state homeless programs coordinator in carrying out this Act. The committee shall regularly consult with homeless persons. The executive director of the Hawaii housing authority or a designee shall serve as the ex officio voting chairperson of the committee. The members of the committee shall include the director of human services, the director of labor and industrial relations, the director of health, the superintendent of education, and the governor's advisor on housing. The governor shall appoint one member to represent the homeless population, and one member each to represent each county from a list of two nominees submitted by the mayor of each county.

The committee shall be deemed the State's "interagency council on the homeless" as authorized by the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11320(b)). The members of the committee shall serve without compensation but shall be reimbursed for necessary expenses incurred while attending meetings and while in the discharge of their responsibilities.

**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 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

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- (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.** 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. The respective county government whose jurisdiction includes the site shall determine the disposition of the additional unit constructed with the grant.

**SECTION 7.** Nothing contained in this Act shall be deemed to delegate or detract in any way from the functions, powers, and duties prescribed by law for any other department or agency of the State or counties, nor to interrupt or preclude the direct relationships of any such department or agency in the performance of such functions, powers, and duties.

**SECTION 8.** This Act shall take effect upon its approval, and shall be repealed on July 1, 1994; provided that the repeal of this Act shall not affect the right to recover grants under section 6.

(Approved June 19, 1992.)

## **ACT 280**

H.B. NO. 3396

A Bill for an Act Relating to the Hawaii Civil Rights Commission.

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

**SECTION 1.** The twelve employees of the Hawaii civil rights commission not accorded civil service status and currently occupying the positions of investigator V, investigator IV, program specialist V, secretary III, legal stenographer I, and clerk typist III, authorized, established, and funded pursuant to Act 299, Session Laws of Hawaii 1990, and Act 296, Session Laws of Hawaii 1991, shall be converted to permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination, and shall be accorded all of the rights, benefits, and privileges attributable thereto. Those rights, benefits, and privileges shall include seniority, prior service credits, and vacation and sick leave credits, and other rights, benefits, and privileges accorded employees with civil service status. The positions held by these employees shall be assigned by the director of personnel services to appropriate classes in the position classification plan, and the affected employees shall continue to receive at least the same rate of pay as they currently receive despite the change in status; provided that subsequent changes in position classification and pay shall be made pursuant to chapters 76 and 77.

**SECTION 2.** This Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

## ACT 281

H.B. NO. 3400

A Bill for an Act Relating to the Wages and Hours.

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

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§46- Limitation of application.** This chapter shall not be construed to exempt counties from the application of chapter 104 to experimental and demonstration housing projects pursuant to section 46-15.”

SECTION 2. Section 104-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) [Every] Except as otherwise provided, the specifications of every contract in excess of \$2,000 to which a governmental contracting agency is a party, for construction of any public work, [and the specifications for the contract,] shall state the minimum wages [which] that shall be paid to the various classes of laborers and mechanics engaged in the performance of the contract on the job site[.], and that the minimum wages shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the director of labor and industrial relations; provided that this subsection shall be applied individually and on a case by case basis to each public work project, including development of housing under section 46-15 or chapter 201E, for which a contract is required under this section, and that specific terms of each contract shall be mutually exclusive of the terms of any other public work contract; and provided further that this subsection shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter 201E if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection[, “party”]:

“Governmental contracting agency” includes any person or entity that causes either directly or indirectly the building or development of a public work.

“Party” [shall include, but not be limited to, the housing finance and development corporation,] includes eligible bidders[,] for and eligible developers of any public work and any housing [projects developed] under chapter 201E; provided that[, with respect to a housing project developed under chapter 201E, this subsection shall only apply to the laborers and mechanics working on that particular housing project; provided further that] this subsection shall not apply to [a] any housing [project] developed under section 46-15 or chapter 201E if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

“Public work” means any project, including development of any housing pursuant to section 46-15 or chapter 201E, and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

## **ACT 282**

(b) The minimum wages shall be not less than the wages [which] that the director of labor and industrial relations, under the [regulations<sup>1</sup>] rules, shall have determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State. The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works in the State [which] that are prosecuted under contract or agreement with the government of the United States. Notwithstanding the provisions of the original contract, if the director determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on a public work project shall be raised accordingly."

**SECTION 3.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 4.** This Act shall take effect upon its approval, and shall apply to any public work project under consideration on that date for which a contract has not been finally executed.

(Approved June 19, 1992.)

### **Notes**

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

## **ACT 282**

**H.B. NO. 3787**

A Bill for an Act Relating to Impact Fee Authorization.

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

**SECTION 1.** The legislature finds that development and construction for residential, commercial, industrial, hotel, and other purposes have placed a significant burden upon existing public facilities. The legislature further finds that present and future development will place severe burdens upon existing public facilities, resulting in a substantial and detrimental impact upon the quality of life, health, and general welfare of our population. The legislature recognizes that in order to maintain an acceptable capacity of public services and to preserve the quality of life in the region, some counties have adopted impact fee ordinances that establish a system of financing the development of public facilities by assessing, on a pro rata basis, the reasonably anticipated costs of developments and improvements. The legislature finds that the imposition of an impact fee to provide for public facilities and services required by such development is both fair and reasonable.

In response to county interest in impact fee legislation, the legislature finds that there is a need to establish general guidelines and provisions for adoption of impact fee ordinances and assessment of impact fees.

The purpose of this Act is to set forth general guidelines for the adoption of impact fee ordinances and to establish uniform general provisions for county impact fee ordinances adopted after the effective date of this Act.

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

## "CHAPTER IMPACT FEES"

**§ -1 Definitions.** As used in this chapter, unless the context requires otherwise:

"Capital improvements" means the acquisition of real property, improvements to expand capacity and serviceability of existing public facilities, and the development of new public facilities.

"Comprehensive plan" means a coordinated land use plan for the development of public facilities within the jurisdiction of a county based on existing and anticipated needs, showing existing and proposed developments, stating principles to which future development should conform, such as the county's general plans, development plans, or community plans, and the manner in which development should be controlled. In the case of the city and county of Honolulu, public facility maps shall be equivalent to the comprehensive plan required in this chapter.

"County" or "counties" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Credits" means the present value of past or future payments or contributions, including, but not limited to, the dedication of land or construction of a public facility made by a developer toward the cost of existing or future public facility capital improvements, except for contributions or payments made under a development agreement pursuant to section 46-123.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any development activity.

"Development" means any artificial change to real property that requires a grading or building permit as appropriate, including, but not limited to, construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Discount rate" means the interest rate, expressed in terms of an annual percentage, that is used to adjust past or future financial or monetary payments to present value.

"Impact fees" means the charges imposed upon a developer by a county to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.

"Needs assessment study" means a study required under an impact fee ordinance that determines the need for a public facility, the cost of development, and the level of service standards, and that projects future public facility capital improvement needs; provided that the study shall take into consideration and incorporate any relevant county general plan, development plan, or community plan.

"Non-site related improvements" means land dedications or the provision of public facility capital improvements that are not for the exclusive use or benefit of a development and are not site-related improvements.

"Offset" means a reduction in impact fees designed to fairly reflect the value of non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Present value" means the value of past or future payments adjusted to a base period by a discount rate.

"Proportionate share" means the portion of total public facility capital improvement costs that is reasonably attributable to a development, less:

- (1) Any credits for past or future payments, adjusted to present value, for public facility capital improvement costs made or reasonably anticipated to be contributed by a developer in the form of user fees, debt service payments, taxes, or other payments; or
- (2) Offsets for non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

“Public facility capital improvement costs” means costs of land acquisition, construction, planning and engineering, administration, and legal and financial consulting fees associated with construction, expansion, or improvement of a public facility. Public facility capital improvement costs do not include expenditures for required affordable housing, routine and periodic maintenance, personnel, training, or other operating costs.

“Reasonable benefit” means a benefit received by a development from a public facility capital improvement that is greater than the benefit afforded the general public in the jurisdiction imposing the impact fees. Incidental benefit to other developments shall not negate a “reasonable” benefit to a development.

“Recoupment” means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

“Site-related improvements” means land dedications or the provision of public facility capital improvements for the exclusive use or benefit of a development or for the provision of safe and adequate public facilities related to a particular development.

**§ -2 Authority to impose impact fees.** (a) The counties are authorized to assess, impose, levy, and collect impact fees for any development within their jurisdictions and to enact impact fee ordinances and to adopt rules to effectuate imposition and collection.

(b) Except for any ordinance governing impact fees enacted before July 1, 1993, impact fees may be imposed only for those types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study. The plan or study shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities.

**§ -3 Impact fee calculation.** (a) A county council considering the enactment of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be set forth in the needs assessment study.

(c) The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred by the county.

(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred by the county in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

- (1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study

that identifies:

- (A) Deficiencies in existing public facilities;
  - (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
  - (C) Additional demands anticipated to be placed on specified public facilities by a development;
  - (2) The availability of other funding for public facility capital improvements, including, but not limited to, user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
  - (3) The cost of existing public facility capital improvements;
  - (4) The methods by which existing public facility capital improvements were financed;
  - (5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;
  - (6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and
  - (7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.
- (e) The impact fee ordinance shall contain a provision setting forth the process by which a developer may contest the amount of the impact fee assessed.

**§ -4 Collection and expenditure of impact fees.** Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. In order to determine whether the fees are reasonably related, the impact fee ordinance shall provide that:

- (1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;
- (2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county. A county shall explain in writing and disclose at a public hearing reasons for establishing or not establishing benefit zones;
- (3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;
- (4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and

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- (5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development.

**§ -5 Refund of impact fees.** (a) If impact fees are not expended or encumbered within the period established in section -4, the county shall refund to the developer or the developer's successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the special trust fund or interest bearing account and expended as provided in section -4.

(b) If a county seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county shall place a notice of termination and availability of refunds in a newspaper of general circulation at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to the county's general fund and expended for any public purpose as determined by the county council.

(c) Recoupment shall be exempt from subsections (a) and (b).

**§ -6 Time of assessment and collection of impact fees.** Assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be collected in full before or upon issuance of the permit.

**§ -7 Effect on existing ordinances.** This chapter shall not invalidate any impact fee ordinance existing on the effective date of this Act.

**§ -8 Transitions.** Any county requiring impact fees or imposing development exactions, in order to fund public facilities, shall incorporate fee requirements into their broader system of development and land use regulations in such a manner that developments, either collectively or individually, are not required to pay or otherwise contribute more than a proportionate share of public facility capital improvements. Development contributions or payments made under a development agreement, pursuant to section 46-123, are exempted from this requirement."

**SECTION 3.** 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

(Approved June 19, 1992.)

**ACT 283**

**H.B. NO. 3944**

A Bill for an Act Relating to Land Use.

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

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, or special live-stock lease may: (1) modify or eliminate any of the foregoing restrictions[.]; (2) extend or modify the fixed rental period of the lease[.]; or (3) extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, Farmers Home Administration, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other federal mortgage lending agency qualified to do business in the State, and their respective successors and assigns or to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; provided that the private lender shall be qualified to do business in the State; provided further that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term; and
- (4) The rules of the board, setting forth any additional terms and conditions which shall insure and promote the purposes of the demised lands.”

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Disposition of public lands for airline, aircraft, agricultural processing, cattle feed production, aquaculture, marine, and maritime operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, agricultural, aquaculture, and maritime industries;
- (2) The disposition shall not exceed a maximum term of thirty-five years; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purpose of this subsection “agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii.”

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 section 1 of this Act shall take effect on July 1, 1992.

(Approved June 19, 1992.)

ACT 284

S.B. NO. 276

A Bill for an Act Relating to Nondegradable Solid Waste.

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

SECTION 1. Section 339-22, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§339-22]] Prohibited acts.~~ (a) No person shall sell or offer for sale to any consumer within the State beverage containers, motor oil, or other consumer goods connected to each other with plastic connecting devices that are not degradable. This section shall not apply to the following plastic connecting devices:

- (1) Plastic connecting devices that contain an enclosed hole or circle less than 1 and 1/4 inches in diameter; and
- (2) Plastic connecting devices comprised of one or more rings that are broken when the beverage container or other consumer good is removed from the ring or rings.

(b) Notwithstanding section 339-24 to the contrary, any person who violates this section shall be fined \$250 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."

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

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

(Approved June 19, 1992.)

ACT 285

S.B. NO. 2407

A Bill for an Act Making an Appropriation to Mark the One Hundredth Anniversary of the Overthrow of Queen Liliuokalani and to Discuss Issues of Hawaiian Sovereignty.

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

SECTION 1. Queen Liliuokalani, the last monarch of Hawaii, ruled in an era of tumultuous change in Hawaii. The moi wahine of her people, she represented the best of Hawaiian culture and values. When forced to renounce the throne, against her will and by threat of force, she chose to spare her people by refusing to incite her many supporters who would have had to face armed troops arrayed against her. She was imprisoned and then placed under house arrest for many months, a fate which she, a born monarch, endured with dignity.

Even after she was dethroned, this woman continued to inspire her people through her music and poetry and to support them through acts of charity. To this day, her statue at the state capitol is honored by spontaneous offerings of leis and flowers, and is a symbol of Hawaii's love and respect for this far-sighted and astute monarch.

The year 1993 marks the one hundredth anniversary of the overthrow of the Queen and the end of the Hawaiian monarchy. It is appropriate at this time that the legislature and the people of this State come together to commemorate the life of this gracious, brave, and remarkable woman and to explore topics surrounding the issue of Hawaiian sovereignty.

SECTION 2. (a) There shall be established a commission to be known as the Queen Liliuokalani commemoration commission, to be placed in the office of Hawaiian affairs for administrative purposes, which shall consist of fifteen members to be appointed by the governor in the manner provided by section 26-34; provided that no fewer than eleven members shall be of Hawaiian ancestry as defined in section 10-3, Hawaii Revised Statutes. The members shall be persons who represent a broad spectrum of geographic, cultural, and educational disciplines. The terms of all appointments shall end on January 1, 1994. The governor shall appoint the chairperson of the commission from among the members.

(b) The members of the commission shall serve without compensation, but shall be entitled to reimbursement for travel and necessary expenses while attending meetings in the discharge of their duties. The funds appropriated for the purposes hereof shall be disbursed on warrants based on vouchers approved by the chairperson of the board of trustees.

(c) The duties of the commission shall be as follows:

- (1) To plan and sponsor activities to educate all segments of the population on the life and accomplishments of Queen Lydia Kamaka`eha Liliuokalani Paki Dominis. Programs shall be aimed at school-aged children, youths, and adults, and may include entertainment components. The programs may involve the mass media. All programs shall be free of charge. The commission may work with private individuals and organizations interested in Hawaiian rights and sovereignty in holding these programs;
- (2) To develop and disseminate informational materials on the history, causes, and consequences of the overthrow of the kingdom of Hawaii; and
- (3) To coordinate a statewide commemoration to recognize the significance of Queen Liliuokalani's life and the overthrow of the kingdom of Hawaii.

(d) The commission shall consider input from interested Hawaiian groups in carrying out its duties, and may appoint committees and delegate powers and duties to the committees as it deems necessary.

(e) State departments shall assist and support the commission in this effort as appropriate.

(f) The commission may adopt rules pursuant to chapter 91 necessary for the purposes of this section.

SECTION 3. January 17, 1993, shall be declared a day of commemoration for the people of the State to recognize and observe the life of Queen Liliuokalani. The day shall not be considered a state holiday for the purposes of section 8-2, Hawaii Revised Statutes.

SECTION 4. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$90,000 or .0028914 per cent. The reasons for exceeding

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the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$90,000, or so much thereof as may be necessary for fiscal year 1992-1993, for the Queen Liliu'okalani commemoration commission to carry out its duties; provided that the commission shall expend the appropriation: \$25,000 for the island of Hawaii; \$25,000 for the island of Kauai; \$25,000 for the island of Maui; and \$15,000 for the island of Molokai; provided further that the commission shall schedule commemoration activities to occur on the week-end of January 17, 1993; and provided further that the office of Hawaiian affairs may supplement this appropriation with private funding sources to carry out the purposes of this Act. It is not the intent of the legislature that the commemoration activities extend for the entire year, but be limited to the week-end of January 17, 1993.

SECTION 6. The sum appropriated shall be expended by the office of Hawaiian affairs for the purposes of this Act.

SECTION 7. This Act shall take effect upon its approval; provided that sections 4 and 5 shall take effect on July 1, 1992.

(Approved June 19, 1992.)

## ACT 286

S.B. NO. 1843

A Bill for an Act Relating to Firearms.

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

SECTION 1. Section 134-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Assault pistol" means a semiautomatic pistol which accepts a detachable magazine and which has two or more of the following characteristics:

- (1) An ammunition magazine which attaches to the pistol outside of the pistol grip;
- (2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward hand grip, or silencer;
- (3) A shroud which is attached to or partially or completely encircles the barrel and which permits the shooter to hold the firearm with the second hand without being burned;
- (4) A manufactured weight of fifty ounces or more when the pistol is unloaded;
- (5) A centerfire pistol with an overall length of twelve inches or more, or
- (6) It is a semiautomatic version of an automatic firearm;

but does not include a firearm with a barrel sixteen or more inches in length, an antique pistol as defined in section 134-1 or a curio or relic as those terms are used in 18 U.S.C. §921(16) or 27 C.F.R. 178.11.

"Semiautomatic" means the mode of operation by which a firearm uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of a trigger."

SECTION 2. Section 134-4, Hawaii Revised Statutes, is amended to read as follows:

**“§134-4 Transfer, possession of firearms.** (a) No transfer of any rifle having a barrel length of sixteen inches or over or any shotgun having a barrel length of eighteen inches or over, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner, or unregistered shall be made to any person under the age of eighteen years, except as provided by section 134-5.

(b) No person shall possess any firearm that is owned by another, regardless of whether the owner has consented to possession of the firearm, without a permit from the chief of police of the appropriate county, except as provided in subsection (c) and section 134-5.

(c) Any lawfully acquired rifle or shotgun may be lent to an adult for use within the State for a period not to exceed fifteen days without a permit; provided that where the rifle or shotgun is to be used outside of the State, the loan may be for a period not to exceed seventy-five days.

(d) No person shall knowingly lend a firearm to any person who is prohibited from ownership or possession of a firearm under section 134-7.

(e) After July 1, 1992, no person shall bring or cause to be brought into the State an assault pistol. No assault pistol may be sold or transferred on or after July 1, 1992, to anyone within the State other than to a dealer licensed under section 134-32 or the chief of police of any county except that any person who obtains title by bequest or intestate succession to an assault pistol registered within the State shall, within ninety days, render the weapon permanently inoperable, sell or transfer the weapon to a licensed dealer or the chief of police of any county, or remove the weapon from the State."

SECTION 3. Section 134-8, Hawaii Revised Statutes, is amended to read as follows:

**“§134-8 Ownership, etc., of automatic firearms, silencers, etc., prohibited; [penalty.] penalties.** (a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: assault pistols, except as provided by section 134-4(e); automatic firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; [cannon;] cannons,<sup>1</sup> mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or [bombshell,] bombshells, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of [this section.] subsection (a).

(c) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds which are designed for or capable of use with a pistol is prohibited. This

subsection shall not apply to magazines originally designed to accept more than ten rounds of ammunition which have been modified to accept no more than ten rounds and which are not capable of being readily restored to a capacity of more than ten rounds. This section shall, also, not apply to magazines designed to accept twenty or fewer rounds of ammunition which are in the possession or control of a person who, prior to July 1, 1992, was the registered owner of a firearm into which the magazine will fit.

[c] (d) Any person violating [this section] subsection (a) or (b) shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation. Any person violating subsection (c) shall be guilty of a misdemeanor except when a detachable magazine prohibited under this section is possessed while inserted into a pistol in which case the person shall be guilty of a class C felony.”

SECTION 4. Section 134-8, Hawaii Revised Statutes, is amended to read as follows:

**“§134-8 Ownership, etc., of automatic firearms, silencers, etc., prohibited; [penalty.] penalties.** (a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: assault pistols, except as provided by section 134-4(e); automatic firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; [cannon;] cannons;<sup>1</sup> mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or [bombshell,] bombshells, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of [this section.] subsection (a).

(c) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds which are designed for or capable of use with a pistol is prohibited. This subsection shall not apply to magazines originally designed to accept more than ten rounds of ammunition which have been modified to accept no more than ten rounds and which are not capable of being readily restored to a capacity of more than ten rounds.

[c] (d) Any person violating [this section] subsection (a) or (b) shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation. Any person violating subsection (c) shall be guilty of a misdemeanor except when a detachable magazine prohibited under this section is possessed while inserted into a pistol in which case the person shall be guilty of a class C felony.”

SECTION 5. Prior to the effective date of this Act, the attorney general, in consultation with the chiefs of police of the respective counties, shall make reasonable efforts to publicize, a list of the firearms which the chiefs of police have determined meet the definition of “assault pistol” set forth in section 1 of this Act. The attorney general shall, at the written request of any person, advise that person as to whether or not a particular pistol meets the criteria and is an assault pistol. This Act, however, shall not be construed to authorize the chiefs of police

of the respective counties or the attorney general to adopt rules pursuant to chapter 91 or any regulation having the force of law specifying which firearms meet the definition of an "assault pistol."

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, except for section 4, shall take effect on July 1, 1992; provided that on July 1, 1994, section 3 shall be repealed and section 4 shall take effect.

(Approved June 29, 1992.)

**Note**

1. Semicolon should be underscored.

**ACT 287**

H.B. NO. 3903

A Bill for an Act Relating to Firearms.

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

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§134- Qualified immunity for physicians, psychologists or psychi-atrists who provide information on permit applicants.** There shall be no civil liability for any physician, psychologist or psychiatrist who provides information or renders an opinion in response to an inquiry made for purposes of issuing a firearm permit under section 134-2, provided that the physician, psychologist or psychiatrist acted without malice."

SECTION 2. Section 134-2, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The permit application form shall be signed by the applicant and by the issuing authority. One copy of the permit shall be retained by the issuing authority as a permanent official record. Except for sales to dealers licensed under section 134-31, or dealers licensed by the United States Department of the Treasury, or law enforcement officers, or where a license is granted under section 134-9, or where any firearm is registered pursuant to section 134-3(a), no permit shall be issued to a first time applicant earlier than [ten] fourteen calendar days after the date of the application; provided that a permit shall be issued or the application denied before the [sixteenth] twentieth day from the date of application. Persons who have previously obtained permits subject to the [ten-day] waiting period required by this subsection and who make a subsequent application within one year of the issue date of the first permit may be issued permits in less than [ten] fourteen days. Permits issued to acquire any pistol or revolver shall be void unless used within ten days after the date of issue. Permits to acquire a pistol

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or revolver require a separate application and permit for each transaction. Permits issued to acquire any rifle or shotgun shall entitle the permittee to make subsequent purchases of rifles or shotguns for a period of one year from the date of issue without a separate application and permit for each acquisition, subject to the disqualifications under section 134-7."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved June 29, 1992.)

## ACT 288

H.B. NO. 2871

A Bill for an Act Relating to Firearms.

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

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§134- Storage of firearm; responsibility with respect to minors.**

No person shall store or keep any firearm on any premises under the person's control if the person knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor, unless the person:

- (1) Keeps the firearm in a securely locked box or other container or in a location that a reasonable person would believe to be secure; or
- (2) Carries the firearm on the person or within such close proximity thereto that the person readily can retrieve and use it as if it were carried on the person.

For purposes of this section, "minor" means any person under the age of sixteen years."

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§707- Criminally negligent storage of a firearm.** (1) A person commits the offense of criminally negligent storage of a firearm if the person violates section 134- and a minor obtains the firearm. For purposes of this section, "minor" means any person under the age of sixteen years.

(2) This section shall not apply if the minor obtains the firearm as a result of an unlawful entry to any premises by any person.

(3) Criminally negligent storage of a firearm is a misdemeanor."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.<sup>1</sup>

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

(Approved June 29, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 289

S.B. NO. 2592

A Bill for an Act Relating to Theft.

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

SECTION 1. Section 708-830.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§708-830.5] Theft in the first degree.** (1) A person commits the offense of theft in the first degree if the person commits theft [of property, the value of which exceeds \$20,000.]:

- (a) Of property, the value of which exceeds \$20,000;
  - (b) Of a firearm; or
  - (c) Of dynamite or other explosive.
- (2) Theft in the first degree is a class B felony."

SECTION 2. 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) By obtaining property from the person of another; or
  - (b) Of property or services the value of which exceeds \$300[;
  - (c) Of a firearm; or
  - (d) Of dynamite or other explosive].
- (2) Theft in the second degree is a class C felony."

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 29, 1992.)

ACT 290

H.B. NO. 3854

A Bill for an Act Relating to Domestic Abuse.

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

SECTION 1. Section 580-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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"(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) [Any wilful disobedience of a restraining order issued pursuant to this subsection shall be a misdemeanor under section 710-1077.] 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)<sup>1</sup> and (2)<sup>1</sup>, 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 2. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

**"§586-4 Temporary restraining order.** (a) Upon petition to a family court judge, a temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time such order is granted, is a family or household member as defined in section 586-1 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening or physically abusing the petitioner(s);
- (2) Contacting, threatening or physically abusing any person(s) residing at the petitioner(s)'s residence;
- (3) Telephoning the petitioner(s);
- (4) Entering or visiting the petitioner(s)'s residence; or
- (5) Contacting, threatening or physically abusing the petitioner(s) at work.

(b) The family court judge may issue the ex parte temporary restraining order orally, [but shall reduce the order to writing by the close of the next court day following the application.] if the person being restrained is present in court. The order shall state that there is probable cause to believe that a recent past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order shall further state that the temporary restraining order is necessary for the purpose of preventing acts of abuse, or a recurrence of actual domestic abuse, and assuring a period of separation of the parties involved. The order shall describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order, and may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening or physically abusing the petitioner(s);
- (2) Contacting, threatening or physically abusing any person(s) residing at the petitioner(s)'s residence;
- (3) Telephoning the petitioner(s);
- (4) Entering or visiting the petitioner(s)'s residence; or
- (5) Contacting, threatening or physically abusing the petitioner(s) at work.

(c) When a temporary restraining order is granted pursuant to this chapter and the respondent or person to be restrained knows of the order, violation of the restraining order is a misdemeanor. A person convicted under this section shall undergo treatment or counseling at any available domestic violence program as ordered by the court. The court shall additionally sentence a person convicted under this section as follows:

- (1) For a first conviction for violation of the temporary restraining order the person shall serve a mandatory minimum jail sentence of forty-eight hours;
- (2) For the second and any subsequent conviction for violation of the temporary 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), upon condition 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.”

SECTION 3. Section 586-5, Hawaii Revised Statutes, is amended to read as follows:

**"§586-5 Period of order; hearing.** (a) A temporary restraining order granted pursuant to this chapter shall remain in effect at the discretion of the court, for a period not to exceed [thirty] ninety days from the date the order is granted.

(b) On the earliest date that the business of the court will permit, but no later than fifteen days from the date the temporary restraining order is granted, the court shall, after giving due notice to all parties, hold a hearing on the application requiring cause to be shown why the order should not continue. In the event that service has not been effected, the court may set a new date for the hearing provided that said date shall not exceed [thirty] ninety days from the date the temporary restraining order was granted. All parties shall be present at the hearing and may be represented by counsel.

The protective order may include all orders stated in the temporary restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation with regard to minor children of the parties and orders to either or both parties to participate in treatment or counseling services."

SECTION 4. Section 586-5.6, Hawaii Revised Statutes, is amended to read as follows:

**"§586-5.6 Effective date.** The temporary restraining order shall be effective as of the date of signing and filing[.]; provided that if a temporary restraining order is granted orally in the presence of all the parties and the court determines that each of the parties understands the order and its conditions, if any, then the order shall be effective as of the date it is orally stated on the record by the court until further order of the court. Protective orders orally stated by the court on the record shall be effective as of the date of the hearing until further order of the court; provided that all oral protective orders shall be reduced to writing [within one week of the hearing date.] and issued forthwith. The judiciary shall provide forms which will enable the court to issue all temporary restraining orders forthwith."

SECTION 5. 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. [regular mail.]"

SECTION 6. 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 [and the], a respondent or person to be restrained [knows of the order, violation of] 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.

The court may suspend any jail sentence except the mandatory sentences under paragraphs (1) and (2), 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 7. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

**“§709-906 Abuse of family and household members; penalty.** (1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member, or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member may, upon request, transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses or former spouses, parents, children, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer may, with or without a warrant, arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member, and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was recent physical abuse or harm inflicted by one person upon a family or household member, whether or not such physical abuse or harm occurred in the officer's presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes recent physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer may lawfully order the person to leave the premises for a cooling off period of twenty-four hours; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;

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- (c) Where the police officer makes the finding referred to in [[paragraph]] subsection (b) and the incident occurs after 4:30 p.m. on any Friday, or on any Saturday, Sunday or legal holiday, the order to leave the premises shall commence immediately and be in full force but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person; and
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the cooling off period, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member.

(5) Abuse of a family or household member, and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors[; provided that a person convicted under this section shall serve a minimum jail sentence of forty-eight hours and be required to undergo any available domestic violence treatment and counseling program as ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory forty-eight hours, upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered counseling.] and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense and any other subsequent offense which occurs within one year of the previous offense the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

(6) Whenever a court sentences a person pursuant to section 709-906(5), it shall also require that the offender undergo any available domestic violence treatment and counseling programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under section 709-906(5)(a) and (5)(b), upon the condition that the defendant remain arrest-free and conviction-free or complete court ordered counseling.

[6] (7) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting such arrest.

[7] (8) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith, or may file a criminal complaint through the prosecuting attorney of the applicable county.

[8] (9) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may then dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

[9] (10) This section shall not operate as a bar against prosecution

under any other section of this Code in lieu of prosecution for abuse of a family or household member.

[(10)] (11) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

[(11)] (12) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

[(12)] (13) Upon dismissal of such person and discharge of the proceeding against the person under this section, such person, if the offense is the only offense against the other family or household member for a period of not less than five years, may apply for an order to expunge from all official records all recordation relating to the person's arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against the person were discharged and that no other similar offenses were charged against the person for a period of not less than five years, it shall enter such order.

[(13)] (14) If a person is ordered by the court to undergo any treatment or counseling, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered treatment. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the treatment ordered by the court."

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 29, 1992.)

Note

1. So in original.

**ACT 291**

H.B. NO. 2604

A Bill for an Act Relating to District Court.

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

SECTION 1. Section 604-10.5, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) [Wilful violations of orders issued under this section shall be punishable as criminal contempt under section 710-1077.] A knowing or intentional violation of a restraining order or injunction 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:

(1) For a violation of an injunction or restraining order that occurs after a conviction for a violation of the same injunction or restraining

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order, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours; and

- (2) For any subsequent violation that occurs after a second conviction for violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon appropriate conditions such as that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or counseling. The court may suspend the mandatory sentences under paragraphs (1) and (2) where the violation of the injunction or restraining order does not involve violence or the threat of violence. 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.”

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 29, 1992.)

## ACT 292

S.B. NO. 3354

A Bill for an Act Relating to Harassment.

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

SECTION 1. The legislature finds that the current description of the offense of harassment in the penal code is underinclusive and the penalties for harassment are not a sufficient deterrent in all cases. The purpose of this Act is to strengthen the laws against harassment by proscribing stalking of another person, unauthorized telecommunication transmissions and other types of unwanted or unwelcomed communications.

SECTION 2. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§711- Harassment by stalking.** (1) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person pursues or conducts surveillance upon the other person:

- (a) Without legitimate purpose; and  
(b) Under circumstances which would cause the other person to reasonably believe that the actor intends to cause bodily injury to the other person or another, or damage to the property of the other person or another.

(2) Harassment by stalking is a misdemeanor if the person harasses another person by stalking on more than one occasion for the same or a similar purpose. Otherwise, harassment by stalking is a petty misdemeanor.

(3) A person convicted under this section may be required to undergo a counseling program as ordered by the court."

SECTION 3. Section 711-1100, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document."

SECTION 4. Section 711-1106, Hawaii Revised Statutes, is amended to read as follows:

**"§711-1106 Harassment.** (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm another person, [he:] that person:

- (a) Strikes, shoves, kicks, or otherwise touches [a] another person in an offensive manner or subjects [him] the other person to offensive physical contact; [or]
  - (b) Insults, taunts, or challenges another person in a manner likely to provoke [a] an immediate violent response[:] or which would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another;
  - (c) Makes a telephone call or a facsimile transmission without purpose of legitimate communication[:] which would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another; or
  - (d) Makes [repeated communications] a communication anonymously, or at an extremely inconvenient [hours,] hour, or in offensively coarse language which would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another.
  - (e) Makes repeated communications, after being advised by the person to whom the communication is directed that further communication is unwelcome.
- (2) Harassment is a petty misdemeanor."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 29, 1992.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 293**

H.B. NO. 2612

A Bill for an Act Making an Appropriation for the Construction of a Model for the Collection of Data Regarding the Victims of Hate Crimes.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$50,000, or 0.0016 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** The purpose of this Act is to create a model for the gathering of data and statistics on the nature and frequency of occurrence of hate crimes in Hawaii. Currently, statewide statistics are not available and, therefore, it is difficult to determine if statutory amendments or resource reallocations are needed to better deter these crimes.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1992-1993, for the development of a model for the specification and collection of data regarding crimes that are motivated by prejudice based on gender, sexual orientation, race, national origin, religion, age, and physical and/or mental disability. The moneys appropriated by this section shall be used for reasonable and necessary expenses incurred by the attorney general in the development of the model data collection mechanism. The attorney general shall submit the model, together with findings, recommendations, and any necessary implementing legislation, to the legislature twenty days before the convening of the regular session of 1993. In developing the model, the attorney general shall give appropriate consideration to the relationship between the model and uniform crime reporting, both as presently conducted and as it may be affected by future adoption of an incident based reporting system.

**SECTION 4.** The sum appropriated shall be expended by the attorney general for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1992.

(Approved June 29, 1992.)

**ACT 294**

H.B. NO. 2123

A Bill for an Act Relating to Education.

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

**SECTION 1.** Hawaii's statewide system has been the envy of mainland states for its ability to equally apportion money between rich and poor, urban and

rural schools. But the centralization standard has become a burden for Hawaii parents who want their schools to adapt to local needs.

The need for reform has been discussed for many years. In 1988, the Berman Report, commissioned by business leaders, recommended that school buildings be renovated and new ones built. The next year, the legislature enacted a law establishing a seven-year, \$630,000,000 school facility fund.

The key Berman recommendation, however, was reform of school governance. The report states that "the lines of authority overlap, so that everyone is responsible, so no one is." The Advertiser, in its editorial of July 14, 1991, described the system as nonsensical: "[a]n elected school board sets policies and hires and fires the schools' superintendent. The department of education carries out the board's instructions. The board also recommends a budget, but it is usually cut by the governor before it even goes to the legislature. The legislature appropriates funds often substituting its own goals and programs for those of the board and governor. Ultimately, the governor decides whether to allocate the money under what terms."

The Task Force on Educational Governance has worked many hours, researching and attending numerous hearings. The legislature recognizes the Task Force's important work and would like to continue the Task Force's work by implementing some of its recommendations.

In response to public hearings and comments, the legislature seeks to reform governance by making the governor and the legislature responsible and accountable.

**SECTION 2.** Article X of the Constitution of the State of Hawaii is amended by amending section 3 to read as follows:

### **"POWER OF THE BOARD OF EDUCATION"**

Section 3. The board of education shall have the power, as provided by law, to formulate [policy and to exercise control over the public school system through its executive officer, the superintendent of education, who shall be appointed by the board; except that the board] policy, set goals, and establish standards for the public school system. The superintendent of education shall be appointed by the governor, with the advice and consent of the senate. The superintendent shall have jurisdiction and control over the internal organization, operations, and management of the public school system, as provided by law, and shall exercise [its jurisdiction] such authority in a manner consistent with general laws."

**SECTION 3.** The question to be printed on the ballot shall be as follows:

"Shall the board of education's powers be limited to formulating policy, setting goals, and establishing standards for the public schools; and shall the superintendent of education be appointed by the governor, with the advice and consent of the senate?"

**SECTION 4.** Article X of the Constitution of the State of Hawaii is amended to read as follows:

1. By amending section 2 to read:

## **"BOARD OF EDUCATION"**

Section 2. There shall be a board of education composed of members who shall be [elected in a nonpartisan manner by qualified voters, as provided by law, from two at-large school board districts.] appointed by the governor from two school board districts, with the advice and consent of the senate. The first school board district shall be comprised of the island of Oahu and all other islands not specifically enumerated. The second school board district shall be comprised of the islands of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau. Each [at-large] school board district shall be divided into departmental school districts, as may be provided by law. There shall be at least one member residing in each departmental school district. The Hawaii State Student Council shall select a public high school student to serve as a nonvoting member on the board of education."

2. By amending section 3 to read:

## **"POWER OF THE BOARD OF EDUCATION"**

Section 3. The board of education shall have the power, as provided by law, to formulate [policy and exercise control over the public school system through its executive officer, the superintendent of education, who shall be appointed by the board; except that the board] policy, set goals, and establish standards for the public school system. The superintendent of education shall be appointed by the governor, with the advice and consent of the senate. The superintendent shall have jurisdiction and control over the internal organization, operations, and management of the public school system, as provided by law, and shall exercise [its jurisdiction] such authority in a manner consistent with general laws."

**SECTION 5.** The question to be printed on the ballot shall be as follows:

"Shall the board of education be appointed by the governor, with the advice and consent of the senate; the board of education's powers be limited to formulating policy, setting goals, and establishing standards for the public schools; and the superintendent of education be appointed by the governor, with the advice and consent of the senate?"

**SECTION 6.** In conjunction with the 1992 primary election, the lieutenant governor shall submit the following two separate questions to the electorate with instructions that each voter select one of the two questions:

"1. Shall the board of education's powers be limited to formulating policy, setting goals, and establishing standards for the public schools; and shall the superintendent be appointed by the governor, with the advice and consent of the senate?"

"2. Shall the board of education be appointed by the governor, with the advice and consent of the senate; the board of education's powers be limited to formulating policy, setting goals, and establishing standards for the public schools; and the superintendent be appointed by the governor, with the advice and consent of the senate?"

SECTION 7. Sections 2 and 3 of this Act shall take effect only if the first question posed to the electorate pursuant to section 6 of this Act receives the most votes cast. Sections 4 and 5 of this Act shall take effect only if the second question posed to the electorate pursuant to section 6 of this Act receives the most votes cast.

SECTION 8. Section 37-36, Hawaii Revised Statutes, is amended to read as follows:

**“§37-36 Modification.** The director of finance may at any time modify or amend any previous allotment upon application of, or upon notice to, the department or establishment concerned; provided that for the University of Hawaii or the department of education, the director of finance may modify or amend any previous allotment only upon application of the university or the department of education, or upon notice to the university or the department of education, and [the approval of the governor] upon public declaration which shall be ten days prior to the modification or amendment taking effect; provided further that the modification [is necessary] or amendment shall be made only to avoid an illegal result[.] or in anticipation of a revenue shortfall; provided further that no deficit or undue reduction of funds to meet future needs of the department or establishment will result therefrom; and provided further that no modification or amendment reduces an allotment below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.”

SECTION 9. Section 37-37, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the University of Hawaii or the department of education, when the director of finance determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the director shall advise the governor of the situation, and the governor shall redetermine the allotment ceiling for the affected source or sources of funding pursuant to section 37-34, and shall advise the university or the department of education, as applicable, [of] and make a public declaration ten days prior to the effective date of the redetermination. The university or the department of education, within twenty days of the governor’s notification, shall submit revised estimates consistent with the governor’s redetermination to the director of finance; otherwise, the director of finance shall modify, amend, or reduce any allotment of the university or the department of education, as applicable, to comply with the governor’s redetermination; provided that no reduction reduces any allotted amount below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.”

SECTION 10. Section 296-2, Hawaii Revised Statutes, is amended 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

## **ACT 295**

accordance with law to formulate policy, [and to exercise control over the public school system through its executive officer, the superintendent of education.] set goals, and establish standards for the public school system.

(b) [The superintendent shall be appointed and may be removed by a majority vote of the members of the board and shall serve as secretary of the board.] The superintendent shall have jurisdiction and control over the internal organization, operations, and management of the public school system."

**SECTION 11.** The department of education shall develop a modified lump-sum budgeting plan only for direct student/school allocations. The plan shall contain procedures, processes, and standards of accountability for implementing lump-sum budgeting and proposed legislation to implement the plan. The plan shall be submitted to the legislature twenty days prior to the convening of the regular session of 1993.

**SECTION 12.** Constitutional and statutory material to be repealed is bracketed. New constitutional and statutory material is underscored.

**SECTION 13.** The amendments to Article X, section 2 and 3 of the Constitution of the State of Hawaii shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

**SECTION 14.** This Act shall take effect upon its approval.

(Approved June 29, 1992.)

## **ACT 295**

S.B. NO. 2253

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 there is no issue more encompassing, more compelling, or more pervasive within the State than education. No individual is immune from the powerful effects of an educational system on all aspects of life. From the home to the neighborhood to the workplace to the school, education is a community issue.

Hawaii's public school system is vital in preparing Hawaii's children to develop the skills needed to function effectively in a rapidly changing, global, and interdependent society.

The purpose of this Act is to empower schools by giving them greater flexibility and autonomy in order to achieve improvements in student learning. This bill also provides for an educational system that encompasses the principle of lifelong learning which helps each individual realize his or her fullest potential as a productive citizen and contributing member of society, and assures the best quality of life for all of Hawaii's people. The legislature hopes to accomplish this objective by:

- (1) Requiring each individual school to prioritize its repair and maintenance projects;
- (2) Requiring the governor to develop incentives that would encourage

- and allow the private sector to make contributions to the educational system;
- (3) Permitting school/community-based management councils to become involved in the selection of school personnel;
  - (4) Encouraging reform and innovation in collective bargaining negotiations between the State and the unions;
  - (5) Extending the term of the commission on performance standards, and requiring the commission to consider performance standards that are results-driven and to develop a model for future assessment on a school-by-school basis;
  - (6) Conducting a review of chapters 26 and 37 as they relate to education;
  - (7) Conducting an inventory of all “add-on” programs or activities that are related to education and are currently competing with the ongoing basic skills program in the curriculum of Hawai‘i’s public school system;
  - (8) Endorsing the concepts of project Ke Au Hou and requiring the implementation of a business manager program at the secondary school level; and
  - (9) Requiring the department of education to evaluate and implement the recommendations of the Task Force on Educational Governance where possible.

## PART I. FINANCIAL REFORMS

**SECTION 2. Prioritization of repair and maintenance.** Each school shall meet with the department of accounting and general services on an annual basis to advise the department of school needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After schools have prioritized their repair and maintenance projects, a statewide list shall be prepared, reviewed, and approved by the department of education, provided that the department may make adjustments among schools and districts. Each school repair and maintenance priority listing shall be approved by the individual school administration and submitted to the department of accounting and general services for implementation. The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the individual school administration.

**SECTION 3. Private sector support incentives.** A key component of school/community-based management is participation by the private sector and, accordingly, the private sector should have a more significant role in promoting and supporting educational reform. The governor, in consultation with the directors of finance and taxation, the director of the office of state planning, and the superintendent of education, shall develop and report on incentives to encourage public/private partnerships in education and private sector financial or other material support for public schools, in addition to any means already provided by law. The governor shall submit a report to the legislature no later than twenty days prior to the convening of the 1993 regular session on progress made toward increasing private support for public education.

## **PART II. STRUCTURAL REFORMS**

**SECTION 4.** The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

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

**SECTION 5. Negotiation of reform and innovation.** The State has a long and well-established public policy that recognizes the right of public employees to organize and negotiate on matters of wages, hours, and other conditions of employment. However, the legislature recognizes the need to broaden the perspectives of the public employer and exclusive collective bargaining representation such that negotiations include consideration of student needs and the facilitation and promotion of shared decision-making at the school level.

The board of education and exclusive bargaining representatives of teachers and educational officers are encouraged to negotiate changes that focus on the needs of students and promote decision-making at the school level to facilitate the restructuring of public education to include but not be limited to: extension of the school day; extension or reconfiguration of the traditional school year; and other innovations in collective bargaining agreements. Where necessary, the parties may make recommendations to the legislature to provide additional resources that may be required to implement proposed reforms.

## **PART III. REVIEW AND ASSESSMENT**

**SECTION 6.** Act 334, Session Laws of Hawaii 1991, is amended as follows:

**1. By amending section 3 to read:**

**"SECTION 3.** The commission shall consist of eleven voting members. The superintendent of education, the chairperson of the board of education, and the president of the University of Hawaii, or their respective designated representatives shall serve as ex officio, voting members. The remaining eight members shall be appointed by the governor from a list of prospective appointees recommended by the board of education. The members shall represent a cross-section of the community.

The terms of all commission members shall terminate on June 30, [1993.] 1994. The commission shall select a chairperson and vice-chairperson from among its members."

**2. By amending section 4 to read:**

**"SECTION 4.** The commission shall submit an interim report on performance standards and the means to assess educational achievement to the governor, the legislature, and the board of education by [June 30, 1992.] December 31, 1992. A final report shall be submitted to the governor, the legislature, and the board of education, twenty days prior to the convening of the regular session of [1993.] 1994."

**3. By amending section 5 to read:**

"SECTION 5. For the purposes of this Act, "performance standards" means the levels of performance expected of students on assessments of educational achievement.

The means used to assess educational achievement may include multiple measures. These measures may include direct and indirect measures such as writing samples, portfolios, open-ended and essay questions, demonstrations, experiments, individual or group projects, or multiple-choice tests.

In conducting its work, the commission shall perform the following tasks:

- (1) Gather relevant data from a broad range of individuals and groups;
- (2) Conduct public forums to obtain broad-based community input on student performance standards;
- (3) Establish student performance standards based upon national goals for education, Hawaii goals for education, and the Hawaii department of education's foundation program objectives, student performance expectations, and essential competencies;
- (4) Recommend assessment methods appropriate for each recommended student performance standard;
- (5) Obtain baseline data reflecting current levels of achievement in the selected performance standards; [and]
- (6) Establish a schedule for development and implementation of these performance standards, assessment methods, and baseline data[.]; and
- (7) Develop an implementation model for future assessment on a school-by-school basis."

4. By amending section 6 to read:

"SECTION 6. The commission shall consider performance standards that are results-driven, balance direct and indirect measures, inform instruction, and are valid, reliable, and cost-effective."

**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.

**SECTION 8. Inventory of add-on programs.** The legislature recognizes that the effectiveness of a school system rests in large part on its ability to teach students the basic academic skills which will enable them to live productive lives in society. A national study conducted by the Gallup Organization suggests that English, mathematics, history/government, and science are among the core courses that are considered to be in the "essential" category.

## **ACT 295**

Additionally, the legislature is aware that over the years, a number of programs and activities have been added to the public school curriculum through legislative and other mandates. Undoubtedly, "add-on" programs provide students with the necessary instruction to "round-out" their curriculum. However, although beneficial, many of these "add-on" programs are competing with core curriculum courses for valuable instructional time and resources. It is the general perception that the quality of our educational system has suffered due to this over-burdening of our limited resources.

In light of the increasing demands placed on Hawaii's students to compete in an information-based and highly skilled society, the legislature believes that alternatives to increase learning opportunities in the schools should be explored and reviewed.

The legislative auditor shall conduct an inventory of all "add-on" programs or activities that are related to education and are currently on-going in the curriculum of Hawaii's public school system. The inventory shall be comprised of data including but not limited to:

1. A complete breakdown of the curricula offered for each grade level, kindergarten through the twelfth grade, categorized as either a core or "add-on" course; and
2. A comparative summary of the total amount of instructional hours and operational costs required to provide core courses versus "add-on" courses.

For the purposes of this part, "add-on" program or activity means any program or activity that:

- (1) Competes with the core curriculum for instructional time; or
- (2) Otherwise impacts or detracts from the core curriculum of the student.

The legislative auditor shall submit a report of findings to the legislature no later than twenty days before the convening of the regular session of 1993.

### **SECTION 9. Project Ke Au Hou and Business management program.**

The legislature endorses the concept of Project Ke Au Hou and encourages its implementation. The legislature is committed to facilitating the consideration of requests for additional resources that may be needed by the department for the implementation of Project Ke Au Hou.

No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit as a consequence of the implementation of project Ke Au Hou. In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment; but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under personnel laws and collective bargaining agreements of the State, and applicable personnel regulations of the department of education.

The legislature encourages the executive branch to establish an ad hoc work group with sufficient staff expertise from other state agencies as may be required by the department of education, to facilitate the initial implementation of Project Ke Au Hou by no later than the beginning of the 1993 school year.

The department of education shall include as a component of Project Ke Au Hou the implementation of a business manager program at a limited number

of selected secondary schools. The department shall submit a report on the design of the program and identify any resources that may be required to implement the program no later than twenty days prior to the convening of the 1993 regular session.

**SECTION 10. Implementation of the Educational Task Force recommendations.** The department of education shall evaluate each of the recommendations of the Educational Task Force, except for the recommendations addressing constitutional implications (structure of the board, thirty per cent budget dedication, and two-thirds voting on bills relating to education), and shall implement, to the extent possible, those recommendations that the department determines will contribute to the reform of public education, that are within the authority of the department consistent with existing law, and that can be implemented within existing resources. The department shall submit an implementation progress report no later than twenty days prior to the convening of the 1993 Regular Session on the status of each of the Educational Task Force recommendations and shall fully explain the failure to implement any recommendation. Furthermore, for those recommendations requiring statutory changes or additional resources, the department shall conduct a study in consultation with other state agencies that may be affected by any statutory change for the purpose of identifying the most appropriate, viable, and cost-effective alternative.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 29, 1992.)

## ACT 296

H.B. NO. 3493

A Bill for an Act Making an Appropriation for Repair and Maintenance of Schools.

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

SECTION 1. Chapter 298, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

(b) Funds in this account shall be expended at the direction of the school principal to contract for minor repairs and maintenance. Any funds appropriated for this purpose which are unencumbered at the close of each fiscal year shall lapse into the general fund.

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

SECTION 2. Section 103-23, Hawaii Revised Statutes, is amended as follows:

**"§103-23 Additional exceptions.** (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.

(b) Nothing provided in section 103-22 shall prevent the department of health, if, after publication of a call for tenders, it receives no bids from any responsible bidder or only one bid therefrom, from purchasing at regular market prices, meats, on the hoof or otherwise, and foodstuffs, as may from time to time be required for the Kalaupapa settlement.

(c) Special contracts or subcontracts by any governmental agency for materials or supplies or purchases of materials or supplies made in furtherance of the contract referred to in this section shall be subject to the requirement of public advertisement for sealed tenders in the manner provided by law.

(d) Nothing provided in paragraph (a) above or in section 103-22 shall prevent the department of education from expending funds from school-level minor repairs and maintenance accounts as established by section 298-, for the purpose of acquiring repair and maintenance services to address immediate needs of the public schools."

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$1,888,000, or 0.06065 per cent. The reasons for exceed-

ing the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and meets the need provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,888,000, or so much thereof as may be necessary for the fiscal year 1992-1993, to distribute the sum of \$8,000 to each of the 236 public schools for minor repairs and maintenance; provided that the repairs shall be exempt from chapter 103, Hawaii Revised Statutes.

SECTION 5. The department of education shall report to the legislature no later than twenty days prior to the convening of the 1993 Regular Session on the establishment of the school accounts and any repairs made from these accounts.

SECTION 6. The sum appropriated shall be expended by the department of education for the purposes of this Act.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1992.

(Approved June 29, 1992.)

**Note**

1. No ramseyer section. Edited pursuant to HRS §23G-16.5.

**ACT 297**

H.B. NO. 2828

A Bill for an Act Relating to School Employees.

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

SECTION 1. During fiscal year 1990-1991, the department of education was authorized to convert to permanent status 156 full-time equivalent temporary school security attendant positions. The department did not take action to do so since all of the incumbents would have had to compete with other interested applicants pursuant to state personnel rules. The purpose of this Act is to "grandfather" those incumbents since they have served faithfully and well in their positions.

Similarly, under section 82 of Act 296, Session Laws of Hawaii 1991, the department was authorized to convert to permanent status six temporary user support technician positions and to "grandfather" the incumbents as well as seven other permanent user support technicians and one user support administrator for the financial management system. However, the department was not able to complete the process in time for the department of personnel services to classify the permanent civil service positions. This Act provides those employees the opportunity to gain permanent status, thus allowing implementation of the system.

SECTION 2. The department of education is authorized to convert to

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permanent status 156 full-time equivalent general funded temporary school security attendant positions (EDN 306); provided that incumbent employees of the positions shall become permanent employees along with their positions without loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; and provided further that any employee converted pursuant to this section shall have performed work satisfactorily for a period of not less than six months prior to the effective date of this Act.

**SECTION 3.** The department of education is authorized to convert to permanent status one full-time equivalent user support administrator position and 13.0 full-time equivalent user support technician positions that were established to develop and implement the financial management system (EDN 303); provided that incumbent employees of the positions shall become permanent employees along with their positions without the loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; and provided further that any employee converted pursuant to this section shall further have performed work satisfactorily for a period of not less than six months prior to the effective date of this Act.

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

(Approved June 29, 1992.)

## **ACT 298**

S.B. NO. 3432

A Bill for an Act Relating to Schools.

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

**SECTION 1.** The purpose of this Act is to establish a consistent process authorizing the department of education to accept donations of equipment and fixtures, and to clarify responsibility for the repair and maintenance of these donations. The legislature finds that the State needs a consistent policy and procedure for these matters.

**SECTION 2.** Chapter 296, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

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

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

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

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 29, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 299**

H.B. NO. 3934

A Bill for an Act Relating to Education.

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

**SECTION 1.** The purpose of this Act is to allow the department of education to establish a two-year pilot Hawaii young scholars program. The legislature finds that certain ethnic groups occupy a disadvantaged position in our State, particularly because of their socio-economic and education status. The legislature also finds that one way to lessen this disadvantage is to provide a stimulating, positive, and quality educational environment.

The Hawaii young scholars program would serve to lessen the disparity among those individuals who pursue a higher education and those who do not go on to college. This disparity is a community concern, especially as a significant number of economically disadvantaged children tend to become school drop-outs. Education is a positive alternative for these children to avoid a life of need, poverty, welfare, and abuse.

In 1990, the legislature passed Act 333, which established the Hawaii opportunity program in education (HOPE). Through the HOPE special fund, financially needy students are given the chance to participate in a comprehensive program at the elementary, secondary, and post-secondary levels with priority given to students from ethnic groups who are underrepresented in the student population at the University of Hawaii.

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However, HOPE is limited to those students attending "special needs schools". A separate but complementary program may be initiated and implemented to reach students who might not otherwise be eligible participants in HOPE, but could benefit from a program that affords quality preparation for post-secondary education. A program that is designed to stimulate, motivate, and support children from ethnic groups underrepresented at the University of Hawaii would assist in continuing efforts to equalize educational opportunities for all ethnic groups within the State and would help to alleviate the racial tension that sometimes exists because of lack of educational opportunities for some groups.

This program should provide early, continuous, and quality educational enrichment activities that include parents, teachers, students, and student peers as core support members in each student's educational progress. This support network would in all probability have substantial influence on whether a student will acquire the motivation, interest, and determination to pursue a higher education.

The teacher, the parent, the sibling, the friend, and the employer—all facets of society—are critical to learning. Also important are parental support and attitudes toward learning and education, as parental attitudes are often reflected in their child's attitude, ability, and determination to learn and succeed in school. Teachers generally find that if students are motivated to learn, then their role as facilitators of learning is greatly enhanced.

**SECTION 2.** The department of education may establish a two-year pilot program to be called the Hawaii young scholars program. The department of education may implement the program in five selected elementary schools throughout the State, beginning with the third grade in the first year of the two-year pilot program, and then the fourth grade in the second year of the two-year pilot program. Schools not selected may be encouraged to participate in the Hawaii young scholars program under school/community-based management.

The department of education may coordinate with the University of Hawaii in the design of the Hawaii young scholars program.

The department of education may also provide a contract of agreement to each economically disadvantaged child and the child's parents or guardians that is consistent with school/community-based management.

**SECTION 3.** If established by the department of education, the Hawaii young scholars program pilot program shall operate for two years. The department of education shall submit a report on the performance of the Hawaii young scholars program and its recommendations with regard to the program to the legislature twenty days prior to the convening of the regular session of 1994.

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

(Approved June 29, 1992.)

## ACT 300

H.B. NO. 2454

A Bill for an Act Relating to the State Budget.

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

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 1992.

SECTION 2. This Act amends Act 296, Session Laws of Hawaii 1991, and other appropriations and authorizations effective during fiscal biennium 1991-93.

SECTION 3. Part I, Act 296, Session Laws of Hawaii 1991, is amended by adding a new section to read as follows:

"SECTION 1A. In accordance with Article VII, section 9, of the Constitution of the State of Hawaii, and section 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 1991-1992 to be exceeded by \$72,402,712, or 2.56 per cent, and for fiscal year 1992-1993 to be exceeded by \$77,129,864, or 2.48 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act."

SECTION 4. The appropriations and authorizations, or the expending agency, as the case may be, set forth opposite the cost categories in Part II of Act 296, Session Laws of Hawaii 1991, for the following programs are amended:

**P R O G R A M   A P P R O P R I A T I O N S**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	<b>APPROPRIATIONS</b>			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
<b>A. ECONOMIC DEVELOPMENT</b>							
1.	BED102	-					
	OPERATING		BED	45.00 *		45.00 *	
			BED	16,293,928 A		18,270,036 A	
			BED	257,400 B		808,800 B	
			BED	7,900,000 W		8,000,000 W	
	INVESTMENT CAPITAL		BED	6,181,000 C		511,000 C	
2.	BED113	- STATE TOURISM OFFICE					
	OPERATING		BED	5.00 *		5.00 *	
			BED	21,862,938 A		21,718,146 A	
3.	BED107	- FOREIGN TRADE					
	OPERATING		BED	26.00 *		26.00 *	
			BED	1,698,488 B		1,629,899 B	
4.	AGR101	- FINANCIAL ASSISTANCE FOR AGRICULTURE					
	OPERATING		AGR	15.00 *		15.00 *	
			AGR	944,591 B		985,280 B	
				2,326,000 W		2,326,000 W	

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
5.	AGR122	- PLANT PEST AND DISEASE CONTROL		104.00 *		104.00 *
	OPERATING		AGR	4,237,573	A	4,268,092
			AGR	240,455	U	300,895
	INVESTMENT CAPITAL		AGS	84,000	C	
6.	AGR131	- ANIMAL QUARANTINE		63.00 *		63.00 *
	OPERATING		AGR	2,351,728	A	2,296,913
			AGR	202,127	U	230,827
	INVESTMENT CAPITAL		AGS	159,000	C	2,940,000
7.	AGR132	- ANIMAL DISEASE CONTROL		24.50 *		24.50 *
	OPERATING		AGR	1,348,536	A	1,303,615
			AGR	51,648	T	54,230
8.	LNR172	- FORESTRY - PRODUCTS DEVELOPMENT		29.00 *		29.00 *
	OPERATING		LNR	1,210,870	A	951,419
			LNR	112,805	N	112,805
	INVESTMENT CAPITAL		LNR	70,000	C	810,000
9.	AGR151	- MARKETING INFO & DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR		60.00 *		62.00 *
	OPERATING		AGR	3,980,370	A	3,765,148
			AGR	493,520	B	489,503
			AGR	10,620	N	10,620
10.	AGR141	- AGRICULTURAL RESOURCE MANAGEMENT		26.00 *		26.00 *
	OPERATING		AGR	475,803	A	480,759
			AGR	115,950	B	184,720
			AGR	546,322	W	572,726
	INVESTMENT CAPITAL		AGR			860,000
			AGR			80,000
			AGS	410,000	C	200,000
			LNR	280,000	C	
11.	AGR192	- GENERAL ADMINISTRATION FOR AGR		38.00 *		43.00 *
	OPERATING		AGR	2,158,174	A	1,963,446
	INVESTMENT CAPITAL		AGR	8,100,000	C	7,400,000
12.	AGR102	- FINANCIAL ASSISTANCE FOR AQUACULTURE				
	OPERATING		AGR	80,000	W	80,000
13.	LNR153	- COMMERCIAL FISHERIES AND AQUACULTURE		21.00 *		22.00 *
	OPERATING		LNR	2,242,030	A	1,982,223
			LNR	267,500	N	267,500
	INVESTMENT CAPITAL		LNR	2,850,000	C	25,000
14.	BED120	- ENERGY DEVELOPMENT AND MANAGEMENT		10.00 *		10.00 *
	OPERATING		BED	4,168,358	A	3,780,025
			BED	759,000	B	759,000
			BED	199,070	N	197,920
	INVESTMENT CAPITAL		BED	6,533,000	C	225,000

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
15.	BED130	- ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT		14.00 *		16.00 *
	OPERATING		BED	945,998 A		1,009,382 A
16.	BED142	- GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT		41.00 *		43.00 *
	OPERATING		BED	2,618,712 A		2,667,261 A
			BED			75,000 B
<b>B. EMPLOYMENT</b>						
1.	LBR111	- PLACEMENT SERVICES		3.00 *		3.00 *
	OPERATING		LBR	346,483 A		335,305 A
			LBR			500,000 B
			LBR	132.50 *		132.50 *
			LBR	11,225,213 N		13,262,588 N
			LBR			941,766 U
2.	LBR123	- APPRENTICESHIP & OTHER TRAINING PROGRAMS		7.00 *		8.00 *
	OPERATING		LBR	231,000 A		268,171 A
3.	LBR131	- EMPLOYMENT AND TRAINING PROGRAMS		4.00 *		4.00 *
	OPERATING		LBR	907,640 A		470,141 A
			LBR			3,225,095 B
			LBR	8.00 *		8.00 *
			LBR	13,774,841 N		14,463,911 N
4.	LBR135	- COMMISSION ON EMPLOYMENT & HUMAN RESOURCES		5.00 *		5.00 *
	OPERATING		LBR	301,293 A		220,392 A
			LBR	238,050 N		198,662 N
5.	LBR136	- TRANSITION CENTER				
	OPERATING		LBR	1,755,899 A		1,884,516 A
6.	LBR143	- OCCUPATIONAL SAFETY & HEALTH		57.50 *		59.50 *
	OPERATING		LBR	1,932,732 A		2,315,677 A
			LBR	28.50 *		28.50 *
			LBR	1,283,006 N		1,326,988 N
7.	LBR152	- WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES		35.00 *		38.00 *
	OPERATING		LBR	1,150,677 A		1,290,662 A
			LBR	42,698 N		
8.	LBR153	- CIVIL RIGHTS COMMISSION		26.00 *		26.00 *
	OPERATING		LBR	1,139,133 A		1,167,544 A
			LBR	61,600 N		85,000 N
9.	LBR161	- PUBLIC AND PRIVATE EMPLOYMENT		3.00 *		3.00 *
	OPERATING		LBR	576,133 A		558,312 A

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	<b>APPROPRIATIONS</b>		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
10.	LBR171	- UNEMPLOYMENT COMPENSATION OPERATING	LBR	1,780,862 A		1,734,905 A
			LBR	60,584,106 B		123,807,834 B
				223.90 *		243.90 *
			LBR	9,374,353 N		10,249,232 N
11.	LBR183	- DISABILITY COMPENSATION OPERATING	LBR	142.00 *		145.00 *
			LBR	3,929,456 A		4,329,868 A
				12,055,000 B		16,055,000 B
12.	HMS802	- VOCATIONAL REHABILITATION OPERATING	HMS	34.10 *		35.10 *
			HMS	4,366,819 A		4,143,454 A
				736,966 B		773,814 B
				91.90 *		93.90 *
			HMS	4,939,477 N		5,008,797 N
13.	LBR901	- DLIR-DATA GATHERING, RESEARCH AND ANALYSIS OPERATING	LBR	15.34 *		17.84 *
				1,329,462 A		1,444,803 A
				28.08 *		28.08 *
			LBR	1,558,938 N		1,632,749 N
14.	LBR902	- GENERAL ADMINISTRATION OPERATING	LBR	37.30 *		37.76 *
				1,519,524 A		1,546,909 A
				33.64 *		33.64 *
			LBR	1,740,586 N		1,809,713 N
15.	LBR903	- OFFICE OF COMMUNITY SERVICES OPERATING	LBR	7.00 *		7.00 *
				8,036,293 A		7,953,966 A
				3.00 *		3.00 *
			LBR	1,698,143 N		2,467,180 N
16.	LBR812	- LABOR & INDUSTRIAL RELATIONS APPEALS BOARD OPERATING	LBR	9.00 *		9.00 *
				479,725 A		499,830 A

**C. TRANSPORTATION FACILITIES**

1.	TRN102	- HONOLULU INTERNATIONAL AIRPORT OPERATING	TRN	825,000 A		
				543.00 *		618.00 *
			TRN	55,203,774 B		59,479,334 B
		INVESTMENT CAPITAL	TRN	39,950,000 B		B
			TRN	579,602,000 E		529,701,000 E
			TRN	8,600,000 N		2,100,000 N
2.	TRN104	- GENERAL AVIATION OPERATING	TRN	2.00 *		2.00 *
				619,494 B		614,297 B
3.	TRN111	- HILO INTERNATIONAL AIRPORT OPERATING	TRN	77.00 *		82.00 *
				6,636,625 B		6,853,349 B
		INVESTMENT CAPITAL	TRN	2,235,000 B		7,170,000 B
			TRN	100,000 N		2,000,000 N

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
4.	TRN114	- KE-AHOLE AIRPORT		77.00 *		79.00 *
	OPERATING	TRN		7,320,299 B		6,357,108 B
	INVESTMENT CAPITAL	TRN		74,650,000 B		2,925,000 B
		TRN				75,299,000 E
		TRN		7,000,000 N		2,000,000 N
5.	TRN116	- WAIMEA-KOHALA AIRPORT		2.00 *		2.00 *
	OPERATING	TRN		109,844 B		190,204 B
6.	TRN118	- UPOLU AIRPORT				
	OPERATING	TRN		347,453 B		7,843 B
7.	TRN131	- KAHULUI AIRPORT		163.00 *		164.00 *
	OPERATING	TRN		9,249,004 B		10,188,337 B
	INVESTMENT CAPITAL	TRN		29,365,000 B		11,795,000 B
		TRN		2,000,000 N		1,000,000 N
8.	TRN133	- HANA AIRPORT		2.00 *		2.00 *
	OPERATING	TRN		174,440 B		97,004 B
9.	TRN135	- KAPALUA AIRPORT		6.00 *		6.00 *
	OPERATING	TRN		326,027 B		452,177 B
	INVESTMENT CAPITAL	TRN		300,000 B		
10.	TRN141	- MOLOKAI AIRPORT		24.00 *		24.00 *
	OPERATING	TRN		2,137,340 B		1,379,621 B
	INVESTMENT CAPITAL	TRN		4,195,000 B		
		TRN		100,000 N		
11.	TRN143	- KALAUPAPA AIRPORT		1.00 *		1.00 *
	OPERATING	TRN		132,782 B		54,714 B
12.	TRN151	- LANAI AIRPORT		9.00 *		9.00 *
	OPERATING	TRN		586,378 B		784,375 B
13.	TRN161	- LIHUE AIRPORT		109.00 *		110.00 *
	OPERATING	TRN		7,971,459 B		7,696,062 B
	INVESTMENT CAPITAL	TRN		4,760,000 B		
		TRN		1,000,000 N		
14.	TRN163	- PORT ALLEN AIRPORT				
	OPERATING	TRN		1,569 B		1,651 B
15.	TRN195	- AIRPORTS ADMINISTRATION				
	OPERATING	TRN		290,600 A		190,600 A
				91.00 *		91.00 *
	INVESTMENT CAPITAL	TRN		162,517,066 B		238,905,532 B
		TRN		12,975,000 B		600,000 B
		TRN				3,675,000 E
		TRN		600,000 N		100,000 N

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
16.	TRN301	- HONOLULU HARBOR			107.00 *	107.00 *
	OPERATING	TRN		10,824,023	B	10,345,238
	INVESTMENT CAPITAL	TRN		2,775,000	B	310,000
		TRN		11,200,000	E	27,290,000
17.	TRN303	- BARBERS POINT HARBOR			3.00 *	3.00 *
	OPERATING	TRN		525,420	B	327,897
	INVESTMENT CAPITAL	TRN		1,600,000	B	7,150,000
		TRN		1,100,000	E	10,500,000
18.	TRN305	- KEWALO BASIN			3.00 *	3.00 *
	OPERATING	TRN		509,183	B	515,394
19.	TRN311	- HILO HARBOR			10.00 *	10.00 *
	OPERATING	TRN		1,119,554	B	1,165,500
	INVESTMENT CAPITAL	TRN		930,000	B	600,000
		TRN				1,550,000
		TRN				4,570,000
20.	TRN313	- KAWAIHAE HARBOR			8.00 *	7.00 *
	OPERATING	TRN		529,351	B	567,426
	INVESTMENT CAPITAL	TRN		350,000	B	100,000
21.	TRN331	- KAHULUI HARBOR			16.00 *	15.00 *
	OPERATING	TRN		1,475,897	B	1,378,678
	INVESTMENT CAPITAL	TRN		8,800,000	B	1,450,000
		TRN				1,500,000
22.	TRN341	- KAUNAKAKAI HARBOR			1.00 *	1.00 *
	OPERATING	TRN		417,874	B	194,665
	INVESTMENT CAPITAL	TRN		95,000	B	200,000
23.	TRN361	- NAWILIWILI HARBOR			12.50 *	12.50 *
	OPERATING	TRN		840,713	B	868,256
	INVESTMENT CAPITAL	TRN		900,000	B	950,000
		TRN		7,000,000	E	7,000,000
24.	TRN363	- PORT ALLEN HARBOR			1.00 *	1.00 *
	OPERATING	TRN		305,923	B	298,729
	INVESTMENT CAPITAL	TRN		150,000	B	500,000
25.	TRN395	- HARBORS ADMINISTRATION			60.00 *	56.00 *
	OPERATING	TRN		25,772,786	B	28,142,597
	INVESTMENT CAPITAL	TRN		825,000	B	975,000

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
26.	TRN501	- OAHU HIGHWAYS			233.00 *	268.00 *
	OPERATING	TRN		31,150,632	B	31,874,239
	INVESTMENT CAPITAL	TRN		84,256,000	B	23,962,000
		TRN		3,850,000	D	D
		TRN		30,159,000	E	40,900,000
		TRN		388,388,000	J	
		TRN		15,426,000	K	11,122,000
27.	TRN511	- HAWAII HIGHWAYS			118.00 *	127.00 *
	OPERATING	TRN		14,230,901	B	22,976,342
	INVESTMENT CAPITAL	TRN		18,730,000	B	30,210,000
		TRN			D	
		TRN				24,500,000
28.	TRN531	- MAUI HIGHWAYS			68.00 *	77.00 *
	OPERATING	TRN		9,581,061	B	12,461,770
	INVESTMENT CAPITAL	TRN		24,985,000	B	52,699,000
		TRN				40,000,000
29.	TRN541	- MOLOKAI HIGHWAYS			12.00 *	12.00 *
	OPERATING	TRN		1,883,308	B	1,956,841
	INVESTMENT CAPITAL	TRN				1,010,000
30.	TRN551	- LANAI HIGHWAYS			3.00 *	3.00 *
	OPERATING	TRN		544,887	B	596,759
	INVESTMENT CAPITAL	TRN		305,000	B	5,795,000
		TRN		305,000	R	5,795,000
31.	TRN561	- KAUAI HIGHWAYS			49.00 *	50.00 *
	OPERATING	TRN		5,577,858	B	7,373,897
	INVESTMENT CAPITAL	TRN		16,818,000	B	25,113,000
		TRN				30,800,000
32.	TRN595	- HIGHWAYS ADMINISTRATION			56.00 *	59.00 *
	OPERATING	TRN		35,968,903	B	44,769,904
	INVESTMENT CAPITAL	TRN		1,150,000	B	2,100,000
		TRN		1,875,000	D	D
		TRN		2,605,000	N	980,000
33.	TRN597	- HIGHWAY SAFETY			38.00 *	40.00 *
	OPERATING	TRN		4,652,458	B	4,939,244
		TRN		4.00 *		4.00 *
		TRN		393,859	N	415,187
34.	TRN995	- GENERAL ADMINISTRATION			99.00 *	99.00 *
	OPERATING	TRN		8,486,110	B	8,899,187

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS					
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93			
<b>D. ENVIRONMENTAL PROTECTION</b>									
1. HTH840 - ENVIRONMENTAL MANAGEMENT									
		OPERATING	HTH HTH	99.00 *		107.00 *			
				4,832,148 A	4,410,248 A				
					85,000 B				
				29.00 *	29.00 *				
		INVESTMENT CAPITAL	HTH HTH	3,315,783 N		3,544,972 N			
				13,000,000 C					
2. AGR846 - PESTICIDES									
		OPERATING	AGR AGR	25.00 *		25.00 *			
				821,634 A	810,021 A				
				151,947 N	183,521 N				
3. LNR401 - AQUATIC RESOURCES									
		OPERATING	LNR LNR	26.00 *		26.00 *			
				1,430,141 A	1,447,919 A				
				462,283 N	472,889 N				
4. LNR402 - FORESTS AND WILDLIFE RESOURCES									
		OPERATING	LNR	65.50 *		65.50 *			
				3,002,809 A	2,854,773 A				
				.50 *	.50 *				
		INVESTMENT CAPITAL	LNR LNR	536,978 N	546,245 N				
				940,000 C	885,000 C				
5. LNR403 - MINERAL RESOURCES									
		OPERATING	LNR	3.00 *		3.00 *			
				309,946 A	325,655 A				
6. LNR404 - WATER RESOURCES									
		OPERATING	LNR	25.00 *		25.00 *			
		INVESTMENT CAPITAL	LNR	3,071,158 A	2,901,899 A				
				3,520,000 C	2,650,000 C				
7. LNR405 - CONSERVATION & RESOURCES ENFORCEMENT									
		OPERATING	LNR LNR	78.00 *		80.00 *			
				4,471,767 A	4,175,051 A				
				230,249 N	256,533 N				
		INVESTMENT CAPITAL	LNR LNR	1.00 *	1.00 *				
				7,107 W	7,302 W				
				30,000 C	330,000 C				
8. TRN903 - COASTAL AREAS									
		OPERATING	TRN		17,514 A	17,102 A			
9. HTH850 - POLICY DVLPMENT,COORD & ANLYS FOR NAT P ENVIR									
		OPERATING	HTH	8.00 *		11.00 *			
				346,923 A	393,112 A				
10. LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT									
		OPERATING	LNR LNR	59.50 *		61.50 *			
				4,113,290 A	4,688,572 A				
				84,130 N	85,275 N				
11. HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION									
		OPERATING	HTH	16.50 *		17.50 *			
				1,372,479 A	1,301,910 A				

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
			HTH	4.50 *		5.50 *
				1,522,349N		1,693,790N
<b>E. HEALTH</b>						
1.	HTH101	- TUBERCULOSIS/HANSEN'S DISEASE CONTROL				
	OPERATING		HTH	47.00 *		47.00 *
				2,133,974A		2,232,764A
				3.00 *		3.00 *
			HTH	601,809N		615,410N
2.	HTH111	- HANSEN'S DISEASE INSTITUTIONAL SERVICES				
	OPERATING		HTH	71.00 *		71.00 *
				4,577,850A		4,669,948A
			HTH	185,000B		210,000B
	INVESTMENT CAPITAL		AGS	410,000C		
			TRN	200,000C		
3.	HTH121	- STD/AIDS PREVENTION SERVICES				
	OPERATING		HTH	15.00 *		15.00 *
				6,260,612A		6,405,213A
				4.00 *		4.00 *
			HTH	2,092,781N		2,206,116N
4.	HTH131	- EPIDEMIOLOGY SERVICES				
	OPERATING		HTH	13.00 *		15.00 *
				2,478,472A		2,800,599A
				1.00 *		1.00 *
			HTH	272,311N		371,805N
5.	HTH141	- DENTAL DISEASES				
	OPERATING		HTH	38.60 *		38.60 *
				1,274,939A		1,498,786A
6.	HTH151	- PREVENTIVE HEALTH SERVICES				
	OPERATING		HTH	6.00 *		6.00 *
				1,432,768A		1,398,546A
			HTH	284,871N		295,161N
7.	HTH160	- NUTRITION				
	OPERATING		HTH	7.00 *		7.00 *
				362,807A		415,994A
				18.00 *		18.00 *
			HTH	13,012,574N		13,678,787N
8.	HTH180	- HEALTH EDUCATION & INJURY PREVENTION				
	OPERATING		HTH	27.00 *		27.00 *
				1,601,685A		1,574,149A
			HTH	433,909N		459,891N
9.	HTH195	- HPDP ADMINISTRATION				
	OPERATING		HTH	14.00 *		15.00 *
				682,649A		670,185A
			HTH	63,011N		66,723N
10.	HTH211	- HILO HOSPITAL				
	OPERATING		HTH	722.00 *		772.00 *
				42,066,000B		47,267,828B

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**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	<b>APPROPRIATIONS</b>			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
11. HTH212 - HONOKAA HOSPITAL OPERATING			HTH	788,033 A		338,683 A	
				50.00 *		50.00 *	
12. HTH213 - KA'U HOSPITAL OPERATING			HTH	2,732,179 B		3,153,579 B	
				4,812,000 C			
13. HTH214 - KOHALA HOSPITAL OPERATING			HTH	493,180 A		484,459 A	
				33.00 *		33.00 *	
14. HTH215 - KONA HOSPITAL OPERATING			HTH	1,422,520 B		1,288,560 B	
15. HTH221 - MAUI MEMORIAL HOSPITAL OPERATING			HTH	537,326 A		626,538 A	
				43.00 *		43.00 *	
16. HTH222 - HANA MEDICAL CENTER OPERATING			HTH	1,734,620 B		1,675,600 B	
17. HTH223 - KULA HOSPITAL OPERATING			HTH	639.50 *		648.50 *	
				42,435,316 B		47,571,299 B	
18. HTH224 - LANAI COMMUNITY HOSPITAL OPERATING			HTH	265,399 A		225,852 A	
				9.50 *		9.50 *	
19. HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL OPERATING			HTH	426,688 B		498,148 B	
				404,000 C			
20. HTH232 - SAMUEL MAHELONA MEMORIAL HOSPITAL OPERATING			HTH	1,484,576 A		1,399,023 A	
				182.00 *		184.00 *	
21. HTH241 - MALUHIA HOSPITAL OPERATING			HTH	6,852,843 B		8,132,879 B	
INVESTMENT CAPITAL			HTH	492,914 A		378,816 A	
				28.00 *		28.00 *	
INVESTMENT CAPITAL			HTH	1,317,318 B		1,647,072 B	
INVESTMENT CAPITAL			HTH	3,855,237 A		3,265,318 A	
				150.50 *		150.50 *	
INVESTMENT CAPITAL			HTH	5,340,292 B		6,069,041 B	
				5,000,000 C			
INVESTMENT CAPITAL			HTH	2,721,000 A		2,397,010 A	
				154.50 *		154.50 *	
INVESTMENT CAPITAL			HTH	4,075,098 B		4,095,954 B	
INVESTMENT CAPITAL			HTH	2,263,133 A		4,723,006 A	
				194.00 *		194.00 *	
INVESTMENT CAPITAL			HTH	6,437,859 B		6,591,325 B	
				742,037 N		742,037 N	
INVESTMENT CAPITAL			AGS	1,248,000 C			

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
22.	HTH242 - LEAHI HOSPITAL OPERATING		HTH	4,118,864 A 308.00 *		4,346,278 A 311.00 *
			HTH	9,444,905 B		9,446,754 B
23.	SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES OPERATING		SUB	5,093,923 A		2,832,230 A
24.	HTH295 - COMMUNITY HOSPITALS ADMINISTRATION OPERATING		HTH	2,343,164 A 39.00 *		2,377,361 A 33.00 *
			HTH	2,639,627 B		2,591,606 B
25.	HTH420 - ADULT MENTAL HEALTH OPERATING		HTH	885.50 *		998.50 *
			HTH	42,013,095 A		46,964,006 A
			HTH			231,651 B
	INVESTMENT CAPITAL	AGS		1,034,630 N		1,098,556 N
				5,515,000 C		500,000 C
26.	HTH440 - ALCOHOL & DRUG ABUSE OPERATING		HTH	8.50 *		9.50 *
			HTH	6,270,335 A 2.00 *		6,576,073 A 2.00 *
			HTH	2,366,422 N		4,489,856 N
27.	HTH460 - CHILD & ADOLESCENT MENTAL HEALTH OPERATING		HTH	183.00 *		191.00 *
			HTH	12,272,963 A		13,622,839 A
				246,979 N		381,900 N
28.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION OPERATING		HTH	70.00 *		84.00 *
			HTH	5,147,458 A 2.00 *		5,678,685 A 2.00 *
			HTH	573,580 N		2,095,858 N
29.	HTH501 - COMMUNITY SERVICES FOR DEV DIS & MENT RET OPERATING		HTH	122.25 *		123.25 *
			HTH	14,351,628 A		15,978,041 A
				137,943 B		2,111,543 B
	INVESTMENT CAPITAL	AGS		180,000 C		
30.	HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL OPERATING		HTH	402.00 *		402.00 *
			HTH	15,492,825 A		15,312,577 A
				703,404 B		738,574 B
31.	HTH530 - FAMILY HEALTH SERVICES OPERATING		HTH	73.25 *		110.00 *
			HTH	18,742,462 A 49.00 *		21,012,393 A 60.00 *
				3,601,951 N		3,681,552 N
32.	HTH540 - SCHOOL HEALTH SERVICES OPERATING		HTH	365.00 *		383.00 *
			HTH	9,310,988 A 2.00 *		9,558,677 A 2.00 *
				78,003 N		95,638 N

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**P R O G R A M A P P R O P R I A T I O N S**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
33.	HTH570	- COMMUNITY HEALTH NURSING			168.00 *		168.00 *
		OPERATING	HTH	7,119,021	A	7,375,069	A
				4.00 *		4.00 *	
			HTH	51,289	B	51,289	B
				1.00 *		1.00 *	
			HTH	631,001	N	650,651	N
34.	HTH595	- PERSONAL HEALTH SERVICES ADMINISTRATION			30.00 *		33.00 *
		OPERATING	HTH	3,103,528	A	3,006,551	A
				2.00 *		2.00 *	
			HTH	100,601	N	105,649	N
35.	HTH610	- ENVIRONMENTAL HEALTH SERVICES			199.00 *		200.00 *
		OPERATING	HTH	6,308,422	A	6,206,788	A
				2.00 *		2.00 *	
			HTH	54,134	X	56,745	X
		INVESTMENT CAPITAL	AGS			471,000	C
36.	HTH710	- STATE LABORATORY SERVICES			87.00 *		90.00 *
		OPERATING	HTH	3,777,017	A	4,231,185	A
		INVESTMENT CAPITAL	AGS	3,500,000	C		
37.	HTH720	- MED FACILITIES - STDS, INSPECTION, LICENSING			18.00 *		18.40 *
		OPERATING	HTH	892,485	A	930,683	A
				14.00 *		16.60 *	
			HTH	944,299	N	1,071,463	N
38.	HTH730	- EMERGENCY MEDICAL SERVICES			16.00 *		16.00 *
		OPERATING	HTH	28,472,304	A	30,947,197	A
			HTH	210,515	N	210,515	N
39.	HTH760	- HEALTH STATUS MONITORING			35.00 *		35.00 *
		OPERATING	HTH	1,960,147	A	1,984,247	A
			HTH	113,352	N	113,352	N
40.	HTH770	- STATE HEALTH INSURANCE			2.00 *		2.00 *
		OPERATING	HTH	9,636,975	A	10,171,580	A
41.	HTH795	- HEALTH RESOURCES ADMINISTRATION			16.00 *		24.00 *
		OPERATING	HTH	1,479,821	A	1,528,461	A
			HTH	2,675	N	2,675	N
42.	HTH906	- COMPREHENSIVE HEALTH PLANNING			13.00 *		13.00 *
		OPERATING	HTH	700,218	A	684,429	A
43.	HTH907	- GENERAL ADMINISTRATION			122.00 *		124.00 *
		OPERATING	HTH	5,722,289	A	6,173,861	A
				7.00 *		7.00 *	
			HTH	407,850	N	461,935	N

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		INVESTMENT CAPITAL	AGS HTH	13,162,000	C	3,029,000 C 250,000 C
<b>F. SOCIAL SERVICES</b>						
1.	HMS301	- CHILD WELFARE SERVICES				
	OPERATING		HMS	199.50 *		195.50 *
				18,023,259	A	18,349,130 A
				200.00 *		200.00 *
			HMS	7,215,115	N	7,295,523 N
2.	HMS302	- CHILD DAY CARE SERVICES				
	OPERATING		HMS	21.00 *		32.00 *
				1,016,862	A	1,212,325 A
3.	HMS303	- CHILD FOSTER CARE SERVICES				
	OPERATING		HMS	20.00 *		22.00 *
			HMS	12,848,421	A	12,687,931 A
				931,462	N	931,462 N
4.	HMS601	- COMMUNITY LONG TERM CARE SERVICES				
	OPERATING		HMS	66.00 *		71.00 *
			HMS	12,174,062	A	13,038,697 A
			HMS	8,644,516	N	8,316,728 N
			HMS	148,886	U	148,886 U
5.	HMS501	- YOUTH SERVICES ADMINISTRATION				
	OPERATING		HMS	18.00 *		18.00 *
	INVESTMENT CAPITAL		AGS	1,402,622	A	1,389,613 A
				8,325,000	C	5,211,000 C
6.	HMS502	- YOUTH SERVICES PROGRAM				
	OPERATING		HMS			11.00 *
			HMS	2,662,354	A	3,996,277 A
				685,861	N	720,154 N
7.	HMS503	- YOUTH RESIDENTIAL PROGRAMS				
	OPERATING		HMS	78.50 *		78.50 *
			HMS	4,054,813	A	4,259,383 A
				1,467,633	N	1,541,015 N
8.	DEF112	- SERVICES TO VETERANS				
	OPERATING		DEF	19.00 *		22.00 *
	INVESTMENT CAPITAL		AGS	1,475,047	A	1,394,894 A
			AGS	2,550,000	C	475,000 C
				2,550,000	N	
9.	HMS201	- PAYMNTS TO ASSIST FAMILIES WITH DEPNDNT CHLD				
	OPERATING		HMS	45,486,539	A	60,547,335 A
			HMS	53,902,549	N	62,117,445 N
10.	HMS202	- PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED				
	OPERATING		HMS	14,382,600	A	14,079,582 A
11.	HMS204	- OTHER GENERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	27,522,967	A	33,199,584 A
12.	HMS206	- OTHER FEDERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	1,491,331	N	1,491,331 N

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
13. HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE				10.00 *		11.00 *	
	OPERATING	HMS		3,863,008 A		4,377,950 A	
				26.50 *		26.50 *	
		HMS		1,597,587 B		1,648,889 B	
				222.00 *		222.00 *	
	INVESTMENT CAPITAL	HMS		22,497,548 N		23,610,513 N	
		HMS		9,890,000 C		1,075,000 C	
14. HMS807 - TEACHER HOUSING							
	OPERATING	HMS			.50 *	200,000 A	
						.50 *	
		HMS		138,606 B		143,245 B	
	INVESTMENT CAPITAL	HMS		349,000 C			
15. HMS229 - HOUSING ASSISTANCE ADMINISTRATION							
	OPERATING	HMS				3.00 *	
						350,000 A	
		HMS		8.00 *		8.00 *	
				215,069 B		215,069 B	
		HMS		31.00 *		37.00 *	
	INVESTMENT CAPITAL	HMS		1,575,471 N		1,811,312 N	
		HMS				9,160,000 A	
		HMS		12,550,000 C			
16. BUF225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP							
	OPERATING	BUF		200,000 A		236,000 A	
				19.00 *		19.00 *	
		BUF		2,968,462 B		3,341,858 B	
	INVESTMENT CAPITAL	BUF				43,220,000 A	
		BUF		9,511,000 C		120,000,000 C	
17. BUF223 - BROADENED HOMESITE OWNERSHIP							
	OPERATING	BUF		1.00 *		1.00 *	
				197,558 A		175,679 A	
		BUF		2.00 *		2.00 *	
				274,496 B		278,101 B	
18. BUF227 - HOUSING FINANCE PROGRAM							
	OPERATING	BUF		6,000,000 A			
				8.00 *		8.00 *	
		BUF		977,558 B		1,009,182 B	
19. BUF229 - HOUSING FINANCE & DEVELOPMENT ADMINISTRATION							
	OPERATING	BUF		1,000,000 A			
				21.00 *		21.00 *	
		BUF		1,714,026 B		2,241,742 B	
20. HMS230 - HEALTH CARE PAYMENTS							
	OPERATING	HMS		130,295,542 A		174,608,048 A	
		HMS		118,209,610 N		163,513,887 N	
		HMS		7,016,691 U		7,256,905 U	
21. HMS236 - ELIGIBILITY DETERMINATION							
	OPERATING	HMS		330.57 *		336.27 *	
				11,428,122 A		11,906,166 A	
		HMS		249.93 *		254.23 *	
		HMS		12,543,695 N		12,895,964 N	

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
22.	HMS238 - DISABILITY DETERMINATION			31.00 *		36.00 *
	OPERATING	HMS		2,686,220N		2,815,650N
23.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES			45.77 *		64.47 *
	OPERATING	ATG		1,628,169A		2,157,291A
		ATG		64.23 *		100.53 *
		ATG		5,209,647N		8,442,608N
24.	HMS701 - JOBS PROGRAM			43.00 *		58.50 *
	OPERATING	HMS		7,655,820A		9,774,720A
		HMS		37.00 *		53.50 *
		HMS		3,480,586N		4,980,668N
25.	HMS702 - FOOD STAMP EMPLOYMENT & TRAINING			2.25 *		2.25 *
	OPERATING	HMS		794,047A		743,336A
		HMS		.50 *		.50 *
		HMS		749,492N		752,899N
26.	HMS703 - GENERAL ASSISTANCE WORK PROGRAM			.90 *		.90 *
	OPERATING	HMS		35,550A		36,276A
		HMS		.35 *		.35 *
27.	HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDs			102.00 *		102.00 *
	OPERATING	HHL		4,278,706A		3,850,727A
	INVESTMENT CAPITAL	HHL		12,985,000C		14,480,000C
28.	GOV861 - PLAN, PRGM DEV & COORD OF SVCS FOR CHD & YTH			11.00 *		11.00 *
	OPERATING	GOV		4,335,187A		5,038,635A
		GOV				3.00 *
		GOV		734,278N		3,281,135N
29.	GOV602 - ELDERLY			8.90 *		9.65 *
	OPERATING	GOV		8,044,310A		8,108,872A
		GOV		9.10 *		8.35 *
	INVESTMENT CAPITAL	AGS		4,918,051N		4,935,003N
		AGS				1,147,000A
30.	HTH520 - PLAN, PROG DEV & COORD OF SVS FOR HANDCPPD			6.00 *		6.00 *
	OPERATING	HTH		720,968A		789,834A
		HTH		63,787N		N
31.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			20.39 *		20.39 *
	OPERATING	HMS		2,424,668A		2,280,496A
		HMS		24.61 *		24.61 *
		HMS		2,642,848N		2,561,828N
32.	HMS903 - GENERAL SUPPORT FOR PUBLIC WELFARE			43.20 *		65.80 *
	OPERATING	HMS		6,366,888A		5,429,600A

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
			HMS	47.80 *		64.20 *	
				6,177,907N		5,340,462N	
33.		HMS904 - GENERAL ADMINISTRATION (DSSH)					
		OPERATING	HMS	182.66 *		194.66 *	
				12,315,824A		12,437,377A	
				21.34 *		21.34 *	
		INVESTMENT CAPITAL	HMS AGS	733,345N		717,701N	
				220,000C			

**G. FORMAL EDUCATION**

1.	EDN105 - REGULAR INSTRUCTION PROGRAM			7,154.00 *		7,280.00 *	
	OPERATING	EDN		249,213,553A		266,608,434A	
		EDN				350,000B	
		EDN		18,430,000N		18,485,000N	
	INVESTMENT CAPITAL	AGS				1,399,000A	
		AGS		81,700,000B		91,564,000B	
		AGS		8,329,000C			
2.	EDN106 - OTHER REGULAR INSTRUCTION			869.50 *		935.50 *	
	OPERATING	EDN		71,467,664A		75,561,740A	
		EDN		3,443,193B		3,483,736B	
		EDN		3,198,248N		5,727,280N	
3.	EDN107 - SPECIAL EDUCATION			1,417.50 *		1,985.00 *	
	OPERATING	EDN		45,647,786A		51,986,843A	
		EDN		30,000B		30,000B	
		EDN		7,631,606N		8,912,537N	
	INVESTMENT CAPITAL	AGS		8,300,000B		8,654,000B	
4.	EDN108 - COMPENSATORY EDUCATION			183.50 *		189.50 *	
	OPERATING	EDN		9,952,558A		10,305,386A	
		EDN		16,097,039N		19,876,616N	
5.	EDN203 - SCHOOL ADMINISTRATION			985.50 *		1,150.50 *	
	OPERATING	EDN		38,740,406A		40,314,649A	
	INVESTMENT CAPITAL	AGS		1,845,000C			
6.	EDN204 - INSTRUCTIONAL MEDIA			308.50 *		311.50 *	
	OPERATING	EDN		12,694,121A		13,182,164A	
	INVESTMENT CAPITAL	AGS				380,000A	
		AGS		800,000C		80,000C	
7.	EDN205 - INSTRUCTIONAL DEVELOPMENT			115.00 *		115.00 *	
	OPERATING	EDN		10,234,510A		9,664,118A	
		EDN		1,418,421N		1,620,190N	
8.	EDN206 - COUNSELING			400.00 *		400.00 *	
	OPERATING	EDN		15,475,471A		16,080,114A	

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
9.	EDN207	- STUDENT ACTIVITIES		72.00 *		73.00 *
		OPERATING	EDN	7,199,352 A		7,405,316 A
			EDN			50,000 N
10.	EDN208	- EDUCATIONAL ASSESSMENT & PRESCRIPTIVE SERVICES		259.00 *		292.50 *
		OPERATING	EDN	12,614,023 A		14,406,222 A
11.	EDN303	- STATE ADMINISTRATION		286.00 *		299.00 *
		OPERATING	EDN	24,835,291 A		21,333,982 A
			EDN	1,067,426 N		1,345,731 N
12.	EDN304	- DISTRICT ADMINISTRATION		266.50 *		267.50 *
		OPERATING	EDN	12,648,414 A		12,796,680 A
13.	EDN305	- SCHOOL FOOD SERVICES		230.00 *		232.00 *
		OPERATING	EDN	21,184,169 A		23,220,423 A
			EDN	720.50 *		720.50 *
			EDN	12,445,232 B		12,617,252 B
		INVESTMENT CAPITAL	EDN		3.00 *	
			AGS	17,575,278 N		17,957,327 N
			AGS	340,000 C		1,000,000 A
14.	EDN306	- SAFETY AND SECURITY SERVICES		156.00 *		156.00 *
		OPERATING	EDN	4,457,722 A		4,998,874 A
15.	EDN307	- PHYSICAL PLANT OPERATIONS & MAINTENANCE		1,081.60 *		1,098.10 *
		OPERATING	EDN	41,319,203 A		43,868,339 A
			EDN		570,000 B	
16.	AGS807	- PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS		273.00 *		275.00 *
		OPERATING	AGS	46,630,299 A		45,482,526 A
17.	AGS808	- STUDENT TRANSPORTATION		11.00 *		11.00 *
		OPERATING	AGS	23,041,398 A		23,425,957 A
18.	EDN405	- AFTER SCHOOL A+ PROGRAM				
		OPERATING	EDN	15,668,860 A		17,609,912 A
19.	EDN406	- ADULT EDUCATION		35.00 *		38.00 *
		OPERATING	EDN	7,216,852 A		7,666,892 A
			EDN	417,175 B		434,196 B
			EDN	804,729 N		950,441 N
20.	EDN407	- PUBLIC LIBRARIES		597.05 *		623.55 *
		OPERATING	EDN	22,640,877 A		23,384,867 A
			EDN	350,000 B		600,000 B
			EDN	624,520 N		660,763 N
		INVESTMENT CAPITAL	AGS	7,531,000 C		550,000 C

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
21.	UOH101	- INSTRUCTION - UOH, MANOA				
		OPERATING	UOH	1,712.62 *		1,744.37 *
				97,297,575 A		104,685,694 A
				3.00 *		3.00 *
			UOH	5,179,814 B		5,320,832 B
			UOH	277,785 N		277,785 N
		INVESTMENT CAPITAL	AGS	36,958,000 C		13,990,000 C
			AGS	8,888,000 N		5,000,000 N
22.	UOH102	- ORGANIZED RESEARCH - UOH, MANOA				
		OPERATING	UOH	632.31 *		652.81 *
				37,436,055 A		40,409,849 A
				5.00 *		6.00 *
			UOH	514,996 B		567,046 B
				34.42 *		38.42 *
			UOH	1,901,195 N		2,338,931 N
			UOH	6,808,474 W		7,493,599 W
		INVESTMENT CAPITAL	AGS	3,399,000 C		
			UOH	252,000 C		50,000 C
23.	UOH103	- PUBLIC SERVICE - UOH, MANOA				
		OPERATING	UOH	108.41 *		109.41 *
				6,906,904 A		6,909,012 A
				11.00 *		13.00 *
			UOH	3,169,328 B		5,466,433 B
				43.64 *		43.64 *
			UOH	2,059,900 N		2,108,118 N
			UOH	337,970 W		464,921 W
24.	UOH104	- ACADEMIC SUPPORT - UOH, MANOA				
		OPERATING	UOH	383.00 *		385.00 *
				22,993,990 A		23,787,489 A
				13.50 *		13.50 *
			UOH	1,802,469 B		1,865,741 B
				6.00 *		6.00 *
		INVESTMENT CAPITAL	UOH	3,655,080 W		4,024,198 W
			AGS	1,535,000 B		2,800,000 A
			AGS	220,000 C		
25.	UOH105	- STUDENT SERVICES - UOH, MANOA				
		OPERATING	UOH	268.25 *		273.75 *
				11,835,743 A		12,204,224 A
				.25 *		.25 *
			UOH	373,508 B		584,117 B
			UOH	770,000 N		770,000 N
				95.25 *		96.25 *
		INVESTMENT CAPITAL	UOH	19,590,171 W		20,556,009 W
			AGS	9,494,000 C		177,000 C
			UOH			5,000,000 E
26.	UOH106	- INSTITUTIONAL SUPPORT - UOH, MANOA				
		OPERATING	UOH	406.00 *		422.00 *
				36,420,097 A		31,175,465 A
				12.50 *		12.50 *
			UOH	3,305,849 B		3,319,092 B
				15.50 *		15.50 *
		INVESTMENT CAPITAL	UOH	3,878,075 W		3,995,525 W
			AGS	10,259,000 C		23,468,000 C
			AGS	2,348,000 R		245,000 R

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		UOH		4,380,000	C	748,000 C
		UOH		12,000,000	E	4,136,000 E
		UOH		3,189,000	R	
27.	UOH211	- INSTRUCTION - UOH, HILO				
	OPERATING	UOH		161.00 *		174.00 *
		UOH		10,839,778	A	12,288,041 A
		UOH		498,883	B	503,693 B
		UOH		165,926	W	180,834 W
28.	UOH213	- PUBLIC SERVICE - UOH, HILO				
	OPERATING	UOH		81,663	A	88,010 A
		UOH		10.00 *		10.00 *
		UOH		1,099,869	B	1,207,928 B
29.	UOH214	- ACADEMIC SUPPORT - UOH, HILO				
	OPERATING	UOH		46.00 *		49.00 *
		UOH		2,916,328	A	3,231,510 A
		UOH		5.00 *		5.00 *
		UOH		313,859	B	324,032 B
30.	UOH215	- STUDENT SERVICES - UOH, HILO				
	OPERATING	UOH		32.50 *		32.50 *
		UOH		1,875,212	A	2,076,753 A
		UOH		394,543	N	394,543 N
		UOH		6.00 *		6.00 *
	INVESTMENT CAPITAL	UOH		2,477,400	W	2,593,957 W
		AGS		185,000	C	
31.	UOH216	- INSTITUTIONAL SUPPORT - UOH, HILO				
	OPERATING	UOH		56.00 *		70.50 *
		UOH		5,080,101	A	5,026,575 A
		UOH		113,696	B	118,418 B
		UOH		19,557	W	20,535 W
	INVESTMENT CAPITAL	AGS		2,182,000	C	
32.	UOH301	- INSTRUCTION - HONOLULU COMMUNITY COLLEGE				
	OPERATING	UOH		155.00 *		156.00 *
		UOH		7,778,980	A	8,237,346 A
		UOH		180,828	N	180,828 N
		UOH		2.00 *		2.00 *
	INVESTMENT CAPITAL	UOH		395,382	W	412,223 W
		AGS		784,000	C	
33.	UOH302	- PUBLIC SERVICE- HONOLULU COMMUNITY COLLEGE				
	OPERATING	UOH		17.00 *		17.00 *
		UOH		1,452,018	A	1,489,450 A
		UOH		4.00 *		4.00 *
		UOH		1,570,811	B	1,582,299 B
34.	UOH303	- ACADEMIC SUPPORT- HONOLULU COMMUNITY COLLEGE				
	OPERATING	UOH		33.00 *		33.00 *
		UOH		1,257,833	A	1,294,776 A
		UOH		62,915	B	65,811 B
35.	UOH304	- STUDENT SERVICES- HONOLULU COMMUNITY COLLEGE				
	OPERATING	UOH		29.00 *		29.00 *
		UOH		997,593	A	1,014,095 A
		UOH		111,000	N	111,000 N
		UOH		114,592	W	119,868 W

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
36.	UOH305	- INSTITUTIONAL SUPPORT - HONOLULU CC			48.00 *		49.00 *
	OPERATING		UOH	2,223,326	A	2,248,529	A
			UOH	62,750	B	65,888	B
			UOH	133,381	W	140,050	W
37.	UOH311	- INSTRUCTION - KAPIOLANI COMMUNITY COLLEGE			171.60 *		174.10 *
	OPERATING		UOH	9,098,469	A	9,689,970	A
			UOH	88,562	N	88,562	N
				6.00 *		6.00 *	
			UOH	699,835	W	877,383	W
	INVESTMENT CAPITAL		AGS	17,937,000	C		
38.	UOH312	- PUBLIC SERVICE-KAPIOLANI COMMUNITY COLLEGE			5.00 *		5.00 *
	OPERATING		UOH	308,385	A	301,203	A
				16.00 *		18.00 *	
			UOH	2,076,994	B	2,387,383	B
39.	UOH313	- ACADEMIC SUPPORT-KAPIOLANI COMMUNITY COLLEGE			37.00 *		38.00 *
	OPERATING		UOH	1,768,532	A	1,833,567	A
			UOH	60,000	B	60,000	B
40.	UOH314	- STUDENT SERVICES-KAPIOLANI COMMUNITY COLLEGE			30.00 *		30.00 *
	OPERATING		UOH	1,110,041	A	1,113,994	A
			UOH	91,020	N	91,020	N
			UOH	158,854	W	161,944	W
41.	UOH315	- INSTITUTIONAL SUPPORT - KAPIOLANI CC			51.00 *		51.50 *
	OPERATING		UOH	2,393,014	A	2,424,975	A
			UOH	21,246	B	22,308	B
			UOH	117,738	W	123,625	W
42.	UOH321	- INSTRUCTION-LEEWARD COMMUNITY COLLEGE			164.50 *		170.00 *
	OPERATING		UOH	7,958,872	A	8,504,673	A
			UOH	54,561	N	54,561	N
				1.00 *		1.00 *	
			UOH	247,183	W	256,528	W
43.	UOH322	- PUBLIC SERVICE-LEEWARD COMMUNITY COLLEGE			6.00 *		6.00 *
	OPERATING		UOH	227,888	A	219,233	A
				10.00 *		10.00 *	
			UOH	1,609,734	B	1,634,947	B
44.	UOH323	- ACADEMIC SUPPORT-LEEWARD COMMUNITY COLLEGE			25.00 *		26.00 *
	OPERATING		UOH	1,114,974	A	1,167,552	A
			UOH	60,000	B	60,000	B
45.	UOH324	- STUDENT SERVICES-LEEWARD COMMUNITY COLLEGE			36.00 *		36.00 *
	OPERATING		UOH	1,395,364	A	1,422,779	A
			UOH	52,690	B	53,851	B

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
			UOH	125,000	N	125,000
			UOH	106,009	W	109,644
46.	UOH325	- INSTITUTIONAL SUPPORT - LEEWARD CC		52.00	*	52.00
	OPERATING		UOH	2,684,168	A	2,673,824
47.	UOH331	- INSTRUCTION-WINDWARD COMMUNITY COLLEGE		50.00	*	50.00
	OPERATING		UOH	2,193,208	A	2,372,001
			UOH	16,987	W	17,836
	INVESTMENT CAPITAL		AGS			12,258,000
			AGS	310,000	C	
48.	UOH332	- PUBLIC SERVICE-WINDWARD COMMUNITY COLLEGE		3.00	*	3.00
	OPERATING		UOH	140,593	A	146,156
			UOH	343,853	B	446,432
49.	UOH333	- ACADEMIC SUPPORT-WINDWARD COMMUNITY COLLEGE		14.00	*	14.00
	OPERATING		UOH	680,246	A	680,938
			UOH	10,000	B	10,000
50.	UOH334	- STUDENT SERVICES-WINDWARD COMMUNITY COLLEGE		13.00	*	15.00
	OPERATING		UOH	495,792	A	490,845
			UOH	19,907	N	19,907
			UOH	31,380	W	32,949
51.	UOH335	- INSTITUTIONAL SUPPORT - WINDWARD CC		17.00	*	18.00
	OPERATING		UOH	899,578	A	1,013,619
			UOH	66,284	W	69,598
52.	UOH401	- INSTRUCTION - HAWAII CC		88.50	*	88.50
	OPERATING		UOH	3,630,807	A	3,632,139
			UOH	95,028	N	95,028
			UOH	132,230	W	132,230
53.	UOH402	- PUBLIC SERVICE - HAWAII CC		2.00	*	2.00
	OPERATING		UOH	136,608	A	88,824
54.	UOH403	- ACADEMIC SUPPORT - HAWAII CC		3.00	*	3.00
	OPERATING		UOH	81,320	A	81,320
55.	UOH404	- STUDENT SERVICES - HAWAII CC		6.00	*	6.00
	OPERATING		UOH	181,649	A	140,813
56.	UOH405	- INSTITUTIONAL SUPPORT - HAWAII CC		2.00	*	2.00
	OPERATING		UOH	90,366	A	90,366
57.	UOH501	- INSTRUCTION-MAUI COMMUNITY COLLEGE		83.00	*	87.00
	OPERATING		UOH	4,238,847	A	4,762,719

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		UOH		26,090N		26,090N
				1.00 *		1.00 *
		UOH		347,521W		358,375W
		AGS				14,054,000C
INVESTMENT CAPITAL						
58. UOH502 - PUBLIC SERVICE-MAUI COMMUNITY COLLEGE						
	OPERATING	UOH		4.50 *		6.00 *
				266,625A		375,002A
				6.50 *		6.50 *
		UOH		1,119,131B		1,137,757B
59. UOH503 - ACADEMIC SUPPORT-MAUI COMMUNITY COLLEGE						
	OPERATING	UOH		20.00 *		20.00 *
				876,721A		891,879A
		UOH		25,000B		25,000B
60. UOH504 - STUDENT SEVICES-MAUI COMMUNITY COLLEGE						
	OPERATING	UOH		13.00 *		14.00 *
				530,975A		523,965A
		UOH		46,356B		53,960B
		UOH		88,000N		88,000N
				2.00 *		2.00 *
		UOH		261,410W		261,730W
61. UOH505 - INSTITUTIONAL SUPPORT-MAUI COMMUNITY COLLEGE						
	OPERATING	UOH		27.00 *		30.00 *
				1,482,451A		1,573,515A
62. UOH601 - INSTRUCTION-KAUAI COMMUNITY COLLEGE						
	OPERATING	UOH		66.00 *		68.00 *
				2,751,010A		2,979,547A
		UOH		1,735N		1,735N
				1.00 *		1.00 *
		UOH		127,939W		133,581W
63. UOH602 - PUBLIC SERVICE - KAUAI COMMUNITY COLLEGE						
	OPERATING	UOH		5.00 *		6.00 *
				170,404A		244,302A
		UOH		294,416B		555,662B
64. UOH603 - ACADEMIC SUPPORT-KAUAI COMMUNITY COLLEGE						
	OPERATING	UOH		21.00 *		21.00 *
				808,262A		811,697A
		UOH		25,000B		25,000B
65. UOH604 - STUDENT SERVICES-KAUAI COMMUNITY COLLEGE						
	OPERATING	UOH		13.00 *		13.00 *
				463,791A		456,319A
		UOH		36,000N		36,000N
		UOH		4,272W		34,486W
66. UOH605 - INSTITUTIONAL SUPPORT - KAUAI CC						
	OPERATING	UOH		29.00 *		33.00 *
				1,819,179A		1,888,321A
		UOH		30,811B		32,213B
67. UOH701 - INSTRUCTION-UOH AT WEST OAHU						
	OPERATING	UOH		20.00 *		22.00 *
				987,347A		1,127,635A
		UOH		54,970B		56,283B

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
68.	UOH703	PUBLIC SERVICE - UOH AT WEST OAHU				
69.	UOH704	ACADEMIC SUPPORT-UOH AT WEST OAHU				
		OPERATING	UOH	4.50 *		4.50 *
				249,677 A		251,307 A
70.	UOH705	STUDENT SERVICES-UOH AT WEST OAHU				
		OPERATING	UOH	5.00 *		5.00 *
				259,100 A		274,342 A
71.	UOH706	INSTITUTIONAL SUPPORT-UOH AT WEST OAHU				
		OPERATING	UOH	4.00 *		4.00 *
				375,350 A		368,437 A
72.	UOH901	ACADEMIC SUPPORT-UOH, SYSTEM-WIDE SUPPORT				
		OPERATING	UOH	46.50 *		46.50 *
			UOH	6,204,462 A		6,478,686 A
			UOH	652,316 B		682,433 B
		INVESTMENT CAPITAL	UOH	900,000 C		
73.	UOH902	STUDENT SERVICES-UOH, SYSTEM-WIDE SUPPORT				
		OPERATING	UOH	639,541 A		671,237 A
74.	UOH903	INSTITUTIONAL SPPT-UOH, SYSTEM-WIDE SPPT				
		OPERATING	UOH	254.00 *		269.00 *
				13,187,265 A		14,600,561 A
			UOH	4.20 *		4.20 *
				339,059 B		386,191 B
			UOH	77.00 *		81.00 *
		INVESTMENT CAPITAL	UOH	22,168,601 W		24,751,070 W
			AGS	1,000,000 C		500,000 C
75.	UOH904	VOCATIONAL EDUCATION,STATEWIDE COORDINATION				
		OPERATING	UOH	7.00 *		7.00 *
				303,083 A		405,769 A
			UOH	4.00 *		4.00 *
				423,443 N		443,726 N
76.	UOH905	STATEWIDE PLAN & COORD FOR POST-SECONDARY ED				
		OPERATING	UOH	1,489,423 A		1,563,895 A
77.	UOH906	COMMUNITY COLLEGE SYSTEMWIDE SUPPORT				
		OPERATING	UOH	84.15 *		90.15 *
				12,131,797 A		8,259,188 A
			UOH	10.00 *		10.00 *
				1,025,749 B		1,043,836 B
			UOH	19.60 *		19.60 *
				2,032,133 N		2,062,520 N
			UOH	266,060 W		278,549 W
		INVESTMENT CAPITAL	AGS	150,000 C		

## H. CULTURE AND RECREATION

## 1. UOH881 - AQUARIA

OPERATING	UOH	13.00 *	13.00 *
	UOH	728,051 A	1,205,471 A
INVESTMENT CAPITAL	AGS	800,000 B	840,000 B

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
2.	CCA701	- HAWAII PUBLIC BROADCASTING			46.00 *	46.00 *
	OPERATING		CCA	2,744,425	A	2,808,978 A
			CCA	1,629,923	W	2,801,916 W
	INVESTMENT CAPITAL		AGS	1,543,000	C	1,274,000 C
3.	AGS881	- PERFORMING & VISUAL ARTS EVENTS			17.00 *	19.00 *
	OPERATING		AGS	10,000,673	A	6,583,412 A
				1.00 *		1.00 *
			AGS	698,495	B	2,048,233 B
			AGS	553,310	N	568,670 N
			AGS	15,000	R	15,000 R
	INVESTMENT CAPITAL		AGS			3,380,000 C
4.	AGS818	- ETHNIC GROUP PRESENTATIONS			1.00 *	1.00 *
	OPERATING		AGS	102,869	A	102,765 A
			AGS	7,760	B	8,148 B
5.	LNR802	- HISTORIC PRESERVATION			16.00 *	18.00 *
	OPERATING		LNR	1,624,856	A	1,317,082 A
			LNR	158,000	B	75,000 B
			LNR	361,403	N	400,756 N
	INVESTMENT CAPITAL		LNR	375,000	C	460,000 C
6.	LNR804	- FOREST RECREATION			47.00 *	49.00 *
	OPERATING		LNR	2,059,463	A	2,227,965 A
			LNR	567,615	N	580,506 N
	INVESTMENT CAPITAL		LNR	825,000	C	
7.	LNR805	- RECREATIONAL FISHERIES			8.00 *	8.00 *
	OPERATING		LNR	291,439	A	249,478 A
			LNR	502,074	N	404,710 N
8.	LNR806	- HERITAGE & RECREATION PARKS			143.00 *	139.00 *
	OPERATING		LNR	7,288,886	A	7,257,973 A
	INVESTMENT CAPITAL		LNR	8,680,000	C	2,600,000 C
9.	TRN801	- OCEAN-BASED RECREATION			54.00 *	79.00 *
	OPERATING		TRN	8,172,520	B	9,625,131 B
	INVESTMENT CAPITAL		TRN	1,612,000	C	1,125,000 C
			TRN	7,085,000	D	1,405,000 D
10.	AGS889	- SPECTATOR EVENTS & SHOWS - ALOHA STADIUM			38.00 *	40.00 *
	OPERATING		AGS	4,638,684	B	4,822,944 B
	INVESTMENT CAPITAL		AGS			2,900,000 B
			AGS	21,160,000	C	15,100,000 C
11.	LNR809	- GENERAL ADMIN FOR CULTURE & RECREATION			15.00 *	15.00 *
	OPERATING		LNR	746,180	A	637,774 A
						3.00 *

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		LNR				1,019,310 B
		LNR		271,620 N		285,201 N
<b>I. PUBLIC SAFETY</b>						
1.	PSD402 - HALAWA CORRECTIONAL FACILITY			459.00 *		459.00 *
	OPERATING INVESTMENT CAPITAL	PSD AGS		18,839,576 A 3,445,000 C		18,817,048 A
2.	PSD403 - KULANI CORRECTIONAL FACILITY			92.83 *		92.83 *
	OPERATING INVESTMENT CAPITAL	PSD AGS AGS		4,168,171 A 100,000 C		4,267,238 A 1,387,000 A C
3.	PSD404 - WAIWAIA CORRECTIONAL FACILITY			76.00 *		77.00 *
	OPERATING INVESTMENT CAPITAL	PSD AGS		3,376,864 A 2,450,000 C		3,351,327 A
4.	PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER			69.50 *		79.50 *
	OPERATING INVESTMENT CAPITAL	PSD AGS AGS		2,573,896 A 650,000 C		2,838,293 A 3,502,000 A 250,000 C
5.	PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER			77.00 *		77.00 *
	OPERATING INVESTMENT CAPITAL	PSD AGS AGS		2,572,110 A 1,550,000 C		2,610,103 A 4,250,000 A
6.	PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER			562.10 *		565.10 *
	OPERATING INVESTMENT CAPITAL	PSD AGS AGS		22,736,198 A 475,000 C		23,266,878 A 4,125,000 A
7.	PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER			48.50 *		48.50 *
	OPERATING INVESTMENT CAPITAL	PSD AGS AGS		1,847,762 A 3,066,000 C		1,942,735 A 500,000 A
8.	PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER			89.00 *		90.00 *
	OPERATING INVESTMENT CAPITAL	PSD AGS		4,306,022 A		4,174,138 A 1,000,000 A
9.	PSD410 - INTAKE SERVICE CENTERS			40.00 *		40.00 *
	OPERATING	PSD		1,653,285 A		1,730,118 A
10.	PSD501 - PROTECTIVE SERVICES			52.00 *		52.00 *
	OPERATING	PSD		1,334,979 A		1,278,067 A

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
11.	PSD502	- NARCOTICS ENFORCEMENT			12.00 *	12.00 *
		OPERATING	PSD		489,686 A	508,344 A
12.	PSD503	- SPECIAL SERVICES			152.00 *	153.00 *
		OPERATING	PSD		3,865,430 A	3,941,720 A
13.	PSD801	- HARBOR PATROL SERVICES			24.00 *	29.00 *
		OPERATING	PSD		551,924 A	576,204 A
					46.00 *	46.00 *
			PSD		1,507,363 U	1,513,616 U
14.	PSD411	- ADULT PAROLE DETERMINATION			2.00 *	2.00 *
		OPERATING	PSD		210,585 A	209,284 A
15.	PSD413	- ADULT PAROLE SUPERVISION & COUNSELING			40.00 *	40.00 *
		OPERATING	PSD		1,191,749 A	1,226,351 A
16.	PSD414	- CRIMINAL INJURIES COMPENSATION			6.00 *	7.00 *
		OPERATING	PSD		231,760 A	1,129,700 A
17.	PSD900	- GENERAL ADMINISTRATION			190.00 *	238.10 *
		OPERATING	PSD		16,027,586 A	15,227,472 A
			PSD		712,090 X	776,167 X
		INVESTMENT CAPITAL	AGS			5,800,000 A
			AGS		3,501,000 C	
			AGS			10,000,000 N
18.	ATG231	- STATE CRIMINAL JUSTICE INFO & IDENTIFICATION			37.00 *	44.00 *
		OPERATING	ATG		1,940,279 A	2,098,536 A
19.	LNR810	- PREVENTION OF NATURAL DISASTERS			6.00 *	6.00 *
		OPERATING	LNR		316,194 A	323,966 A
20.	DEF110	- AMELIORATION OF PHYSICAL DISASTERS			149.30 *	153.05 *
		OPERATING	DEF		8,642,137 A	8,420,407 A
					9.20 *	11.45 *
		INVESTMENT CAPITAL	DEF		1,821,913 N	1,963,315 N
			AGS		1,580,000 C	500,000 C
			AGS		130,000 N	100,000 N

**J. INDIVIDUAL RIGHTS**

1. AGR810 - TESTING & CERTIFICATION OF CONSUMER GOODS
 

OPERATING	AGR	26.25 *	26.25 *
		831,924 A	837,664 A
		26.25 *	26.25 *
	AGR	1,159,000 N	1,170,835 N
2. CCA102 - CABLE TELEVISION

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		OPERATING	CCA	4.00 *		4.00 *
				336,613X		529,428X
3.	CCA103	- CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC		19.00 *		19.00 *
		OPERATING	CCA	1,319,969A		1,265,443A
4.	CCA104	- FINANCIAL INSTITUTION SERVICES		31.00 *		31.00 *
		OPERATING	CCA	1,324,825A		1,314,927A
5.	CCA105	- PROFESSIONAL, VOCATIONAL & PERSONAL SVCS		54.00 *		55.00 *
		OPERATING	CCA	2,459,517A		2,383,794A
6.	BUF901	- TRANSPORTATION, COMMUNICATIONS, & UTILITIES		42.00 *		42.00 *
		OPERATING	BUF	2,069,824A		2,294,985A
7.	CCA106	- INSURANCE SERVICES		37.00 *		46.00 *
		OPERATING	CCA	1,979,087A		1,998,988A
8.	CCA110	- OFFC OF CONSUMER PROT - ADV & TERMS OF SALE		29.00 *		29.00 *
		OPERATING	CCA	1,181,818A		1,184,513A
9.	AGR812	- MEASUREMENT STANDARDS		28.00 *		28.00 *
		OPERATING	AGR	1,426,078A		1,064,938A
		INVESTMENT CAPITAL	AGR	40,000C		
10.	CCA111	- BUSINESS REGISTRATION		32.00 *		32.00 *
		OPERATING	CCA	1,041,040A		1,021,690A
				14.00 *		14.00 *
			CCA	679,996B		686,169B
11.	CCA191	- GENERAL SUPPORT-PROTECTION OF THE CONSUMER		59.00 *		59.00 *
		OPERATING	CCA	2,824,343A		3,113,833A
			CCA	2,120,118B		3,448,251B
12.	BUF151	- LEGAL ASSISTANCE IN CRIMINAL ACTIONS		87.00 *		90.00 *
		OPERATING	BUF	6,276,956A		6,377,213A
13.	LNR111	- CONVEYANCES AND RECORDINGS		57.00 *		61.00 *
		OPERATING	LNR	2,712,346A		1,947,548A
14.	HMS888	- COMMISSION ON THE STATUS OF WOMEN		2.00 *		2.00 *
		OPERATING	HMS	147,558A		153,374A

## K. GOVERNMENT-WIDE SUPPORT

1. GOV100 - OFFICE OF THE GOVERNOR                    56.00 \*                    56.00 \*

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**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	<b>APPROPRIATIONS</b>		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		OPERATING INVESTMENT CAPITAL	GOV GOV GOV	4,205,227 A		4,144,584 A 1,000 A
				3,000,000 C		
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR				21.00 *	21.00 *
		OPERATING	LTG	3,142,023 A		5,313,514 A
3.	GOV102 - GOV - OTH POLICY DEVELOPMENT & COORDINATION				10.00 *	10.00 *
		OPERATING	GOV	7,510,374 A		7,450,400 A
4.	GOV103 - STATEWIDE PLAN AND COORDINATION				47.00 *	48.00 *
		OPERATING	GOV	4,352,941 A		9,052,663 A
				5.00 *		4.00 *
			GOV	784,992 N		791,000 N
		INVESTMENT CAPITAL	BED	5,398,000 C		7,265,000 C
5.	BED103 - LAND USE AND COASTAL MANAGEMENT				6.00 *	7.00 *
		OPERATING	BED	442,213 A		508,780 A
6.	BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY				5.00 *	5.00 *
		OPERATING	BED	259,689 A		268,395 A
		INVESTMENT CAPITAL	BED	17,865,000 C		9,260,000 C
7	BUF101 - BUF - PRGM PLANNING, ANALYSIS & BUDGETING				85.00 *	85.00 *
		OPERATING	BUF	115,540,139 A		130,014,376 A
8.	TAX102 - INCOME ASSESSMENT AND AUDIT				126.00 *	129.00 *
		OPERATING	TAX	4,062,413 A		4,320,952 A
9.	TAX103 - TAX COLLECTIONS ENFORCEMENT				87.00 *	87.00 *
		OPERATING	TAX	2,481,925 A		2,449,994 A
10.	TAX105 - TAX SERVICES & PROCESSING				107.00 *	107.00 *
		OPERATING	TAX	4,949,317 A		5,451,793 A
11.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION				63.00 *	63.00 *
		OPERATING	TAX	4,032,356 A		5,037,850 A
12.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE				13.00 *	13.00 *
		OPERATING	AGS	485,766 A		432,836 A
13.	AGS102 - EXPENDITURE EXAMINATION				23.00 *	23.00 *
		OPERATING	AGS	1,046,929 A		950,922 A
14.	AGS103 - RECORDING AND REPORTING				15.00 *	15.00 *
		OPERATING	AGS	617,930 A		635,114 A

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
15.	AGS104	- INTERNAL POST AUDIT		19.00 *		19.00 *
		OPERATING	AGS	1,459,161	A	1,521,155 A
16.	BUF111	- FINANCIAL PLANNING, POLICY & INVESTMENTS		14.00 *		14.00 *
		OPERATING	BUF	310,276,196	A	369,101,863 A
			BUF			50,000,000 B
			BUF			5,525 U
17.	BUF112	- TREASURY OPERATIONS		18.00 *		18.00 *
		OPERATING	BUF	1,972,548	A	2,406,277 A
			BUF	8,200	B	7,200 B
18.	ATG100	- LEGAL SERVICES		212.08 *		225.08 *
		OPERATING	ATG	20,270,350	A	20,161,986 A
			ATG	18.10 *		18.10 *
			ATG	1,963,118	N	3,513,220 N
			ATG	34.82 *		34.82 *
			ATG	3,275,192	U	3,285,060 U
19.	BUF131	- ELECTRONIC DATA PROCESSING SERVICES		275.00 *		275.00 *
		OPERATING	BUF	19,052,299	A	16,165,987 A
				36.00 *		36.00 *
		INVESTMENT CAPITAL	BUF	1,797,343	U	1,849,525 U
			AGS	300,000	C	
20.	BUF161	- COMMUNICATION		16.00 *		16.00 *
		OPERATING	BUF	6,300,920	A	6,144,284 A
			BUF	1,387,035	U	1,595,370 U
		INVESTMENT CAPITAL	AGS	1,369,000	C	
21.	BUF162	- HAWAII INFORMATION NETWORK CORP.		129.00 *		156.00 *
		OPERATING	BUF	1,169,931	A	569,350 A
22.	PER102	- WORK FORCE ATTR, SELECT, CLASS, & EFFECT		129.00 *		156.00 *
		OPERATING	PER	18,580,772	A	20,057,485 A
			PER	526,500	U	552,825 U
23.	PER191	- SUPPORTING SERVICES-PERSONNEL SERVICES		17.00 *		17.00 *
		OPERATING	PER	1,199,805	A	1,448,691 A
			PER			30,000 B
24.	BUF141	- RETIREMENT		34.90 *		35.65 *
		OPERATING	BUF	159,969,427	A	224,396,555 A
				10.10 *		10.35 *
			BUF	634,084	S	621,942 S
25.	BUF142	- HEALTH & LIFE INSURANCE BENEFITS		15.00 *		15.00 *
		OPERATING	BUF	1,036,306	A	898,168 A

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**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	<b>APPROPRIATIONS</b>			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
26.	LNR101	PUBLIC LANDS MANAGEMENT			41.00 *		43.00 *
	OPERATING		LNR	1,295,177A		1,700,724A	
	INVESTMENT CAPITAL		LNR	10,250,000C			
27.	AGS203	RISK MANAGEMENT			5.00 *		5.00 *
	OPERATING		AGS	6,842,962A		5,971,635A	
			AGS	221,130W		232,187W	
28.	AGS211	LAND SURVEY			28.00 *		28.00 *
	OPERATING		AGS	927,561A		973,239A	
29.	AGS221	CONSTRUCTION			26.00 *		28.00 *
	OPERATING		AGS	22,759,057A		20,917,711A	
			AGS	3,790,000U		3,980,000U	
	INVESTMENT CAPITAL		AGS	38,808,000C		3,276,000C	
			AGS			4,064,000W	
30.	AGS231	CUSTODIAL SERVICES			162.50 *		163.50 *
	OPERATING		AGS	9,649,725A		9,906,625A	
			AGS	410,001U		430,501U	
31.	AGS232	GROUNDS MAINTENANCE			36.00 *		36.00 *
	OPERATING		AGS	1,111,930A		1,066,644A	
32.	AGS233	BUILDING REPAIRS AND ALTERATIONS			30.00 *		30.00 *
	OPERATING		AGS	4,284,624A		4,685,697A	
33.	AGS240	CENTRAL PURCHASING			16.00 *		16.00 *
	OPERATING		AGS	569,298A		600,067A	
			AGS	34,261W		35,974W	
34.	AGS244	SURPLUS PROPERTY MANAGEMENT			27,000A		28,350A
	OPERATING		AGS	5.00 *		5.00 *	
			AGS	181,832W		188,999W	
35.	AGS251	MOTOR POOL			11.00 *		12.50 *
	OPERATING		AGS	782,032W		869,269W	
36.	AGS252	PARKING CONTROL			20.00 *		22.50 *
	OPERATING		AGS	2,798,481W		2,747,357W	
37.	AGS111	RECORDS MANAGEMENT			28.00 *		29.00 *
	OPERATING		AGS	793,788A		822,536A	
38.	AGS901	GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS			57.00 *		58.00 *
	OPERATING		AGS	2,395,609A		2,099,781A	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
39. SUB101 - GRANTS-IN-AID TO COUNTIES						
40.	SUB201	- CITY AND COUNTY OF HONOLULU OPERATING INVESTMENT CAPITAL	SUB CCH CCH	525,000A 10,000,000C		525,000A 7,300,000A
41.	SUB301	- COUNTY OF HAWAII OPERATING INVESTMENT CAPITAL	SUB COH COH	100,000A 8,000,000C		1,100,000A 2,621,000A
42.	SUB401	- COUNTY OF MAUI OPERATING INVESTMENT CAPITAL	SUB COM COM	100,000A 10,770,000C		100,000A 7,050,000A
43.	SUB501	- COUNTY OF KAUAI OPERATING INVESTMENT CAPITAL	SUB COK COK	100,000A 4,109,000C		100,000A 2,680,000A

SECTION 5. Part III, Act 296, Session Laws of Hawaii 1991, is amended:

(1) By adding a new section to read as follows:

“SECTION 19.1. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$50,000 in fiscal year 1992-93 shall be used for a data-driven Asian investment project.”

(2) By adding a new section to read as follows:

“SECTION 19.2. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$500,000 in fiscal year 1992-93 shall be deposited into the community-based development grant and loan revolving fund; provided further that the advisory council shall consider escargot production and hydroponics in their deliberations for recipients of grants and loans.”

(3) By adding a new section to read as follows:

“SECTION 19.3. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$160,000 in fiscal year 1992-93 shall be used for a state/county matching funds program for the film industry; provided further that the State shall provide matching funds of up to \$50,000 on a first-come, first-served basis.”

(4) By amending Section 6 to read as follows:

“SECTION 6. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$405,405 in fiscal year 1991-92 and

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\$357,204 in fiscal year 1992-93 shall be used for sports promotion activities as follows:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Canoe/Kayak	\$52,650	\$40,000
Carol Kai Aloha Run	47,385	46,271
Honolulu Marathon	78,975	76,979
Aloha Bowl	73,710	71,977
Hula Bowl	73,710	71,977
Amateur Baseball	78,975	50,000 "

(5) By adding a new section to read as follows:

“SECTION 19.4. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$25,000 in fiscal year 1992-93 shall be used for the Masters Rugby Tournament and the sum of \$25,000 in fiscal year 1992-93 shall be used for the Harlequin Rugby Tournament; provided further that both appropriations are contingent upon each tournament providing matching funds.”

(6) By amending Section 5 to read as follows:

“SECTION 5. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$45,000 in fiscal year 1991-92 and \$35,000 in fiscal year 1992-93 shall be used for rural economic development projects; provided further that each grant shall not exceed \$15,000, and shall be matched by the applicant.”

(7) By adding a new section to read as follows:

“SECTION 19.5. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$150,000 in fiscal year 1992-93 shall be used for contract services with the visitor industry education council; provided further that the funds shall be utilized to: produce an updated version of the high school video, “What’s In It For Me?”; re-release the kindergarten unit, “Tourists Make Jobs”; continue and expand the department of education teacher/counselor internship program; and create a statewide media campaign on the benefits of tourism; provided further that no funds shall be used unless matched by private contributions.”

(8) By adding a new section to read as follows:

“SECTION 19.6. Provided that the state tourism office (BED 113), shall consult and work with the Hawaii visitor’s bureau, the director of national cemeteries, the department of veteran’s affairs, the Japanese/Hawaii Travel Association, and other parties to develop a plan that would enable large numbers of visitors to visit the National Cemetery of the Pacific on a daily basis; provided further that this plan shall be submitted to the legislature not fewer than twenty days prior to the convening of the 1993 legislative session.”

(9) By adding a new section to read as follows:

“SECTION 19.7. Provided that of the general fund appropriation for plant

pest and disease control (AGR 122), the sum of \$100,000 in fiscal year 1992-93 be used for the detection, suppression, control, and eradication of brown tree snakes.”

(10) By amending Section 14 to read as follows:

“SECTION 14. Provided that of the general fund appropriation for marketing information and distribution systems improvement for agriculture (AGR 151), the sum of \$620,000 in fiscal year 1991-92 and \$496,000 in fiscal year 1992-93 shall be used for the promotion of agricultural products; provided further that these moneys shall be expended as follows:

	FY 1991-92	FY 1992-93
Hawaiian Beef Products	\$ 45,000	\$ 36,000
Hawaiian Papayas	200,000	160,000
Hawaii Produced Milk	50,000	40,000
Nursery Products	30,000	24,000
Floriculture	75,000	60,000
Island Fresh Eggs	30,000	24,000
Hawaiian Grown Coffee	50,000	40,000
Hawaiian Grown		
Macadamia Nuts	40,000	32,000
Manufactured Agricultural Products	100,000	80,000

provided further that no funds shall be expended unless matched on a dollar-for-dollar basis by private contributions.”

(11) By adding a new section to read as follows:

“SECTION 19.8. Provided that of the general fund appropriation for marketing information and distribution systems improvement for agriculture (AGR 151), the sum of \$300,000 in fiscal year 1992-93 shall be used for the promotion of fresh pineapples in twenty-two western states of the United States and in western Canada; provided further that no funds shall be used unless matched on a dollar-for-dollar basis by private contributions.”

(12) By adding a new section to read as follows:

“SECTION 19.9. Provided that of the general fund appropriation for commercial fisheries and aquaculture (LNR 153), the sum of \$5,000 in fiscal year 1992-93 shall be used for the establishment of a temporary advisory committee to initiate a feasibility study for the planning of a facility at the Loko Ea fishpond in Haleiwa, as an exhibit of a living Hawaiian aquaculture park.”

(13) By adding a new section to read as follows:

“SECTION 19.10. Provided that of the general fund appropriation for energy development and management (BED 120), the sum of \$85,000 in fiscal year 1992-93 shall be used to continue biomass research for energy and alternate uses; provided further that no funds shall be used unless matched on a dollar-for-dollar basis by the Hawaii Sugar Planters Association.”

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(14) By adding a new section to read as follows:

“SECTION 21.1. Provided that of the special fund appropriation for placement services (LBR 111), the sum of \$500,000 in fiscal year 1992-93 shall be used for employment services to intensify activities to recruit, identify, assess, counsel, and refer more individuals to skills training programs as provided through the employment and training fund, established by Act 68, Session Laws of Hawaii 1991.”

(15) By adding a new section to read as follows:

“SECTION 21.2. Provided that of the special fund appropriation for employment and training programs (LBR 131), the sum of \$201,732 in fiscal year 1992-93 shall be used for personnel, administrative, and related costs associated with the implementation of the employment and training fund program; provided further that the sum of \$3,023,363 in fiscal year 1992-93 shall be used for contract services that provide training programs addressing the needs of business and industry for a skilled work force as mandated by Act 68, Session Laws of Hawaii 1991.”

(16) By adding a new section to read as follows:

“SECTION 21.3. Provided that of the general fund appropriation for transition center (LBR 136), the sum of \$80,895 in fiscal year 1992-93 shall be used for transition centers at Kahuku high school and Honokaa high school.”

(17) By adding a new section to read as follows:

“SECTION 21.4. Provided that of the general fund appropriation for occupational safety and health (LBR 143), the sum of \$121,841 in fiscal year 1992-93 shall be used for the establishment of 2.0 permanent occupational safety and health advisor positions and related costs; provided further that \$175,175 in fiscal year 1992-93 shall be used for the expansion of operations and consultation services being provided by the division of occupational safety and health, consultation and training branch.”

(18) By adding a new section to read as follows:

“SECTION 21.5. Provided that of the general fund appropriation for disability compensation (LBR 183), the sum of \$34,800 in fiscal year 1992-93 shall be used for electronic filing systems for the Honolulu records and claims office.”

(19) By adding a new section to read as follows:

“SECTION 21.6. Provided that the special assistant to the director of labor and industrial relations on the effective date of this Act 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 benefit accorded a civil service employee.”

(20) By adding a new section to read as follows:

“SECTION 25.1. Provided that of the special fund appropriation for Kapalua airport (TRN 135), the sum of \$216,795 in fiscal year 1992-93 shall be used for operations and maintenance of the Kapalua airport; provided further that funds shall only be used upon the department of transportation’s acquisition of title or lease to the property.”

(21) By adding a new section to read as follows:

“SECTION 25.2. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$5,500,000 in fiscal year 1992-93 shall be used for additional surcharge payments to the general fund for central services.”

(22) By adding a new section to read as follows:

“SECTION 25.3. Provided that of the special fund appropriation for Hawaii highways (TRN 511), the sum of \$22,500 in fiscal year 1992-93 shall be used for 1.0 permanent civil engineer V.”

(23) By adding a new section to read as follows:

“SECTION 25.4. Provided that of the special fund appropriation for Maui highways (TRN 531), the sum of \$22,500 in fiscal year 1992-93 shall be used for 1.0 permanent civil engineer V.”

(24) By adding a new section to read as follows:

“SECTION 25.5. Provided that of the special fund appropriation for Kauai highways (TRN 561), the sum of \$1,460,200 in fiscal year 1992-93 shall be used for special maintenance to restore funds which were used for flood damage.”

(25) By adding a new section to read as follows:

“SECTION 25.6. Provided that of the special fund appropriation for Kauai highways (TRN 561), the sum of \$22,500 in fiscal year 1992-93 shall be used for 1.0 permanent civil engineer V.”

(26) By adding a new section to read as follows:

“SECTION 25.7. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$3,724,000 in fiscal year 1992-93 shall be used for additional surcharge funding for central services.”

(27) By adding a new section to read as follows:

“SECTION 25.8. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$920,000 in fiscal year 1992-93 shall be used for the increase in debt service on revenue bonds.”

(28) By adding a new section to read as follows:

“SECTION 25.9. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$10,700 in fiscal year 1992-93 shall

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be used for 1.0 permanent engineering technician VI.”

(29) By adding a new section to read as follows:

“SECTION 25.10. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$10,700 in fiscal year 1992-93 shall be used for 1.0 permanent budget analyst I to service the staff service branch.”

(30) By adding a new section to read as follows:

“SECTION 25.11. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$48,000 in fiscal year 1992-93 shall be used for 1.0 permanent deputy director for the highways division to facilitate the planning, design, and construction of capital improvement projects.”

(31) By adding a new section to read as follows:

“SECTION 25.12. Provided that of the special fund appropriation for highway safety (TRN 597), the sum of \$20,000 in fiscal year 1992-93 shall be used for a motorcycle safety course for the neighbor islands.”

(32) By adding a new section to read as follows:

“SECTION 25.13. Provided that unless filled by a permanent appointment by June 30, 1993, the funds and the position established for the planning program administrator under general administration (TRN 995) position number 62710, shall be deleted.”

(33) By adding a new section to read as follows:

“SECTION 25.14. Provided that the city and county of Honolulu shall match the appropriation made to the department of transportation for updating the 2020 Oahu regional transportation plan forecasting model on a dollar-for-dollar basis.”

(34) By adding a new section to read as follows:

“SECTION 25.15. Provided that the special fund appropriation for the department of transportation designated for surcharge shall only be used for this purpose and shall not be transferred for any other purpose; provided further that the department shall submit a report of all expenditures for surcharge payments no fewer than twenty days prior to the convening of the 1993 legislative session.”

(35) By adding a new section to read as follows:

“SECTION 25.16. Provided that the department of transportation shall submit a report on the use of project managers for the airport capital improvement projects; provided further that the report shall include but not be limited to:

(i) A detailed breakdown of actual expenditures regarding the use of project managers on a project-by-project basis for the past five years;

- (2) The estimated expenditures for the next three years;
- (3) Duties and responsibilities; and
- (4) An assessment of the remedial measures undertaken to reduce the concerns identified in the management audit of the capital improvement program, airports division, department of transportation, December 1990;

provided further that the department shall submit the report no fewer than twenty days prior to the convening of the 1993 legislative session."

- (36) By adding a new section to read as follows:

"SECTION 25.17. Provided that of the special fund appropriation for the department of transportation, airports division, the sum designated for special maintenance purposes shall be used exclusively for this purpose, and shall not be transferred or used for any other purpose; provided further that the department shall submit a report on all expenditures on special maintenance no fewer than twenty days prior to the convening of the 1993 legislative session."

- (37) By adding a new section to read as follows:

"SECTION 26.1. Provided that of the general fund appropriation for environmental management (HTH 840), the sum of \$21,810 in fiscal year 1992-93 shall be used for the purpose of travel to monitor groundwater contamination."

- (38) By adding a new section to read as follows:

"SECTION 26.2. Provided that of the general fund positions for environmental management (HTH 840), 3.0 permanent positions in fiscal year 1992-93 shall be used for 2.0 health specialist and 1.0 engineer for the clean air branch."

- (39) By adding a new section to read as follows:

"SECTION 26.3. Provided that of the special fund appropriation for environmental management (HTH 840), the sum of \$85,000 in fiscal year 1992-93 shall be used to reimburse administrative costs for the underground storage tank program."

- (40) By adding a new section to read as follows:

"SECTION 26.4. Provided that of the general fund appropriation for aquatic resources (LNR 401), the sum of \$150,000 in fiscal year 1992-93 shall be used for a shark population control program to improve water safety in Hawaiian waters; provided further that the department shall consult with the native Hawaiian community in planning and implementing this program."

- (41) By adding a new section to read as follows:

"SECTION 26.5. Provided that of the general fund appropriation for conservation and resources enforcement (LNR 405), the sum of \$23,440 in fiscal year 1992-93 shall be used for 1.0 permanent clerk dispatcher and office equipment."

- (42) By adding a new section to read as follows:

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**"SECTION 26.6.** Provided that of the general fund appropriation for conservation and resources enforcement (LNR 405), the sum of \$126,120 in fiscal year 1992-93 shall be used for 1.0 conservation education program specialist and related expenses for the hunter education program."

(43) By adding a new section to read as follows:

**"SECTION 26.7.** Provided that of the general fund appropriation for LNR-natural physical environment (LNR 906), the sum of \$350,000 in fiscal year 1992-93 shall be deposited into the natural area reserve fund for the natural area partnership program; provided further that the partnership program shall provide state funds on a two-for-one basis with private funds for the management of private lands that are dedicated to conservation."

(44) By adding a new section to read as follows:

**"SECTION 26.8.** Provided that of the general fund appropriation for environmental health administration (HTH 849), the sum of \$120,418 in fiscal year 1992-93 shall be expended to provide continued implementation of the non-point source pollution program."

(45) By adding a new section to read as follows:

**"SECTION 50.1.** Provided that of the general fund appropriation for nutrition (HTH 160), the sum of \$35,460 in fiscal year 1992-93 shall be used for shortage pay differentials for public health nutritionists."

(46) By adding a new section to read as follows:

**"SECTION 50.2.** Provided that 5.0 computer operator II's and 1.0 data processing systems analyst VI, identified as position numbers 92276H, 92281H, 92282H, 43587, 43588 and 43589, as well as position-related special funds of \$147,828 be transferred in fiscal year 1992-93 from the division of community hospitals, department of health budget (HTH 295) to Hilo Hospital (HTH 211)."

(47) By adding a new section to read as follows:

**"SECTION 50.3.** Provided that of the special fund positions authorized for Leahi hospital (HTH 242), 1.0 registered professional nurse V (18249) shall be converted to 1.0 research statistician IV."

(48) By amending Section 34 to read as follows:

**"SECTION 34.** Provided that all community hospitals contained within the division of community hospitals shall not be authorized to establish temporary positions in fiscal year 1991-92 and fiscal year 1992-93; provided further that all community hospitals and the division of community hospitals are authorized to use existing "temporary as needed" positions to address temporary workload needs."

(49) By adding a new section to read as follows:

**"SECTION 50.4.** Provided that of the general fund appropriation for adult

mental health (HTH 420), the department of health shall transfer amounts necessary to child and adolescent mental health (HTH 460), in fiscal year 1992-93 which addresses the children's residential program shortfall at Leahi hospital(HTH 242); provided further that this transfer shall be negotiated between the adult mental health and the child and adolescent mental health programs and shall not exceed \$138,479.”

(50) By adding a new section to read as follows:

“SECTION 50.5. Provided that of the general fund appropriation for adult mental health (HTH 420), the sum of \$505,000 in fiscal year 1992-93 shall be used for system change activities implemented under the Robert Wood Johnson Foundation grant award; provided further that of the special fund appropriation for adult mental health (HTH 420), the sum of \$231,651 in fiscal year 1992-93 shall be used for system change activities implemented under the Robert Wood Johnson Foundation grant award.”

(51) By adding a new section to read as follows:

“SECTION 50.6. Provided that of the general fund appropriation for adult mental health (HTH 420), the sum of \$1,170,000 in fiscal year 1992-93 shall be used for compliance with the United States Department of Justice mandates at the Hawaii state hospital.”

(52) By adding a new section to read as follows:

“SECTION 50.7. Provided that of the general fund appropriation for adult mental health (HTH 420), the sum of \$206,600 in fiscal year 1992-93 shall be used for wraparound services.”

(53) By adding a new section to read as follows:

“SECTION 50.8. Provided that of the general fund appropriation for family health services (HTH 530), the sum of \$3,250,000 in fiscal year 1992-93 shall be used to augment the existing healthy start program; provided further that these funds shall not be used for any other purpose.”

(54) By adding a new section to read as follows:

“SECTION 50.9. Provided that of the general fund appropriation for family health services (HTH 530), the sum of \$250,000 in fiscal year 1992-93 shall be used for the healthy start program to implement the parents as first teacher's component; provided further that these funds shall be transferred from planning, program development, and coordination of services for children and youth (GOV 861).”

(55) By adding a new section to read as follows:

“SECTION 50.10. Provided that of the general fund appropriation for state laboratory services (HTH 710), the sum of \$27,828 in fiscal year 1992-93 shall be used to provide 1.0 temporary chemist III.”

(56) By adding a new section to read as follows:

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“SECTION 50.11. Provided that of the general fund appropriation for emergency medical services (HTH 730), the sum of \$608,000 in fiscal year 1992-93 shall be used to provide emergency helicopter services for the island of Hawaii.”

(57) By amending Section 49 to read as follows:

“SECTION 49. 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 1991-92 and for fiscal year 1992-93; provided further that the department shall submit a report to the legislature not fewer than twenty days prior to the convening of the 1992 and 1993 legislative sessions 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 years 1991-92 and 1992-93; 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.”

(58) By adding a new section to read as follows:

“SECTION 55.1. Provided that of the general fund appropriation for youth services program (HMS 502), the sum of \$1,500,000 in fiscal year 1992-93 shall be used by the office of youth services to continue the multiagency, community-based collaboration of the gang response system; provided further that the office of youth services may contract with other state and county agencies to implement this program.”

(59) By adding a new section to read as follows:

“SECTION 55.2. Provided that of the special fund appropriation for housing finance and development administration (BUF 229), the sum of \$466,000 in fiscal year 1992-93 shall be used for lease payments at the Pohulani project; provided further that if the department of accounting and general services finds another agency to occupy the space at Waterfront Plaza, then the aforementioned moneys shall lapse back into the fund.”

(60) By adding a new section to read as follows:

“SECTION 55.3. Provided that of the general fund appropriation for food stamp employment and training (HMS 702), in fiscal year 1992-93 shall be used for 2.0 case manager V, 2.0 secretary I, and 10.0 case manager III; provided further that \$202,433 in fiscal year 1992-93 in general funds and \$248,993 in fiscal year 1992-93 in federal funds shall be transferred from “service on a fee” to “personal services” for the operation of two pilot employment and training units on Oahu.”

(61) By adding a new section to read as follows:

“SECTION 55.4. Provided that of the general fund appropriation for the elderly (GOV 602), the sum of \$160,696 in fiscal year 1992-93 shall be used for 1.0 temporary research statistician V for the case management model demonstration project; and provided further that the case management model demonstration project shall submit an expenditure and progress report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session.”

(62) By adding a new section to read as follows:

“SECTION 55.5. Provided that of the general fund appropriation for the elderly (GOV 602), the sum of \$500,000 in fiscal year 1992-93 shall be used for the development of the long term care financing program; provided further that the long term care financing program shall submit an expenditure and progress report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session.”

(63) By adding a new section to read as follows:

“SECTION 55.6. Provided that of the general fund appropriation for general administration (HMS 904), the sum of \$860,000 in fiscal year 1992-93 shall be used for the family center demonstration project; provided further that the family center demonstration project shall submit an expenditure and progress report to the legislature not fewer than twenty days prior to the convening of the 1993 legislative session.”

(64) By adding a new section to read as follows:

“SECTION 55.7. Provided that of the general fund appropriation for general administration (HMS 904), the sum of \$100,000 in fiscal year 1992-93 shall be used for the upgrade of Fort Barrette bunker to provide a social service center for the population of West Oahu; provided further that when the center shall cease to occupy the Fort Barrette bunker, the property shall revert to the city and county of Honolulu.”

(65) By adding a new section to read as follows:

“SECTION 55.8. Provided that of the general fund appropriation for general administration (HMS 904), the sum of \$84,127 in fiscal year 1992-93 shall be used for 1.0 temporary coordinator and .25 temporary secretary and related expenses for provision of support services to the Waianae Coast Coalition for Human Services.”

(66) By adding a new section to read as follows:

“SECTION 92.1. Provided that the department of education shall use the 1992 regular session budget worksheets as a guide showing legislative intent in executing reductions to the current services budget; provided further that the department of education shall have flexibility to transfer reductions between programs only in the event that a current services reduction will have adverse impact on a program; provided further that the department of education shall submit a report to the legislature detailing all transfers between programs, along with the appropriate, approved justification forms no fewer than twenty days prior to the convening of the 1993 legislative session.”

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(67) By adding a new section to read as follows:

"SECTION 92.2. Provided that in order to facilitate the legislative review process, the department of education shall submit a report relating to funds for equipment and textbooks contained in the current services budget of the department of education; provided further that this report shall include, but not be limited to, the following:

- (1) The total amount of funds in the current services budget broken down by program ID and the means of financing with textbooks and equipment reflected as separate items;
- (2) Departmental procurement policies, and the process schools adhere to for the replacement of textbooks and equipment;
- (3) A listing of guidelines and criteria used to justify textbook and equipment replacement or acquisition; and
- (4) An expenditure report for fiscal year 1991-92;

provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1993 legislative session."

(68) By amending Section 56 to read as follows:

"SECTION 56. Provided that the amounts shown for regular instruction (EDN 105) are intended for regular instruction student enrollment projections of 163,547 for fiscal year 1991-92 and 165,453 for fiscal year 1992-93; provided further that the amounts shown for special education (EDN 107) are intended for special education student enrollment projections of 9,789 for fiscal year 1991-92 and 11,294 for fiscal year 1992-93."

(69) By adding a new section to read as follows:

"SECTION 92.3. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$1,756,244 in fiscal year 1992-93 shall be used for the advance purchase of equipment and textbooks for three high schools, six elementary schools, and four intermediate schools; provided further that any savings realized as a result of lower than anticipated equipment costs, or the unavailability of equipment, shall be utilized for the replacement of textbooks and equipment; provided further that the department of education shall submit a report to the legislature on the amount of savings realized between the amount appropriated and the amount used, and an expenditure report on the amount of funds utilized for equipment and textbook replacement; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1993 legislative session."

(70) By adding a new section to read as follows:

"SECTION 92.4. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$1,500,000 in fiscal year 1992-93 shall be used for instructional equipment and textbooks; provided further that the department of education shall submit an expenditure report providing details on how the funds were allotted; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1993 legislative session."

(71) By adding a new section to read as follows:

“SECTION 92.5. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$499,203 in fiscal year 1992-93 shall be used for supplies, equipment, and in-service training for schools to upgrade the child care, food services, and health occupations vocational education programs.”

(72) By adding a new section to read as follows:

“SECTION 92.6. Provided that of the special fund appropriation for regular instruction (EDN 105), the sum of \$350,000 in fiscal year 1992-93 shall be used to replace lost equipment and textbooks; provided further that the department of education shall submit an expenditure report no later than twenty days prior to the convening of the 1993 legislative session.”

(73) By adding a new section to read as follows:

“SECTION 92.7. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$1,855,590 in fiscal year 1992-93 shall be expended for a grade school priority fund; provided further that no funds shall be withheld or restricted by the department of education; provided further that these funds shall be allocated on the basis of third grade enrollment on a per pupil basis; provided further that these funds shall be used to enhance direct instructional services for any elementary grade and shall follow the department of education’s resource allocation guidelines for the school priority fund and may include the hiring of temporary school personnel; provided further that no funds shall be used for administrative, technical support, or for facility purposes; provided further that the department of education shall submit an expenditure report by cost categories no later than twenty days prior to the convening of the 1993 legislative session.”

(74) By amending Section 61 to read as follows:

“SECTION 61. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$762,600 in fiscal year 1991-92 and the sum of \$1,468,180 in fiscal year 1992-93 shall be expended for special needs schools in the Farrington, Molokai, and Lanai complexes; provided further that the department shall submit a report on the status of these special needs schools allocations for fiscal year 1991-92 and the budgeted needs for fiscal year 1992-93; provided further that the department shall submit a report on the expenditures for fiscal year 1992-93; provided further that these reports shall be submitted to the legislature not fewer than twenty days prior to the convening of the 1992 and 1993 legislative sessions.”

(75) By amending Section 63 to read as follows:

“SECTION 63. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$150,000 in fiscal year 1991-92 and the sum of \$150,000 in fiscal year 1992-93 shall be expended for incentive grants; provided further that the department of education shall report to the legislature no later than twenty days prior to the convening of the 1992 legislative session on related issues including, but not limited to, the following: the criteria used to qualify a school for an incentive grant, the schools selected, how much each school received and for what type of innovative program, the projected length of time and financial commitment required for full implementation, and how many

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non-school/community-based management schools applied for incentive grants and why they were accepted or rejected; provided further that the department of education shall report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session on the application process and the decision making process to include, but not be limited to: the time lines involved, such as the application submission deadline, decision making time frames, and when schools are notified of the results; provided further that this report shall also include details on the safeguards in the process to assure fairness and the equal opportunity of each school applying for a grant; provided further that this report shall include, the members of the decision making committee and an assessment of whether the current decision making committee is the most impartial body to render a decision.”

(76) By adding a new section to read as follows:

“SECTION 92.8. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$1,000,000 in fiscal year 1992-93 shall be used to reduce the student to computer ratio; provided further that these funds shall be used exclusively for classroom ratio reduction and not for administrative offices; provided further that the department of education shall submit a report including, but not limited to, the following:

- (1) Procurement information showing if bids were centrally issued for these purchases or if these funds were otherwise allotted to each school;
- (2) Details showing the amount of funds allotted per school and the allotment formula used (per school or per pupil);
- (3) Details showing the equipment allocation to each school and the impact on the student to computer ratio;
- (4) A listing of all donated computer equipment per school from July 1, 1992 to December 31, 1992 reflecting separately those donations from grocery store promotions; and
- (5) The total number of computers purchased, the approximate unit cost, and the means of financing;

provided further that this report shall be submitted no later than twenty days prior to the convening of the 1993 legislative session.”

(77) By adding a new section to read as follows:

“SECTION 92.9. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$1,349,520 in fiscal year 1992-93 shall be used to provide 60.0 additional teacher positions to improve core learning for grades seven through twelve.”

(78) By adding a new section to read as follows:

“SECTION 92.10. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$82,524 in fiscal year 1992-93 shall be used for curriculum restructuring and scheduling innovations at Kawananakoa intermediate school.”

(79) By adding a new section to read as follows:

“SECTION 92.11. Provided that of the general fund appropriation for

other regular instruction (EDN 106), the sum of \$100,000 in fiscal year 1992-93 shall be used to provide grants for maximizing existing classroom space through innovations in curriculum and scheduling.”

(80) By adding a new section to read as follows:

“SECTION 92.12. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$50,000 in fiscal year 1992-93 shall be used for teacher training to improve international education.”

(81) By adding a new section to read as follows:

“SECTION 92.13. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$15,000 in fiscal year 1992-93 shall be used for a teacher exchange program between the department of education and European schools.”

(82) By adding a new section to read as follows:

“SECTION 92.14. Provided that of the general fund appropriation for other regular instruction (EDN 106) the sum of \$185,000 in fiscal year 1992-93 shall be used for year-round school programs at Maunaloa school, Kilohana school, and for schools in West Hawaii.”

(83) By adding a new section to read as follows:

“SECTION 92.15. Provided that of the general fund appropriation for special education (EDN 107), the sum of \$4,664,120 and 230.0 permanent positions in fiscal year 1992-93 shall be used for 152.0 special education teachers and 76.0 educational assistants and related expenses to accommodate enrollment increases in special education classes; provided further that 2.0 permanent positions and \$60,786 of the \$4,664,120 appropriation shall be utilized to convert 2.0 federal funded positions (position numbers 42545 and 42546) to permanent general funded positions for the statewide center for students with hearing and visual impairments.”

(84) By adding a new section to read as follows:

“SECTION 92.16. Provided that during fiscal year 1992-93, the department of education is authorized to convert to permanent status the following 479.0 full time equivalent general funded temporary positions:

Prg Id	Org Code	Position Description	Number of Positions
EDN 107	CB	Special Education Teachers	100.50
	CB	Educational Assistants	193.00
	CC	Educational Assistants	3.00
	CD	Educational Assistants	4.00
	CD	Speech Pathologists	1.00
	CK	State Educational Officer	1.00
	CK	Secretary	1.00
	CK	Teachers	30.00

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	CM	Teacher	1.00
	CM	Vocational Counselor	1.00
	CM	Educational Assistant	1.00
	CM	Clerk Typist	1.00
EDN 203	EB	Vice Principals	37.00
	EB	Registrars	10.00
	EB	Account Clerks	5.00
	EB	Clerk Typists	86.00
	EB	Clerk	1.00
	EB	Library Assistant	.50
	EB	General Aides	2.00
		Total	479.00

b) Provided further that an 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 an employee possesses the minimum qualifications for the position to which transferred or appointed; provided further that the department of education shall compile a listing of positions converted under this section by their former temporary position number, current established position number, position title, program area, and organization code; provided further that the department of education shall submit this listing to the legislature no later than twenty days prior to the convening of the 1993 legislative session.”

(85) By amending Section 66 to read as follows:

“SECTION 66. Provided that of the general fund appropriation for other regular instruction (EDN 106) the sum of \$71,467,664 and for compensatory education (EDN 108) the sum of \$9,952,558 in fiscal year 1991-92, and of the general fund appropriation for other regular instruction (EDN 106) the sum of \$75,561,740 and for compensatory education (EDN 108) the sum of \$10,305,386 in fiscal year 1992-93, shall be expended at the discretion of the department of education for instructional improvements; provided further that the department of education shall determine the allocation of positions and funds; provided further that the allocation of positions for (EDN 106) shall not exceed 862.50 permanent positions in fiscal year 1991-92 and 935.50 permanent positions in fiscal year 1992-93, and the allocation of positions for (EDN 108) shall not exceed 183.50 permanent positions in fiscal year 1991-92 and 189.50 permanent positions in fiscal year 1992-93; provided further that the department of education shall submit a report on the usage of the positions and funds in (EDN 106) and (EDN 108) to the legislature not fewer than twenty days prior to the convening of the 1992 and 1993 legislative sessions.”

(86) By amending Section 69 to read as follows:

“SECTION 69. Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$60,800 in fiscal year 1991-92 and the sum of \$65,630 for 5.0 permanent positions in fiscal year 1992-93 shall be expended to institute the in-school suspension program to include five leeward district high schools.”

(87) By adding a new section to read as follows:

“SECTION 92.17. Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$17,000 in fiscal year 1992-93 shall be used for 1.0 permanent clerk typist at the storefront school.”

(88) By amending Section 72 to read as follows:

“SECTION 72. Provided that of the general fund appropriation for school administration (EDN 203), 7.0 permanent positions and the sum of \$251,702 in fiscal year 1991-92, and 11.0 permanent positions and the sum of \$449,800 in fiscal year 1992-93 shall be used for vice-principals for schools meeting the criteria for additional vice principals; provided further that 1.0 permanent position shall be authorized and \$38,000 in fiscal year 1991-92 and 1.0 permanent position and \$38,000 in fiscal year 1992-93 shall be expended for a vice principal at Waipahu intermediate school.”

(89) By adding a new section to read as follows:

“SECTION 92.18. Provided that of the general fund appropriation for school administration (EDN 203), the sum of \$168,960 in fiscal year 1992-93 shall be used to provide 7.5 registrars for secondary schools.”

(90) By adding a new section to read as follows:

“SECTION 92.19 Provided that of the general fund appropriation for school administration (EDN 203), the sum of \$155,067 in fiscal year 1992-93 shall be used for 12.0 positions to improve the clerical services at schools where the clerical workload is most critical.”

(91) By adding a new section to read as follows:

“SECTION 92.20. Provided that of the general fund appropriation for instructional media (EDN 204), 2.0 permanent positions and the sum of \$46,600 in fiscal year 1992-93 shall be used for a secretary II and a telecommunications field services technician for the telecommunications/information technology program in the Maui district.”

(92) By adding a new section to read as follows:

“SECTION 92.21. Provided that of the general fund appropriation for instructional media (EDN 204), the sum of \$500,000 in fiscal year 1992-93 shall be used for furniture, equipment, and books for the Farrington high school library.”

(93) By adding a new section to read as follows:

“SECTION 92.22. Provided that of the general fund appropriation for instructional media (EDN 204), 1.0 permanent position and the sum of \$17,028 in fiscal year 1992-93 shall be used for an audio technologist II position for the media production center at the Ewa Beach community school library.”

(94) By adding a new section to read as follows:

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**"SECTION 92.23.** Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$15,000 in fiscal year 1992-93 shall be used for a sister state student exchange program."

(95) By adding a new section to read as follows:

**"SECTION 92.24.** Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$22,492 in fiscal year 1992-93 shall be used for 1.0 permanent student activity coordinator at the Prince Jonah Kuhio Kalanianaole elementary and intermediate school."

(96) By adding a new section to read as follows:

**"SECTION 92.25.** Provided that of the general fund appropriation for psychological assessment and prescriptive services (EDN 208), the sum of \$154,320 in fiscal year 1992-93 shall be used for the care projects and delivery of services relating to mental health services for children and youth in public schools."

(97) By adding a new section to read as follows:

**"SECTION 92.26.** Provided that of the general fund appropriation for state administration (EDN 303), the department of education, in fiscal year 1992-93, may convert the following general funded positions: 3.0 data processing systems analyst IV positions, 1.0 documentation clerk position, and 1.0 applications integration analyst position, from temporary to permanent status; provided further that the incumbent employees of these 5.0 positions shall be granted permanent status 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 those employees shall possess the minimum qualifications for the positions to which they are appointed; provided further that the sum of \$81,482 and 8.0 permanent positions in fiscal year 1992-93 shall be used for additional staff to complete the financial management system."

(98) By adding a new section to read as follows:

**"SECTION 92.27.** Provided that of the general fund appropriation for district administration (EDN 304), \$37,252 in fiscal year 1992-93 shall be used for 1.0 temporary district resource teacher and 1.0 temporary clerk typist to coordinate with the Oahu Interscholastic Association."

(99) By adding a new section to read as follows:

**"SECTION 92.28.** Provided that of the general fund appropriation for district administration (EDN 304), 1.0 permanent position and the sum of \$25,000 in fiscal year 1992-93 shall be used for an environmental resource teacher for the Kauai school district."

(100) By adding a new section to read as follows:

**"SECTION 92.29.** Provided that of the general fund appropriation for safety and security services (EDN 306), the sum of \$491,350 in fiscal year 1992-93 shall be expended to contract additional night security services at Baldwin and

Lahainaluna high schools, and for rate increases in contract security services at Campbell high, Kaimuki high, Waipahu high, Castle high, Konawaena high, Ilima intermediate, Ewa Beach elementary, Kaimiloa elementary, and Pohakea elementary schools; provided further that the department of education shall submit a report to include, but not be limited to, the following:

- (1) A comparison by school showing fiscal year 1991-92 contract rates, and the actual rates agreed upon for fiscal year 1992-93;
- (2) The date that rate increases took effect (per school);
- (3) The projected contract hours versus the actual hours paid from July 1, 1992 through December 31, 1992;
- (4) The projected hourly requirements for the period January 1, 1993 through June 30, 1993; and
- (5) A cost-benefit analysis on the hiring of permanent civil service employees to provide security services versus contracted services;

provided further that this report shall be submitted to the legislature not fewer than twenty days prior to the convening of the 1993 legislative session."

(101) By adding a new section to read as follows:

"SECTION 92.30. Provided that of the general fund appropriation for physical plant, operations, and maintenance (EDN 307), the sum of \$380,800 in fiscal year 1992-93 shall be used to replace and upgrade old telephones in the schools; provided further that the department of education shall submit a report to include but not be limited to, the following:

- (1) The date the bid for the new telephone system was approved;
- (2) The vendor the bid was awarded to;
- (3) The amount of current services money being utilized for telephone replacement, and a detailed breakdown of which schools will be affected; and
- (4) A detailed list of all costs related to telephone replacement per school;

provided further that this report shall be submitted to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(102) By adding a new section to read as follows:

"SECTION 92.31. Provided that of the special fund appropriation for physical plant operations and maintenance (EDN 307), the sum of \$570,000 in fiscal year 1992-93 shall be used to replenish custodial supplies and other related costs as specified in the administrative rules relating to the facilities special fund; provided further that the department of education shall submit an expenditure report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(103) By amending Section 87 to read as follows:

"SECTION 87. Provided that of the general fund appropriation for physical plant operations and maintenance-AGS (AGS 807), the sum of \$29,500,000 in fiscal year 1991-92 and \$27,502,500 in fiscal year 1992-93 shall be expended to accommodate major repair and maintenance projects for the public schools; provided further that the determination of priorities are formulated jointly by the schools, the department of education, and the department of accounting and general services, and that one of the factors in this process reflects the findings from

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the school inspection team; provided further that the department of accounting and general services shall submit a report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session detailing all projects scheduled to be completed in fiscal year 1992-93 and those projects that were deferred.”

(104) By adding a new section to read as follows:

“SECTION 92.32. Provided that of the general fund appropriation for adult education (EDN 406), the sum of \$288,950 in fiscal year 1992-93 shall be used to maintain three families for R.E.A.L. sites at Pearl City, Kaneohe, and Wailuku; provided further that the department of education shall submit an expenditure report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session.”

(105) By adding a new section to read as follows:

“SECTION 92.33. Provided that of the general fund appropriation for public libraries (EDN 407), the sum of \$29,208 for 1.0 permanent position in fiscal year 1992-93 shall be used for a personnel management specialist IV position; provided further that the personnel management specialist IV shall be responsible for performing duties in the recruitment and placement areas.”

(106) By adding a new section to read as follows:

“SECTION 92.34. Provided that of the general fund appropriation for public libraries (EDN 407), the sum of \$789,032 in fiscal year 1992-93 shall be used to provide for a payroll shortfall.”

(107) By adding a new section to read as follows:

“SECTION 92.35. Provided that of the general fund appropriation for public libraries (EDN 407), 25.5 temporary positions in fiscal year 1992-93 shall be converted from temporary to permanent status.”

(108) By adding a new section to read as follows:

“SECTION 106.1. Provided that of the general fund appropriation for regular instruction (UOH 101), the sum of \$125,298 in fiscal year 1992-93 shall be used for 2.0 positions for the school of travel industry management’s neighbor island program; provided further that funds used at Maui community college shall be used for credit programs only.”

(109) By adding a new section to read as follows:

“SECTION 106.2. Provided that of the general fund appropriation for instruction (UOH 101), the sum of \$114,272 in fiscal year 1992-93 shall be used for the college of education’s program for alternative certification for arts and science majors.”

(110) By adding a new section to read as follows:

“SECTION 106.3. Provided that of the general fund appropriation for

organized research (UOH 102), the sum of \$110,000 in fiscal year 1992-93 shall be used for 2.0 assistant researchers and related expenses for the Hawaii evolutionary biology program."

(111) By adding a new section to read as follows:

"SECTION 106.4. Provided that of the general fund appropriation for organized research (UOH 102), the sum of \$100,000 in fiscal year 1992-93 shall be used for a comprehensive research program on Kaneohe Bay."

(112) By adding a new section to read as follows:

"SECTION 106.5. Provided that of the general fund appropriation for organized research (UOH 102), the sum of \$132,000 in fiscal year 1992-93 shall be used for the school of ocean, earth science and technology (SOEST) center for advanced technology research; and provided further that funds for the center for advanced technology research, SOEST, shall be released only after assurances are received that federal and other funds to support the program will be forthcoming; provided further that the university president shall evaluate these assurances with the understanding that this program is expected to operate after the first year largely on non-state funds."

(113) By adding a new section to read as follows:

"SECTION 106.6. Provided that 4.0 federally funded positions shall be created in organized research (UOH 102) if federal funds are appropriated and released for these positions in fiscal year 1992-93; provided further that these federal funds are not one-time nonrecurring funds."

(114) By adding a new section to read as follows:

"SECTION 106.7. Provided that of the general fund appropriation for organized research (UOH 102), the sum of \$35,268 in fiscal year 1992-93 shall be used for 1.0 permanent educational associate IV to provide counseling for the university lab school."

(115) By adding a new section to read as follows:

"SECTION 106.8. Provided that of the general fund appropriation for organized research (UOH 102), the sum of \$45,000 in fiscal year 1992-93 shall be used for the continuation of research into the medical properties of the morinda citrifolia plant (Noni)."

(116) By amending Section 97 to read as follows:

"SECTION 97. Provided that of the general fund appropriation for organized research, the university of Hawaii at Manoa (UOH 102), \$1,037,536 in fiscal year 1991-92 and \$879,412 in fiscal year 1992-93 shall be expended for the research corporation of the university of Hawaii (RCUH) management fee; provided further that the university shall submit a report to the governor and the legislature twenty days prior to the convening of the 1992 and 1993 legislative sessions, which shall include a listing of the projects to be service ordered to the RCUH, a brief description of each project and its objective, and the management

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fee and the cost of each project by means of financing; provided further that the report shall cover fiscal year 1991-92 and the first quarter of fiscal year 1992-93 with estimated amounts for the last three quarters of fiscal year 1992-93."

(117) By adding a new section to read as follows:

"SECTION 106.9. Provided that of the general fund appropriation for academic support (UOH 104), the sum of \$50,000 in fiscal year 1992-93 shall be used for 1.0 permanent curator at the Hamilton library for the Spark M. Matsunaga papers; provided further that in order to organize and catalog these papers in a form usable for research, the initial curator shall possess complete familiarity with the Matsunaga papers and have been well acquainted with Senator Matsunaga and the operations of his offices; provided further that these qualifications will take precedence over any other qualification requirement that may apply to this position."

(118) By adding a new section to read as follows:

"SECTION 106.10. Provided that of the general fund appropriation for student services (UOH 105), the sum of \$33,312 in fiscal year 1992-93 shall be used for 1.0 permanent position for the "one stop shop" for nontraditional students."

(119) By amending Section 93 to read as follows:

"SECTION 93. Provided that of the general fund appropriation for the university of Hawaii, the sum of \$12,930,637 in fiscal year 1991-1992 and \$6,296,318 in fiscal year 1992-93 shall be expended for nonrecurring repair and maintenance projects in the following institutional support programs:

<u>PROGRAM ID</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
UOH 106	\$8,511,050	\$4,229,108
UOH 216	966,491	571,125
UOH 906	3,453,096	1,496,085

provided further that in the implementation of this requirement, the university of Hawaii may use its present staff, student help, and other such temporary personnel pursuant to section 76-16, Hawaii Revised Statutes; provided further that unless otherwise prohibited by law, the university of Hawaii may make expenditures and enter into contracts for necessary equipment, supplies, materials, labor, and professional services, and technical assistance to satisfy the objective of this appropriation."

(120) By amending Section 94 to read as follows:

"SECTION 94. Provided that of the general fund appropriation for the university of Hawaii, the sum of \$7,957,658 in fiscal year 1991-92 and \$3,164,213 in fiscal year 1992-93 shall be expended for nonrecurring equipment expenditures to:

- (1) Replace obsolete or inoperable educational classroom and scientific equipment; and
- (2) Acquire new educational classroom or scientific equipment to keep

pace with new technological advances in the following institutional support programs:

<u>PROGRAM ID</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
UOH 106	\$4,398,196	\$1,724,556
UOH 216	305,847	184,604
UOH 704	17,946	12,800
UOH 906	3,235,669	1,242,253

provided further that any remaining funds in excess of each campus' instructional or research requirements under paragraphs (1) or (2) may be used to meet other institutional equipment needs with the exception of administration office equipment and furniture."

(121) By adding a new section to read as follows:

"SECTION 106.11. Provided that of the general fund appropriation for instruction (UOH 211), the sum of \$161,570 for 4.0 permanent instructor positions in fiscal year 1992-93 shall be used for the augmentation of the fourth year of the university of Hawaii at Hilo bachelor of science nursing degree program."

(122) By adding a new section to read as follows:

"SECTION 106.12. Provided that of the general fund appropriation for instruction, Honolulu community college (UOH 301), the sum of \$200,000 and 1.0 permanent position in fiscal year 1992-93 shall be used for a pilot training program to begin the development of a baccalaureate degree in airway science."

(123) By adding a new section to read as follows:

"SECTION 106.13. Provided that of the general fund appropriation for instruction - Hawaii community college (UOH 401), the sum of \$30,000 in fiscal year 1993 shall be used to develop and implement a modified curriculum to enable emergency medical technicians to meet the educational requirements to sit for the NCLEX-LPN and obtain clinical skills needed to provide emergency room nursing services at rural hospitals on the island of Hawaii; provided further that Hawaii community college submit a report to the legislature on the curriculum and implementation of this program not fewer than twenty days prior to the convening of the 1993 legislative session."

(124) By adding a new section to read as follows:

"SECTION 106.14. Provided that of the general fund appropriation for instruction, Kauai community college (UOH 601), the sum of \$43,788 for 2.0 permanent positions in fiscal year 1992-93 shall be used for childcare for nontraditional students and faculty members at Kauai community college."

(125) By adding a new section to read as follows:

"SECTION 106.15. Provided that of the special fund appropriation for public service, Kauai community college (UOH 602), the sum of \$255,000 in fiscal year 1992-93 shall be used for the increase of the special fund ceiling for "Elderhostel" noncredit, off-campus community service program."

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(126) By amending Section 106 to read as follows:

**"SECTION 106.** Provided that of the general fund appropriation for institutional support, university of Hawaii, system-wide support, (UOH 903), the sum of \$425,000 in fiscal year 1991-92 and \$475,000 in fiscal year 1992-93 shall be deposited into the discoveries and inventions revolving fund; provided further that of the amount deposited, \$250,000 in fiscal year 1991-92 and \$300,000 in fiscal year 1992-93 shall be used to support technical assistance services for Hawaii's businesses and \$175,000 in each year of the 1991-93 fiscal biennium shall be used for seed capital; provided further that to ensure the proper expenditure of general funds, the university of Hawaii shall submit a detailed expenditure and status report documenting the criteria for disbursement, a list of all moneys allocated for support services for Hawaii's businesses, and a list of all venture seed capital distributions to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(127) By adding a new section to read as follows:

**"SECTION 106.16.** Provided that of the general fund appropriation for institutional support, UOH systemwide support (UOH 903), the sum \$57,000 in fiscal year 1992-93 shall be used by the university to search for a new president."

(128) By amending Section 99 to read as follows:

**"SECTION 99.** Provided that the university of Hawaii may use their general fund appropriation as an advance, or the director of finance may make loans when required to the university of Hawaii, to meet costs incurred in connection with federally financed research and training projects; provided further that to ensure the proper expenditure of general funds, the university of Hawaii shall submit a detailed expenditure and status report, documenting all advances and loans made to federally financed research and training projects, to the legislature no later than twenty days prior to the convening of the 1993 legislative session."

(129) By amending Section 96 to read as follows:

**"SECTION 96.** Provided that the university shall submit a report on the research and training revolving fund to the governor and the legislature twenty days prior to the convening of the 1992 and 1993 regular sessions; provided further that the report shall include a discussion on the criteria for disbursement and a listing of all items financed under the fund; provided further that the report shall discuss the benefits and additional grants generated as a result of expenditures made from the fund for fiscal years 1989-90, 1990-91, and 1991-92; provided further that the university shall review the budget authorized and requested for fiscal year 1992-93 and shall identify all areas or items that may be funded through the research and training revolving fund."

(130) By adding a new section to read as follows:

**"SECTION 106.17.** Provided that the university shall prepare a listing of all positions that have been established by the research corporation of the university of Hawaii (RCUH) for the purpose of providing support services to the university; provided further that this listing of RCUH positions shall include each

position's classification title, salary range, source of funding, organizational location, date position was originally established, date position was most recently filled, anticipated duration of the position, and the reason or reasons why personnel support services ordered through RCUH cannot be readily secured through the university and/or state procedures; provided further that the university shall submit a detailed status report to the legislature no later than twenty days prior to the convening of the 1993 legislative session."

(131) By adding a new section to read as follows:

"SECTION 106.18. Provided that the president of the university of Hawaii shall establish an ad hoc task force for the purpose of reviewing university procedures governing the use of the research corporation of the university of Hawaii RCUH to hire personnel to provide support services to the university; provided further that the ad hoc task force shall include representatives of the university, The department of personnel services, and the collective bargaining unit 8; provided further that the ad hoc task force shall conduct a study of procedures, policies, and the operating relationship between the university and RCUH; provided further that the ad hoc task force shall pay particular attention to making recommendations that ensure compliance with applicable university administrative procedures, collective bargaining agreements, grant awarding agency requirements, and/or other state administrative rules, regulations, and requirements governing or relating to the hiring of support service personnel by RCUH for the university; provided further that the ad hoc task force shall submit its findings and recommendations to the president; and provided further that the president shall submit a detailed status report to the legislature twenty days prior to the convening of the 1993 legislative session citing the recommendations of the ad hoc task force and the subsequent actions initiated by the university in regard to the task force recommendations."

(132) By adding a new section to read as follows:

"SECTION 109.1. Provided that of the general fund appropriation for aquaria (UOH 881), the sum of \$434,762 in fiscal year 1992-93 shall be expended to supplement the Waikiki aquarium's earned income during the aquarium's eight month closure for renovations."

(133) By adding a new section to read as follows:

"SECTION 109.2. Provided that of the special fund appropriation for ocean-based recreation (TRN 801), the sum of \$804,046 for 4.0 positions transferred from commercial harbors, and 19.0 new permanent positions, equipment, and motor vehicles in fiscal year 1992-93 shall be expended as follows: (1) the transfer of harbor agent II (12313), account clerk II (16911), property manager IV (45468), and engineer III (11930); and (2) the new positions of maintenance superintendent IV (Oahu), assistant district manager (Oahu), clerk typist III (Oahu), equipment operator III (Oahu), secretary II (Oahu), accountant V (Oahu), data processing systems analyst IV (Oahu), account clerk IV (Oahu), clerk typist III (Oahu), clerk typist II (Lahaina), clerk typist II (Maalaea), building maintenance worker II (Maui), district boating manager I (Kauai), building maintenance worker II (Kauai), account clerk III (Kauai), district boating manager I (Hawaii), building maintenance worker II (Hawaii), account clerk IV (Hawaii), and harbor

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agent III (Hawaii), to provide an acceptable organizational structure of the program as the program will exist in the department of land and natural resources."

(134) By adding a new section to read as follows:

"SECTION 109.3. The department of land and natural resources shall report on the status and effectiveness of the transfer of ocean-based recreation (TRN 801), to its department; provided further that this report shall be submitted to the legislature not fewer than twenty days prior to the convening of the 1993 legislative session."

(135) By adding a new section to read as follows:

"SECTION 109.4. Provided that of the special fund appropriation for general administration for culture and recreation (LNR 809), the sum of \$1,019,310 and 3.0 permanent positions in fiscal year 1992-1993 shall be used for the new Aina Hoomalu state parks program."

(136) By adding a new section to read as follows:

"SECTION 126.1. Provided that of the general fund appropriation for Oahu community correctional center (PSD 407), the sum of \$108,949 in fiscal year 1992-93 shall be used for the salary adjustments of nonsecurity positions pursuant to the recommendations of the department of personnel services and section 77-9, Hawaii Revised Statutes."

(137) By adding a new section to read as follows:

"SECTION 126.2. Provided that of the general fund appropriation for narcotics enforcement (PSD 502), the sum of \$4,500 in fiscal year 1992-93 shall be used for nine sets of body armor."

(138) By adding a new section to read as follows:

"SECTION 126.3. Provided that of the general fund appropriation for special services (PSD 503), the sum of \$15,000 in fiscal year 1992-93 shall be used for thirty sets of body armor."

(139) By adding a new section to read as follows:

"SECTION 126.4. Provided that of the general fund appropriation for criminal injuries compensation (PSD 414) the sum of \$846,556 for fiscal year 1992-93 shall be expended for the purpose of compensating certain persons or their providers of services pursuant to chapter 351, Hawaii Revised Statutes.

(140) By amending Section 115 to read as follows:

"SECTION 115. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$1,500,000 in fiscal year 1991-92 and \$250,000 in fiscal year 1992-93 shall be expended for the following nonrecurring repair and maintenance projects:

## PROJECT DESCRIPTION:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Halawa correctional facility		
Replacement of air conditioning chiller	\$200,000	\$150,000
Kulani correctional facility		
Industrial area repairs	165,000	0
Waiawa correctional facility		
Fuel storage tank replacement	0	75,000
Effluent infiltration basin construction	145,000	0
Hawaii community correctional center		
Repair of maintenance shop building	50,000	25,000
Laundry area retrofit	25,000	0
Maui community correctional center		
Roofing and air conditioning repairs	500,000	0
Oahu community correctional center		
Parking facilities alterations	135,000	0
Kauai community correctional center		
Partial replacement of a/c system	80,000	0
Women's community correctional center		
Vehicle and equipment repair	25,000	0
Interim sewer measures		
Training center		
Building repair of training facilities	100,000	0

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 the terms of this section may be expended for other institutional repair and maintenance needs; 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 1992 and 1993 regular sessions."

(141) By amending Section 116 to read as follows:

"SECTION 116. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$984,161 for fiscal year 1991-92 and \$916,181 for fiscal year 1992-93 shall be expended for the basic training and staff development of department personnel; provided further that, of the sums indicated, only \$367,389 in fiscal year 1991-92 and \$385,209 in fiscal year 1992-93 shall be expended for personal services related to the in-service training of department personnel and the basic training of adult corrections and law enforcement officers; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions."

(142) By amending Section 117 to read as follows:

"SECTION 117. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$2,894,047 for fiscal year 1991-92 and

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the sum of \$1,568,502 for fiscal year 1992-93 shall be expended for the salary adjustments of adult corrections officers pursuant to the recommendations of the department of personnel services and section 77-9, Hawaii Revised Statutes; provided further that the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to 1992 and 1993 regular sessions."

(143) By amending Section 120 to read as follows:

"SECTION 120. Provided that of the general fund appropriation for the department of public safety, the sum of \$424,858 for fiscal year 1991-92 and \$424,918 for fiscal year 1992-93 shall be expended for the administration and staffing of the substance abuse treatment program; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions."

(144) By amending Section 121 to read as follows:

"SECTION 121. Provided that of the general fund appropriation for the department of public safety, the sum of \$139,698 for fiscal year 1991-92 and \$133,581 for fiscal year 1992-93 shall be expended for the administration and staffing of the sex offender assessment and treatment program; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions."

(145) By amending Section 122 to read as follows:

"SECTION 122. Provided that of the general fund appropriation for the department of public safety, the sum of \$1,954,239 for fiscal year 1991-92 and \$1,846,558 for fiscal year 1992-93 shall be expended for the educational services program; provided further that in order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions."

(146) By amending Section 123 to read as follows:

"SECTION 123. Provided that of the general fund appropriation for the department of public safety, the sum of \$1,334,216 for fiscal year 1991-92 and \$835,993 for fiscal year 1992-93 shall be expended for the library services program; provided further that in order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions."

(147) By amending Section 124 to read as follows:

"SECTION 124. Provided that of the general fund appropriation for the department of public safety, the sum of \$7,253,010 for fiscal year 1991-92 and

\$7,683,748 for fiscal year 1992-93 shall be expended for the health care services program; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.”

(148) By adding a new section to read as follows:

“SECTION 126.5. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$473,000 in fiscal year 1992-93 shall be used for nonrecurring special repair and maintenance projects at the Halawa correctional facility; provided further that in order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session.”

(149) By adding a new section to read as follows:

“SECTION 126.6. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$100,000 in fiscal year 1992-93 shall be used for nonrecurring special repair and maintenance projects at the Hawaii community correctional center; provided further that in order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session.”

(150) By adding a new section to read as follows:

“SECTION 126.7. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$41,000 in fiscal year 1992-93 shall be used for nonrecurring special repair and maintenance projects at the Kauai community correctional center; provided further that in order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session.”

(151) By adding a new section to read as follows:

“SECTION 126.8. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$544,438 and 26.1 permanent positions in fiscal year 1992-93 shall be used to establish 26.1 adult corrections officer positions, based on a shift relief factor of 1.65 for seven-day post assignments and a shift relief factor of 1.24 for five-day post assignments.”

(152) By adding a new section to read as follows:

“SECTION 126.9. Provided that the legislative auditor shall conduct a comprehensive study and review of the security staffing needs of each correctional facility and center of the department of public safety; and provided further that the study shall include, but not be limited to, an analysis and assessment of:

- (1) Security unit posts;
- (2) The management of daily and master rosters for all shifts;

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- (3) The current shift relief factor and uniform manning formula computation;
- (4) The recapitulation of manpower utilization;
- (5) Relief posts and schedules;
- (6) Overtime management;
- (7) Plot plans; and
- (8) Consent decree civil no. 84-1104;

provided further that the legislative auditor shall submit a report of findings and recommendations to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(153) By adding a new section to read as follows:

"SECTION 126.10. Provided that all permanent adult corrections officer positions budgeted within the department of public safety shall be used solely for the purpose of providing services within each correctional facility as detailed in the respective position descriptions; provided further that the department is authorized to transfer security positions only between correctional facilities during fiscal year 1992-93; provided further that such transfers shall be with the prior approval of the governor or the director of finance, if so delegated by the governor; provided further that the department shall report to the legislature all positions specially assigned, temporarily assigned, detached, or otherwise transferred between the correctional facilities; provided further that the report shall include, but not be limited to, the following:

- (1) Original location of positions;
- (2) New locations; and
- (3) Purpose of transferring the position;

provided further that the report shall be submitted to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(154) By adding a new section to read as follows:

"SECTION 128.1. Provided that the public utilities commission district representatives in Hawaii county and Maui county serving on the public utilities commission staff on the effective date of this Act 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 benefit accorded a civil service employee."

(155) By adding a new section to read as follows:

"SECTION 128.2. Provided that of the general fund appropriation for transportation, communications and utilities (BUF 901), the sum of \$200,000 in fiscal year 1992-93 shall be used by the public utilities commission to hire a reliable certified public accounting firm that is knowledgeable in the field of telecommunications to study and evaluate the appropriateness of the selection process, decision, contract negotiation and execution, and project implementation of the sole-source SELEX contract; provided further that the public utilities commission shall open a docket within six months to review the current operating costs, cost centers, and rates of return; review and examine the regulated and unregulated cost accounting and allocation practices; determine whether there

exists any internal or external cross-subsidization and its impacts on consumers and employment in Hawaii; and inquire into whether and how consumers, businesses, and the State will benefit from the proposed capital investments; provided further that the department of accounting and general services shall review and prepare a recommendation on whether existing bids or price list contracts may be used to meet the State's voice telecommunications needs in a cost-effective manner or whether the bid already prepared by the consultants to the State should be revised. The review and recommendation shall be submitted to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(156) By adding a new section to read as follows:

"SECTION 164.1. Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$75,000 in fiscal year 1992-93 shall be used for the transfer of funds for the annual maintenance of the Marks estate from statewide plan and coordination (GOV 103)."

(157) By amending Section 137 to read as follows:

"SECTION 137. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$300,000 in fiscal year 1991-92 and \$190,000 in fiscal year 1992-93 shall be expended for the pesticide re-registration program; provided further that these funds shall be expended by the governor's agriculture coordinating committee; provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision; provided further that this report shall include but not be limited to: the progress being made with the re-registration program and each specific pesticide under consideration, and the projected funding level (if necessary) for the continuation of this project 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 1992 and 1993 regular session; provided further that a complete and final report of this provision shall be submitted to the legislature at the end of each fiscal year."

(158) By amending Section 139 to read as follows:

"SECTION 139. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$50,000 in fiscal year 1991-92 shall be expended for research on Chinese tallow; provided further that these funds shall be expended by the governor's agriculture coordinating committee (GACC)."

(159) By amending Section 140 to read as follows:

"SECTION 140. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$89,900 in fiscal year 1991-92 and \$85,300 in fiscal year 1992-93 shall be expended for firetree research and control; provided further that these funds shall be expended by the governor's agricultural coordinating committee (GACC); provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision; provided further that this report shall include, but not be limited to: the progress being made on the firetree research and control program, and the

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projected funding level (if necessary) for the continuation of this project 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 1992 and 1993 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year."

(160) By amending Section 142 to read as follows:

**"SECTION 142.** Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$5,201,918 in fiscal year 1991-92 and \$5,079,293 in fiscal year 1992-93 shall be expended for research on agricultural commodities; provided further that the governor's agriculture coordinating committee (GACC) shall be the expending agency; provided further that the sum of \$2,500,000 in fiscal year 1991-92 and \$2,375,000 in fiscal year 1992-93 shall be used to assist the sugar industry through a contract with the Hawaii Sugar Planters Association; provided further that the sum of \$250,000 in fiscal year 1991-92 and \$225,000 in fiscal year 1992-93 shall be expended for research on anthuriums; provided further that the sum of \$404,388 in fiscal year 1991-92 and \$327,786 in fiscal year 1992-93 shall be used as a contingency fund to be expended only to address emergency situations needing funding and deemed necessary by the department of agriculture and the governor's agriculture coordinating committee, with the approval of the director of finance; provided further that the expenditure of these funds shall be itemized and reported to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular session; provided further that an up-dated itemized report on this provision 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 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 1992 and 1993 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year."

(161) By adding a new section to read as follows:

**"SECTION 164.2.** Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$150,000 in fiscal year 1992-93 shall be used for research to be conducted by the university of Hawaii at Manoa, school of medicine, and the Kuakini medical center (Honolulu heart program) on the nutritional, health benefits, and food value of macadamia nuts; provided further that no funds shall be made available under this Act unless matched on a dollar-for-dollar basis by federal or other funds; provided further that the university of Hawaii and the Kuakini medical center shall publish both an interim report and a final report regarding the research, including their findings, conclusions, and recommendations; provided further that the final report shall be submitted to the legislature no fewer than twenty days prior to the convening of the 1993 legislative session."

(162) By adding a new section to read as follows:

“SECTION 164.3. Provided that of the general fund appropriated for other policy development and coordination (GOV 102), the sum of \$24,000 in fiscal year 1992-93 shall be used for the development of farm lots and dairies in North Kohala, Hawaii; provided further that these funds shall be expended by the governor's agriculture coordinating committee.”

(163) By adding a new section to read as follows:

“SECTION 164.4. Provided that of the general fund appropriation for statewide planning and coordination (GOV 103), the sum of \$5,000,000 in fiscal year 1992-93 shall be used to partially satisfy and pay to the office of Hawaiian affairs, the amount of \$111,883,000, subject to audit, payable to the office Hawaiian affairs under Act 304, Session Laws of Hawaii 1990, for the period from June 16, 1980 through June 30, 1991; provided further that the moneys appropriated by this section shall be utilized by the office of Hawaiian affairs for the betterment of native Hawaiians.”

(164) By adding a new section to read as follows:

“SECTION 164.5. Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$150,000 in fiscal year 1992-93 shall be used by the office of state planning to conduct a comprehensive study and evaluation of land use regulation and management at the state and county levels, including, but not limited to: applicable provisions of state constitution, Hawaii Revised Statutes, county charters, the land use decision-making process, jurisdictional issues, land use classification, organizational structure and function of government agencies, and public input in the land use decision-making and classification process; provided further that the office of state planning shall incorporate, where applicable, the findings and recommendations of this study and evaluation into its first official report to the land use commission required by section 205-18, Hawaii Revised Statutes; provided further that the office of state planning shall submit a preliminary report and a final report on its finding and recommendations to the legislature no later than twenty days prior to the convening of the 1993 and 1994 regular sessions respectively.”

(165) By adding a new section to read as follows:

“SECTION 164.6. Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$80,000 in fiscal year 1992-93 shall be used for the office of state planning to develop maps to identify environmentally sensitive regions and areas for the state geographic information system (GIS); provided further that among the items which shall be included in the GIS are: identification of groundwater and aquifers, rainfall data, degree of slope, soil type, land use districts, and existing and proposed golf courses.”

(166) By adding a new section to read as follows:

“SECTION 164.7. Provided that of the general fund appropriation for budget program planning, analysis and budgeting (BUF 101), the sum of \$123,583,932 in fiscal year 1992-93 shall be used for only the following purposes:

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<u>Purpose</u>	<u>FY 1992-93</u>
Health fund premiums active and retirees	\$117,489,315
Witness fees	\$ 3,052,262
Court appointed counsel	\$ 3,042,355

provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall submit a detailed report of all expenditures no less than twenty days prior to the convening of the 1993 legislative session."

(167) By adding a new section to read as follows:

"SECTION 164.8. Provided that of the general fund appropriation for income assessment and audit (TAX 102), the sum of \$207,024 in fiscal year 1992-93 shall be used for the establishment of 12.0 temporary tax clerks, 1.0 temporary clerical supervisor, and 1.0 temporary operations supervisor to address the implementation of Act 184, Session Laws of Hawaii 1990, relating to the establishment of a county general excise and use tax surcharge; provided further that no funds shall be used unless the establishment of the county general excise and use tax surcharge is adopted by at least one county."

(168) By adding a new section to read as follows:

"SECTION 164.9. Provided that of the general fund appropriation for tax services and processing (TAX 105), the sum of \$260,478 in fiscal year 1992-93 shall be used for the establishment of 20.0 temporary clerks, and 11.0 temporary key equipment operators to address the implementation of Act 184, Session Laws of Hawaii 1990, relating to the establishment of a county general excise and use tax surcharge; provided further that no funds shall be used unless the establishment of the county general excise and use tax surcharge is adopted by at least one county."

(169) By adding a new section to read as follows:

"SECTION 164.10. Provided that of the special fund appropriation for financial planning, policy, and investments (BUF 111), the sum of \$50,000,000 in fiscal year 1992-93 shall be used out of the transit capital development fund for transfer to the counties upon the commitment of matching funds over the life of the project."

(170) By adding a new section to read as follows:

"SECTION 164.11. Provided that of the general fund appropriation for financial planning, policy, and investments (BUF 111), the sum of \$1,650,000 in fiscal year 1992-93 shall be used for the issuance expense of the bonds for the homes revolving fund and the state educational facilities improvement special fund."

(171) By adding a new section to read as follows:

"SECTION 164.12. Provided that of the general fund appropriation for financial planning, policy, and investments (BUF 111), the sum of \$364,801,013 in fiscal year 1992-93 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1992-93</u>
Interest and Principal on general obligation bonds	\$314,801,013
Transit capital development fund	\$ 50,000,000

provided further that the funds shall not be transferred for any other purpose; 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 1993 legislative session."

(172) By amending Section 150 to read as follows:

"SECTION 150. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$1,700,000 in fiscal year 1991-92 and \$1,581,000 in fiscal year 1992-93 shall be expended for litigation expenses; provided further that the attorney general shall submit a quarterly accountability report on all expenses incurred for litigation expenses and the hire of special deputies to the governor; provided further that the report shall identify such litigation expenses and costs of special deputies incurred by any general funded and any non-general funded state department, agency, or program by program identification and organization code."

(173) By amending Section 152 to read as follows:

"SECTION 152. Provided that, notwithstanding any appropriation or position ceiling, the governor may transfer positions and funds between existing programs of the state government to work force attraction, selection, classification and effectiveness (PER 102), for the purpose of implementing a centralized workers' compensation program during fiscal year 1991-92 and fiscal year 1992-93; provided further that the governor shall submit a report to the legislature of all transfers as of December 31 and June 30 of each respective fiscal year."

(174) By amending Section 155 to read as follows:

"SECTION 155. Provided that of the general fund appropriation for work force attraction, selection, classification, and effectiveness (PER 102), the sum of \$350,000 in fiscal year 1991-92 and \$60,562 in fiscal year 1992-93 shall be expended for the continued implementation of the market-based recruitment plan and shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds the department of personnel services shall submit a detailed expenditure and comprehensive status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions."

(175) By adding a new section to read as follows:

"SECTION 164.13. Provided that of the general fund appropriation for

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work force attraction, selection, classification, and effectiveness (PER 102), the sum of \$100,000 in fiscal year 1992-93 shall be used for an independent consultant to conduct a study for the workers' compensation division."

(176) By adding a new section to read as follows:

"SECTION 164.14. Provided that of the general fund appropriation for supporting services - personnel services (PER 191), the sum of \$100,000 in fiscal year 1992-93 shall be used for an independent consultant for the center for excellence; provided further that the emphasis of the center for excellence shall be to create and test new ways to improve the efficiency, effectiveness, and responsiveness of state government and improve the morale and retention of "line" employees; and provided further that the department of personnel services shall submit an expenditure and status report to the legislature no later than twenty days prior to the convening of the 1993 regular session."

(177) By adding a new section to read as follows:

"SECTION 164.15. Provided that of the general fund appropriation for retirement (BUF 141), the sum of \$222,593,645 shall be used for only pension accumulation, pensioner's bonus, minimum pension, social security, medicare contributions (noncovered EES), and military leave; provided further that the funds shall not be transferred for any other purpose; 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 1993 legislative session."

(178) By amending Section 158 to read as follows:

"SECTION 158. Provided that of the general fund appropriation for construction (AGS 221), the sum of \$905,438 in fiscal year 1991-92, and the sum of \$814,267 in fiscal year 1992-93 shall be expended for additional office space leases for the following state agencies:

<u>AGENCY</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Dept. of Budget & Finance		
Hawaii Public Emp. Health Fund	\$170,400	169,974
Dept. of Education		
ETV & Office of Information & Space Technology	240,000	228,000
Dept. of Health		
West Hawaii Staff	163,875	155,681
Litter Control Office	88,800	84,360
Dept. of Personnel Services	50,000	47,500
Dept. of Public Safety		
Maui Parole Section	15,360	15,048
Kauai Intake Service Center	38,938	36,991
Hawaii State Public Library System Administrative Services Branch	58,065	
Kauai Library District	15,000	14,963
Office of International Relations	65,000	61,750

provided further that the department of accounting and general services (DAGS) shall submit an updated listing of all leases centralized within DAGS for other state agencies no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

(179) By adding a new section to read as follows:

“SECTION 164.16. Provided that of the general fund appropriation for construction (AGS 221), the sum of \$557,000 in fiscal year 1992-93 shall be used to fund unbudgeted lease rents; provided further that of the sum appropriated \$162,000 shall be used for the relocation of the following department of education programs and agencies: (1) the statistical information services branch; (2) visual technology services; and (3) the Hawaii educational dissemination and diffusion system.”

(180) By adding a new section to read as follows:

“SECTION 164.17. Provided that of the general fund appropriation for general administrative services-accounting & general services (AGS 901), the sum of \$60,000 in fiscal year 1992-93 shall be expended for the establishment of a statewide pilot program to examine cost saving measures related to travel costs; provided further that the department of accounting and general services (DAGS) shall coordinate the installation of four satellite ticket printing systems currently in place in the University before the installation of any ticket printing systems in other departments; provided further that in the selection of sites for these systems, DAGS may consider the following:

- 1) Two state departments engaging in travel consisting on average of over 2,500 trips per year;
- 2) A state department engaging in travel consisting on average of between 1,000 and 2,500 trips per year;
- 3) A state department engaging in travel consisting on average under 1,000 trips per year;

provided further that DAGS shall consider the implementation of the lowest fare available for a particular trip as a travel cost saving system; provided further that DAGS shall consider other travel cost saving systems or methods or procedures to implement on a pilot program basis in an effort to assess the relative benefits of these different systems or methods and which would result in a more uniform and cost effective system of travel cost procedure and management; provided further that DAGS shall also consider the finding, data, and recommendations contained in the travel cost study released by the legislative reference bureau, report number 3, 1992; provided further that DAGS shall submit a report to the legislature which shall include, but not be limited to:

- (1) A comparative analysis of the types of systems or procedures studied to determine the effectiveness of each in reducing costs. Degree and flexibility of service shall also be reported;
- (2) An assessment of the feasibility of establishing satellite ticket printing systems within all or a select number of state departments; and
- (3) A recommendation by DAGS to whether or not satellite ticket printing systems or another alternative should be permanently established and, if a permanent program is recommended, the report shall include a proposal for a statewide plan for such a program, including

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a schedule of implementation and the fiscal requirements for the program;  
provided further that this report shall be transmitted to the legislature on January 20, 1993 for review and consideration."

(181) By adding a new section to read as follows:

"SECTION 164.18. Provided that of the general fund appropriation for the county of Hawaii (SUB 301), the sum of \$1,000,000 in fiscal year 1992-93 shall be used for the development of a mass transit system in the county of Hawaii, as specified in the development agreement dated February 26, 1992; provided further that no funds shall be expended under this Act unless matched on a dollar-for-dollar basis by the county of Hawaii; provided further that the county of Hawaii shall submit a detailed report on the expenditure of these funds no less than twenty days prior to the convening of the 1993 regular session."

(182) By adding a new section to read as follows:

"SECTION 164.19. Provided that the executive branch shall: 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), provide support to facilitate the electronic access to this data; and 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 6. Part IV, Act 296, Session Laws of Hawaii 1991, is amended by amending Section 165 to read as follows:

"SECTION 165. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in Part II of this Act for capital improvement 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 further that the total cost of the project thus combined shall not exceed the total of the sum specified for the projects separately. (The amounts after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

## A. ECONOMIC DEVELOPMENT

## BED102 - COMMERCE AND INDUSTRY

## 1. HTDC-2 MANOA INNOVATION CENTER, OAHU

LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE BUILDING WING, INCUBATION WALLS, TELECOMMUNICATIONS/CABLING, UNINTERRUPTED POWER AND LANDSCAPING.

LAND	1	509
DESIGN	40	1
CONSTRUCTION	2,140	1
EQUIPMENT	1	
TOTAL FUNDING	BED	2,182 C

## 2. TELECOMMUNICATIONS GROUND STATION, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ADVANCED TELECOMMUNICATIONS GROUND STATION FOR THE STATE OF HAWAII.

PLANS	58	
DESIGN	25	
CONSTRUCTION	73	
EQUIPMENT	393	
TOTAL FUNDING	BED	549 C

## 3. FILMING FACILITY, PHASE I, OAHU

CONSTRUCTION FOR THE FILMING FACILITY, PHASE I.

CONSTRUCTION	3,000	
TOTAL FUNDING	BED	3,000 C

## 4. KAUAI TROPICAL FRUIT DISINFESTATION FACILITY, KAUAI

LAND ACQUISITION AND CONSTRUCTION FOR THE DEVELOPMENT OF A TROPICAL FRUIT DISINFESTATION FACILITY.

LAND	200	
CONSTRUCTION	250	
TOTAL FUNDING	BED	450 C

## AGR122 - PLANT PEST AND DISEASE CONTROL

## 5. PPC-01 QUARANTINE AND PROPAGATION INSECTARY BUILDINGS ADDITIONS, OAHU

DESIGN AND CONSTRUCTION FOR ADDITIONS TO EXISTING QUARANTINE AND PROPAGATION INSECTARY BUILDINGS WHICH WILL INCLUDE AN EXTENSION OF MOATS SURROUNDING BOTH BUILDINGS AND AN ESCAPE PROOF DESIGN FOR

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		THE QUARANTINE FACILITY.					
		DESIGN			12		
		CONSTRUCTION			72		
		TOTAL FUNDING	AGS		84 C		C

**AGR131 - ANIMAL QUARANTINE**

6. AQS-01 ANIMAL QUARANTINE STATION, RENOVATIONS AND IMPROVEMENTS, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR AQS RENOVATIONS TO ADD/REPLACE/RENOVATE ANIMAL KENNELS, IMPROVE INFRASTRUCTURE, PROVIDE NEW TEAMLEADER WORKSHEDS, RENOVATE LIGHTING AND PA SYSTEMS, IMPROVE LANDSCAPING, RENOVATE SEWAGE TREATMENT PLANT/BACKUP GENERATOR, AND OTHER IMPROVEMENTS.

PLANS	7		
DESIGN	152		
CONSTRUCTION		2,940	
TOTAL FUNDING	AGS	159 C	2,940 C

**LNR172 - FORESTRY - PRODUCTS DEVELOPMENT**

7. D42A STATE TREE NURSERY OPERATIONS BUILDING, KAMUELA, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF AN OLD QUONSET BUILDING WITH A NEW STEEL STRUCTURE. PROJECT WILL REQUIRE THE REMOVAL OF THE EXISTING BUILDING AND CONSTRUCTION OF THE NEW BUILDING OVER THE EXISTING 40 FEET BY 100 FEET CONCRETE FLOOR AREA; PAVING OF DRIVEWAY AND PARKING AREA; OTHER RELATED WORK.

PLANS	10		
DESIGN	60		
CONSTRUCTION		750	
EQUIPMENT		60	
TOTAL FUNDING	LNR	70 C	810 C

**AGR141 - AGRICULTURAL RESOURCE MANAGEMENT**

8. 920001 PANAEWA AGRICULTURAL PARK, MARSHALLING AND PROCESSING FACILITY, HAWAII

PLANS AND DESIGN FOR INCREMENTAL DEVELOPMENT OF MARSHALLING AND PROCESSING FACILITIES INCLUDING OTHER APPURtenant WORK.

PLANS	50	
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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		DESIGN			150	
		TOTAL FUNDING	AGS		200 C	
9.	930003	WAIMEA IRRIGATION OFFICE ADDITION, KAMUELA, HAWAII				C
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ADDITION TO EXISTING STOREROOM AND RENOVATION OF EXISTING STOREROOM INTO OFFICE SPACE AT THE WAIMEA IRRIGATION OFFICE. PHASE II CONSISTING OF WORKSHOP, LOCKER/SHOWER AND STORAGE ROOM.				
		PLANS		25	15	
		DESIGN		35	20	
		CONSTRUCTION		125	150	
		EQUIPMENT		25	15	
		TOTAL FUNDING	AGS		210 C	200 C
10.	920008	MOLOKAI IRRIGATION SYSTEM, KUALAPUU RESERVOIR SECURITY FENCING, MOLOKAI				
		PLANS, DESIGN, AND CONSTRUCTION FOR SECURITY FENCING TOGETHER WITH APPURtenant WORKS FOR RESERVOIR PERIMETER INCLUDING REMOVAL AND DISPOSAL OF EXISTING FENCING.				
		PLANS		15		
		DESIGN		25		
		CONSTRUCTION		200		
		TOTAL FUNDING	LNR		240 C	
						C
11.	920011	WAIMEA IRRIGATION SYSTEM, IMPROVEMENTS TO LALAMINO DISTRIBUTION SYSTEM, HAWAII				
		PLANS AND DESIGN FOR THE REPLACEMENT OF PIPELINES TOGETHER WITH APPURtenant WORKS IN THE LALAMINO FARM LOT SECTION TO INCLUDE PIPE LOOP, SERVICE LATERAL IMPROVEMENTS AND METER UPGRADING.				
		PLANS		15		
		DESIGN		25		
		TOTAL FUNDING	LNR		40 C	
						C
11A.	930001	WAIMANALO IRRIGATION SYSTEM IMPROVEMENTS, KOOLAUPOKO, OAHU				
		DESIGN AND CONSTRUCTION FOR INCREMENTAL IMPROVEMENTS TO THE WAIMANALO IRRIGATION SYSTEM. THE PROJECT WILL CONSIST OF A 60 MG RESERVOIR AND A CLOSED PRESSURIZED DISTRIBUTION PIPELINE. PHASE III WILL CONSIST OF A 16 INCH PIPELINE AND CHLORINATOR/FILTRATION SYSTEM.				
		DESIGN		30		
		CONSTRUCTION		630		
		TOTAL FUNDING	AGR		660 C	
						C

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
11B.	930002	WAIMEA HOMESTEAD PIPELINE ADDITION, WAIMEA IRRIGATION SYSTEM, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A PIPELINE DISTRIBUTION SYSTEM TO SERVICE THE WAIMEA (DHHL) HOMESTEADS TOGETHER WITH A BOOSTER PUMP STATION AND APPURtenant WORKS INCLUDING ACCESS ROAD FOR THE WAIMEA IRRIGATION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					20
		DESIGN					30
		CONSTRUCTION					150
		TOTAL FUNDING	AGR			C	200C
11C.	930004	ACCESS ROAD RELOCATION, MOLOKAI IRRIGATION SYSTEM, MOLOKAI					
		PLANS AND DESIGN FOR ACCESS ROAD REPLACEMENT, INCLUDING DRAINAGE IMPROVEMENTS AND APPURtenant WORK.					
		PLANS					30
		DESIGN					50
		TOTAL FUNDING	AGR			W	80W
<b>AGR192 - GENERAL ADMINISTRATION FOR AGR</b>							
12.	A01	AGRICULTURAL PARK SUBDIVISION, STATEWIDE					
		PLANS, LAND ACQUISITION, AND DESIGN FOR ON AND OFF SITE IMPROVEMENTS FOR DEVELOPMENT OF AGRICULTURAL PARK SUBDIVISIONS, STATEWIDE. TO INCLUDE ACQUISITION OF LAND BY FEE SIMPLE OR LEASE.					
		PLANS					200
		LAND					7,600
		DESIGN					300
		TOTAL FUNDING	AGR			8,100C	7,400C
<b>LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE</b>							
13.	C36	LARGE-SCALE POND RESEARCH, TRAINING AND DEMONSTRATION FACILITY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A POND RESEARCH FACILITY TO PROVIDE BETWEEN 15-50 ACRES OF VARIOUS SIZED PONDS OF UP TO 1 ACRE IN SIZE WITH REQUIRED EQUIPMENT AND PLUMBING. FACILITY TO CONSIST OF CLASSROOMS, LABS, DORMS, FEED AREA, AND MECHANICAL/					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
MAINTENANCE AREAS. FACILITY TO REQUIRE FRESH, BRACKISH, AND SALTWATER.							
		DESIGN			300		
		CONSTRUCTION			1,400		
		EQUIPMENT			300		
		TOTAL FUNDING	LNR		2,000	C	C
14.	C36A	FEED MILL LABORATORY, OAHU					
CONSTRUCTION FOR A FEED MILL LABORATORY AT THE OCEANIC INSTITUTE'S MAKAPUU FACILITY. (GRANT-IN-AID)							
		CONSTRUCTION			850		
		TOTAL FUNDING	LNR		850	C	C
14A.		ROUND POND SHRIMP PRODUCTION FACILITY, KAUAI					
PLANS FOR THE ROUND POND SHRIMP PRODUCTION FACILITY TO INCLUDE BUT NOT LIMITED TO FEASIBILITY STUDIES.							
		PLANS				25	
		TOTAL FUNDING	LNR			C	25 C
<b>BED120 - ENERGY DEVELOPMENT AND MANAGEMENT</b>							
15.	AEB001	GEOTHERMAL/TRANSMISSION SYSTEM MASTER PLAN AND EIS, STATEWIDE					
PLANS FOR MASTER PLAN & PROGRAMMATIC EIS, NEPA OR STATE, AS DETERMINED, FOR GEOTHERMAL DEVELOPMENT & ELECTRICAL TRANSMISSION; ESTABLISH A COORDINATED PLANNING FRAMEWORK FOR DEVELOPING GEOTHERMAL RESOURCES, FIRST TO MEET THE ISLAND OF HAWAII'S FUTURE BASELOAD ENERGY REQUIREMENTS, & 2ND TO PROVIDE FOR POSSIBLE EXPORT OF ENERGY TO MAUI & OAHU; INCORPORATE INPUT FROM CITIZENS, DEVELOPERS, INDUSTRY, & GOVERNMENT.							
		PLANS			400		
		TOTAL FUNDING	BED		400	C	C
16.	GEO91A	GEOTHERMAL RESOURCE ASSESSMENT, HAWAII					
CONSTRUCTION FOR EXPLORATORY GEOTHERMAL DRILLING AND RESERVOIR ASSESSMENT TO DETERMINE IF AND WHERE SUFFICIENT RETRIEVABLE RESOURCES ARE AVAILABLE, FIRST TO SATISFY THE ISLAND OF HAWAII'S FUTURE BASELOAD ENERGY REQUIREMENTS, AND SECOND TO EXPORT ENERGY TO MAUI AND OAHU.							
		CONSTRUCTION			750		
		TOTAL FUNDING	BED		750	C	C

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	<b>APPROPRIATIONS (IN 000's)</b>			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
17.	SHPA92	SOLAR AND HEAT PIPE-ASSISTED AIR CONDITIONING OF STATE OFFICE BUILDINGS					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RETROFIT OF AIR CONDITIONING SYSTEMS, USING HEAT PIPE OR SOLAR ASSISTED SYSTEMS, IN THREE REPRESENTATIVE STATE OFFICE BUILDINGS.					
		PLANS			20		
		DESIGN			20		
		CONSTRUCTION			60		
		EQUIPMENT			120		
		TOTAL FUNDING	BED		220 C		C
18.	HTDC-1	HAWAII OCEAN SCIENCE AND TECHNOLOGY PARK, HAWAII					
		PLANS AND DESIGN FOR SECONDARY ROADS AND UTILITY DISTRIBUTION SYSTEMS.					
		PLANS			23		
		DESIGN			290		
		TOTAL FUNDING	BED		313 C		C
19.	HTDC-6	HAWAII OCEAN SCIENCE AND TECHNOLOGY (HOST) PARK WARM WATER PIPE, HAWAII					
		CONSTRUCTION FOR A SURFACE SEAWATER PIPE TO SERVICE THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, KEAHOLE, KONA, HAWAII.					
		CONSTRUCTION			100		
		TOTAL FUNDING	BED		100 C		C
20.	HTDC-7	HAWAII OCEAN SCIENCE AND TECHNOLOGY (HOST) PARK ON-SITE BUILDING, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR A LABORATORY/OFFICE BUILDING AT THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, KEAHOLE, KONA, HAWAII.					
		CONSTRUCTION			600		
		EQUIPMENT			50		
		TOTAL FUNDING	BED		650 C		C
21.	NELH10	OFFSHORE SEAWATER PIPELINES, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FOUR OFFSHORE SEAWATER PIPELINES AND RELATED PUMP STATIONS TO SUPPLY OTEC PLANT(S) AND OTHER OCEAN-RELATED INDUSTRIES WITH UP TO 35,000 GALLONS PER MINUTE FOR EACH OF THE SEAWATER FLOWS, BOTH WARM AND COLD, FOR THE TENANTS OF NELHA.					
		DESIGN			360		
		CONSTRUCTION			2,880		
		EQUIPMENT			360		
		TOTAL FUNDING	BED		3,600 C		C

## CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS  
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
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22. OCEAN THERMAL ENERGY CONVERSION (OTEC)  
PROJECT, HAWAII

DESIGN AND CONSTRUCTION TO BUILD AND TEST A PRECOMMERCIAL CLOSED-CYCLE OCEAN THERMAL ENERGY CONVERSION (OTEC) PLANT AT KEAHOLE, HAWAII.

DESIGN		50	1
CONSTRUCTION		450	224
TOTAL FUNDING	BED	500C	225 C

## C. TRANSPORTATION FACILITIES

## TRN102 - HONOLULU INTERNATIONAL AIRPORT

1. A11 HIA INTERISLAND COMPLEX, OAHU

DESIGN & CONSTRUCTION FOR INTERISLAND COMPLEX INCLUDING BUILDINGS, APRONS & TAXIWAYS, ROADWAYS, PARKING AND OTHER MISC IMPROVEMENTS. RELOCATE EXISTING INTERISLAND MAINTENANCE, CARGO AND ADMIN OFFICES. ALTERATIONS TO EXISTING BLDGS, APRONS, ROADWAYS AND PARKING. INSTALL FURNITURE, LANDSCAPING, AND MISC EQUIPMENT.

DESIGN		3,055	2,970
CONSTRUCTION		28,495	14,270
TOTAL FUNDING	TRN	27,050 B	B
	TRN	E	15,240 E
	TRN	4,500N	2,000N

2. A16 HIA INTERNATIONAL TERMINAL COMPLEX, OAHU

DESIGN AND CONSTRUCTION FOR INTERNATIONAL TERMINAL BUILDING COMPLEX INCLUDING BUILDINGS, APRONS & TAXIWAYS, ROADWAYS, PARKING, FURNITURE, LANDSCAPING, GATES, LOADING BRIDGES, AIR CARGO/PARKING/ OFFICE/TENANT LEASE SPACE COMPLEX, FUEL STORAGE, & OTHER MISC IMPROVEMENTS.

DESIGN		9,025	
CONSTRUCTION		334,475	
TOTAL FUNDING	TRN	342,500 E	E
	TRN	1,000N	N

3. A20 INTRA-TERMINAL TRANSPORTATION SYSTEM AT HIA, OAHU

DESIGN AND CONSTRUCTION FOR INTRA-TERMINAL TRANSPORTATION SYSTEM INCLUDING EQUIPMENT, BUILDINGS, GUIDE-WAYS, UTILITIES, COMPUTERIZED CONTROL SYSTEM, TERMINAL BUILDING MODIFICATIONS, RELOCATION OF EXISTING TENANTS, ESCALATORS, MOVING SIDEWALKS, AND OTHER MISCELLANEOUS IMPROVEMENTS.

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			6,075		
		CONSTRUCTION			152,025		
		TOTAL FUNDING	TRN		157,100	E	
			TRN		1,000	N	
3A.	A05	OVERSEAS TERMINAL APM SUPPORT STRUCTURE, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE AUTOMATED PEOPLE MOVER SYSTEM AT THE OVERSEAS TERMINAL, HONOLULU INTERNATIONAL AIRPORT. THE PROJECT INCLUDES SITE PREPARATION, GUIDEWAYS, PASSENGER STATIONS, UTILITY CONNECTIONS, AND ASSOCIATED CONSTRUCTION.					
		DESIGN			2,594		
		CONSTRUCTION			34,813		
		TOTAL FUNDING	TRN		37,407	E	
4.	A23	HIA AIRFIELD IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO AIRFIELD FACILITIES INCLUDING TAXIWAYS, RUNWAYS, SIGNS, ENGINE RUN UP PAD, SERVICE ROADS, SAFETY AREAS, LIGHTING SYSTEMS, EMERGENCY GENERATOR, AND OTHER MISC IMPROVEMENTS.					
		CONSTRUCTION			6,950		
		TOTAL FUNDING	TRN		5,950	B	
			TRN		1,000	N	
5.	A28	HIA AIRPORT TRAINING CENTER, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO AIRPORT TRAINING CENTER INCLUDING BUILDINGS, PARKING, UTILITIES, LANDSCAPING, AND OTHER MISCELLANEOUS IMPROVEMENTS. RELOCATE AVIONICS SCHOOL TENANT.					
		CONSTRUCTION			6,950		
		TOTAL FUNDING	TRN		6,950	B	
6.	A37	AIRPORT SYSTEMS IMPROVEMENTS AT HIA, OAHU					
		DESIGN & CONSTRUCTION FOR 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.					
		DESIGN			3,052		
		CONSTRUCTION			43,790		
		TOTAL FUNDING	TRN		46,742	E	
			TRN		100	N	
						7,395	E
						100	N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)						
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F			
7. A43 SERVICE SUPPORT FACILITIES AT HIA, OAHU										
CONSTRUCTION FOR BUILDINGS, ROADS, PARKING, UTILITIES, APRONS, LANDSCAPING, TELEPHONE, NON-POTABLE WATER, LEASE LOTS, TAXIWAY, AIR CARGO, AIRCRAFT MAINTENANCE, GENERAL AVIATION, HELICOPTER, AIR TAXI, AIRCRAFT FUELING, WASTE DISPOSAL, DRAINAGE IMPROVEMENTS, HANGARS, AND OTHER MISCELLANEOUS IMPROVEMENTS.										
		CONSTRUCTION			34,260					
		TOTAL FUNDING	TRN		33,260	E				
			TRN		1,000	N				
7A. A14 AUTOMATED PEOPLE MOVER MAINTENANCE FACILITY, HIA, OAHU										
DESIGN AND CONSTRUCTION FOR A MAINTENANCE FACILITY FOR THE AUTOMATED PEOPLE MOVER (APM) SYSTEM, INCLUDING SHOP SPACE, EQUIPMENT AND UTILITY HOOK-UPS.										
		DESIGN				41				
		CONSTRUCTION				10,386				
		TOTAL FUNDING	TRN			10,427	E			
7B. A09 AUTOMATED PEOPLE MOVER SYSTEM, HONOLULU INTERNATIONAL AIRPORT, OAHU										
CONSTRUCTION FOR AN AUTOMATED PEOPLE MOVER SYSTEM AT THE HONOLULU INTERNATIONAL AIRPORT, INCLUDING CONTROLLING SYSTEM, SWITCHES, GUIDERAILS, VEHICLES, STATIONS, AND STATION EQUIPMENT AND UTILITY CONNECTIONS.										
		CONSTRUCTION				47,605				
		TOTAL FUNDING	TRN			47,605	E			
7C. A21 ITB AUTOMATED PEOPLE MOVER SUPPORT STRUCTURE, HIA, OAHU										
DESIGN AND CONSTRUCTION FOR GUIDEWAY AND SUPPORTING STRUCTURE FOR THE AUTOMATED PEOPLE MOVER SYSTEM AT THE HONOLULU INTERNATIONAL AIRPORT. PROJECT INCLUDES SITE PREPARATION, GUIDEWAYS, PASSENGER STATIONS, UTILITY CONNECTIONS AND ASSOCIATED CONSTRUCTION.										
		DESIGN				204				
		CONSTRUCTION				20,249				
		TOTAL FUNDING	TRN			20,453	E			
7D. A29 AIR CONDITIONING SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU										
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND MODIFICATIONS TO THE AIR CONDITIONING SYSTEM AT THE HONOLULU										

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		INTERNATIONAL AIRPORT, INCLUDING CHILLER PLANTS, UTILITY CONNECTIONS, DUCTS, PIPING, PUMPS, AND OTHER RELATED EQUIPMENT.					
		DESIGN				685	
		CONSTRUCTION				20,889	
		TOTAL FUNDING	TRN			21,574	E
7E.	A30	ELECTRICAL SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE MODIFICATION OF ELECTRICAL SYSTEMS AT THE HONOLULU INTERNATIONAL AIRPORT, CONSISTING OF SWITCH GEARS, DISTRIBUTION SYSTEMS; TRANSFORMER STATIONS, EMERGENCY GENERATOR SYSTEM, AND OTHER RELATED FACILITIES.					
		DESIGN				600	
		CONSTRUCTION				15,760	
		TOTAL FUNDING	TRN			16,360	E
7F.	A31	ENERGY CONTROL SYSTEM, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION, ALTERATION, AND EXPANSION OF FACILITIES TO MONITOR AND CONTROL VARIOUS UTILITY AND SUPPORT SYSTEMS AT THE HONOLULU INTERNATIONAL AIRPORT.					
		DESIGN				515	
		CONSTRUCTION				2,760	
		TOTAL FUNDING	TRN			3,275	E
7G.	A33	PUBLIC ADDRESS SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION, ALTERATION, AND EXPANSION OF THE PUBLIC ADDRESS SYSTEM AT THE HONOLULU INTERNATIONAL AIRPORT. THE PROJECT INCLUDES UPGRADING AND EXTENDING EXISTING SYSTEMS AND INSTALLING NEW SYSTEMS IN SUPPORT OF THE TERMINAL EXPANSIONS PLANNED AND CURRENTLY UNDER CONSTRUCTION.					
		DESIGN				275	
		CONSTRUCTION				2,680	
		TOTAL FUNDING	TRN			2,955	E
7H.	A41	HIA TERMINAL MODIFICATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES INCLUDING GATES AND HOLDING ROOMS, AIRCRAFT PARKING APRONS, BUILDINGS, PARKING, ROADS, AIR CARGO COMPLEX, SIGNS, FURNITURE, WALKWAYS, CEILING, LANDSCAPING, RELOCATE EXISTING TENANTS,					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		AND OTHER MISCELLANEOUS IMPROVEMENTS.				
		DESIGN				5,000
		CONSTRUCTION				18,000
		TOTAL FUNDING	TRN		E	23,000 E
7I.	A46	INTERNATIONAL TERMINAL BUILDING, HONOLULU INTERNATIONAL AIRPORT, OAHU				
		CONSTRUCTION FOR THE INTERNATIONAL TERMINAL BUILDING INCLUDING ARRIVAL/ DEPARTURE BUILDINGS, TOUR GROUP FACILITIES, CONCESSION SPACES, UTILITY CONNECTIONS AND ASSOCIATED CONSTRUCTION.				
		CONSTRUCTION				292,010
		TOTAL FUNDING	TRN		E	292,010 E
7J.	A48	ITB ROADS AND PARKING, HONOLULU INTERNATIONAL AIRPORT, OAHU				
		DESIGN AND CONSTRUCTION FOR ROADS AND VEHICULAR PARKING IN SUPPORT OF THE NEW INTERNATIONAL TERMINAL BUILDING. THE PROJECT INCLUDES LANDSCAPING, IRRIGATION SYSTEM, DRAINAGE AND OTHER ASSOCIATED CONSTRUCTION.				
		DESIGN				1,000
		CONSTRUCTION				29,000
		TOTAL FUNDING	TRN		E	30,000 E
7K.	A49	ITB UTILITIES, HONOLULU INTERNATIONAL AIRPORT, OAHU				
		DESIGN AND CONSTRUCTION FOR EXPANDED UTILITY SYSTEMS FOR THE NEW INTERNATIONAL TERMINAL BUILDING AT THE HONOLULU INTERNATIONAL AIRPORT. THE PROJECT INCLUDES WATER, SEWER, ELECTRICITY, AIR CONDITIONING, PUBLIC ADDRESS AND SECURITY SYSTEMS, UTILITY CONTROLLING SYSTEMS, AND OTHER SUPPORTING UTILITIES.				
		DESIGN				100
		CONSTRUCTION				1,900
		TOTAL FUNDING	TRN		E	2,000 E

## TRN111 - HILO INTERNATIONAL AIRPORT

8. B10 HILO INTERNATIONAL AIRPORT IMPROVEMENTS,  
HAWAII

DESIGN AND CONSTRUCTION FOR  
IMPROVEMENTS TO FACILITIES INCLUDING  
BUILDINGS, ROADS, PARKING, UTILITIES,  
TAXIWAYS, APRONS, CARGO, GENERAL  
AVIATION, LEASE LOTS, HELICOPTER  
FACILITIES, & OTHER MISC IMPROVEMENTS.  
MODIFICATIONS TO EXISTING FACILITIES AND

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
RELOCATION OF TENANTS. SOUND ATTENUATE WAIAKEA HEALTH CENTER.						
		DESIGN		660		20
		CONSTRUCTION		1,675		9,150
		TOTAL FUNDING	TRN	2,235	B	7,170
			TRN	100	N	2,000

**TRN114 - KE-AHOLE AIRPORT****9. C03 KEAHOLE AIRPORT IMPROVEMENTS, HAWAII**

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES INCLUDING 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.

DESIGN	230	2,015
CONSTRUCTION	54,525	29,209
TOTAL FUNDING	49,755	B

TRN TRN E

5,000 N 2,000 N

**10. C10 KEAHOLE AIRFIELD IMPROVEMENTS, HAWAII**

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO AIRFIELD INCLUDING RUNWAY EXTENSION, TAXIWAYS, SERVICE ROADS, SITWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT. ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISCELLANEOUS IMPROVEMENTS.

DESIGN	4,930	500
CONSTRUCTION	21,965	48,500
TOTAL FUNDING	24,895	B

TRN TRN E

2,000 N N

**TRN131 - KAHULUI AIRPORT****11. D08 SERVICE SUPPORT FACILITIES AT KAHULUI AIRPORT, MAUI**

DESIGN AND CONSTRUCTION FOR BUILDINGS, ROADS, PARKING, APRONS, TAXIWAYS, LEASE LOTS, CARGO TERMINAL, HELIPADS, AIRLINES MAINTENANCE FACIL, FUEL STORAGE SITE, GENERAL AVIATION FACIL, UTILITIES, FLIGHT KITCHEN, ARFF FACIL, AIR TOUR FACIL, PARK, LANDSCAPING, AND OTHER

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
MISC IMPROVEMENTS. RELOCATION OF EXISTING TENANTS.							
		DESIGN			1,215		460
		CONSTRUCTION			2,070		12,335
		TOTAL FUNDING	TRN		2,285 B		11,795 B
			TRN		1,000 N		1,000 N
12.	D10	KAHULUI AIRFIELD IMPROVEMENTS, MAUI					
DESIGN AND CONSTRUCTION FOR EXTENSION TO EXISTING RUNWAY AND TAXIWAYS INCLUDING SITEWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT, SERVICE ROADS, AIRCRAFT PARKING APRONS, ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISCELLANEOUS IMPROVEMENTS.							
		DESIGN			1,305		
		CONSTRUCTION			26,775		
		TOTAL FUNDING	TRN		27,080 B		
			TRN		1,000 N		B N
TRN135 - KAPALUA AIRPORT							
13.	D30	KAPALUA AIRPORT IMPROVEMENTS, MAUI					
PLANS FOR A MASTER PLAN, NOISE COMPATIBILITY PROGRAM, AND ENVIRONMENTAL ASSESSMENT PLANNING STUDIES.							
		PLANS			300		
		TOTAL FUNDING	TRN		300 B		B N
TRN141 - MOLOKAI AIRPORT							
14.	D55	MOLOKAI AIRPORT IMPROVEMENTS, MOLOKAI					
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING NEW TERMINAL BUILDING, ROADS, PARKING, BUILDINGS, UTILITIES, LANDSCAPING, AND OTHER MISCELLANEOUS IMPROVEMENTS. MODIFICATIONS TO EXISTING FACILITIES AND RELOCATION OF EXISTING TENANTS.							
		DESIGN			590		
		CONSTRUCTION			3,705		
		TOTAL FUNDING	TRN		4,195 B		
			TRN		100 N		B N
TRN161 - LIHUE AIRPORT							
15.	E03	LIHUE AIRPORT COMPLEX, KAUAI					
CONSTRUCTION FOR AIRPORT FACILITIES							

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
INCLUDING BLDGS, ROADS, PARKING, UTIL, AIRCRAFT APRONS, TAXIWAYS, RUNWAYS, CARGO TERMINAL, LEASE LOTS AND HANGARS, ALTERATION TO EXISTING FACIL INCLUDING BLDGs, AIRFIELD, ROADS, PARKING AND OTHER MISC IMPROVEMENTS. RELOCATION OF TENANTS AND MODIFICATIONS TO EXISTING FACILITIES.							
		CONSTRUCTION				5,760	
		TOTAL FUNDING	TRN			4,760 B	B
			TRN			1,000 N	N

**TRN195 - AIRPORTS ADMINISTRATION****16. F04 AIRPORT PLANNING, STATEWIDE**

PLANS TO PROVIDE 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.

PLANS		640	700
TOTAL FUNDING	TRN	540 B	600 B
	TRN	100 N	100 N

**17. F08 AIRPORT IMPROVEMENTS, STATEWIDE**

DESIGN AND CONSTRUCTION FOR MISC IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, AND OPERATIONAL EFFICIENCY. IMPROVEMENT OF STATEWIDE SYSTEMS INCLUDING FIRE ALARM, FLIGHT INFORMATION, COMMUNICATIONS, SECURITY, ENERGY MONITORING, AND AIRPORT OPERATIONS SYSTEM.

DESIGN		15	1,598
CONSTRUCTION		12,920	2,077
TOTAL FUNDING	TRN	12,435 B	B
	TRN	E	3,675 E
	TRN	500 N	N

**TRN301 - HONOLULU HARBOR****18. J02 IMPROVEMENTS TO FACILITIES AT PIERS 19 TO 34 AT HONOLULU HARBOR, OAHU**

PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF FIRE SPRINKLER SYSTEM IN PIER 29 SHED, RECONSTRUCT TOILET FACILITY AT PIER 25, AND OTHER IMPROVEMENTS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		PLANS		675		
		DESIGN		320		990
		CONSTRUCTION		630		3,000
		TOTAL FUNDING	TRN	1,625 B		B
			TRN	E		3,990 E
19.	J03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT HONOLULU HARBOR, OAHU				
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO PIERS, SHEDS, AND YARD FACILITIES AT HONOLULU HARBOR, INCLUDING IMPROVEMENTS TO LIGHTING, PAVING, AND OTHER FACILITIES.				
		DESIGN		45		50
		CONSTRUCTION		155		160
		TOTAL FUNDING	TRN	200 B		210 B
20.	J06	CONTAINER FACILITIES AT SAND ISLAND, OAHU				
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF SAND ISLAND CONTAINER YARD AREAS, PIERS, AND OTHER IMPROVEMENTS.				
		DESIGN		950		100
		CONSTRUCTION		6,200		13,800
		TOTAL FUNDING	TRN	950 B		100 B
			TRN	6,200 E		13,800 E
21.	J20	IMPROVEMENTS TO PIERS 39-40 COMPLEX, HONOLULU HARBOR, OAHU				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT PIERS 39-40, TO INCLUDE PIER, YARD, SHED, AND OTHER IMPROVEMENTS.				
		DESIGN		1,000		500
		CONSTRUCTION		4,000		9,000
		TOTAL FUNDING	TRN	5,000 E		9,500 E
<b>TRN303 - BARBERS POINT HARBOR</b>						
22.	J11	BARBERS POINT HARBOR IMPROVEMENTS, OAHU				
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT OF BARBERS POINT HARBOR INCLUDING PIERS, YARDS AND SHED FACILITIES, UTILITIES, AND OTHER IMPROVEMENTS.				
		PLANS		200		
		LAND				6,000
		DESIGN		1,150		850
		CONSTRUCTION		1,350		10,800
		TOTAL FUNDING	TRN	1,600 B		7,150 B
			TRN	1,100 E		10,500 E

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93

**TRN311 - HILO HARBOR**

**23. L01 HILO HARBOR, HAWAII**

DESIGN AND CONSTRUCTION FOR DREDGING OF HILO HARBOR BASIN, DEEPEN ENTRANCE CHANNEL, TURNING BASIN AND OTHER IMPROVEMENTS.

DESIGN		20
CONSTRUCTION		6,100
TOTAL FUNDING	TRN	E
	TRN	N

**24. L02 IMPROVE INTER-ISLAND FACILITIES AT HILO HARBOR, HAWAII**

DESIGN AND CONSTRUCTION FOR THE PAVEMENT OF STORAGE YARD, UTILITY RELOCATION AND OTHER IMPROVEMENTS.

DESIGN		100
CONSTRUCTION		750
TOTAL FUNDING	TRN	850 B

**25. L10 HILO HARBOR IMPROVEMENTS, HAWAII**

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT HILO HARBOR INCLUDING PIERS, YARDS, SHEDS, UTILITIES, AND OTHER IMPROVEMENTS.

DESIGN		80
CONSTRUCTION		600
TOTAL FUNDING	TRN	80 B

**TRN313 - KAWAIHAE HARBOR**

**26. L05 BARGE TERMINAL IMPROVEMENTS AT KAWAIHAE HARBOR, HAWAII**

DESIGN AND CONSTRUCTION FOR CLEARING ADDITIONAL YARD AREA, PROVIDE LIGHTING, AND OTHER IMPROVEMENTS.

DESIGN		20
CONSTRUCTION		100
TOTAL FUNDING	TRN	20 B

**27. L09 IMPROVEMENTS TO KAILUA-KONA PIER, HAWAII**

DESIGN AND CONSTRUCTION FOR THE DEMOLITION AND RECONSTRUCTION OF EXISTING COMFORT STATION/OFFICE BUILDING.

DESIGN		30
CONSTRUCTION		300
TOTAL FUNDING	TRN	330 B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

## TRN331 - KAHULUI HARBOR

28. M06 PIER IMPROVEMENTS AT KAHULUI HARBOR,  
MAUI

DESIGN AND CONSTRUCTION FOR FUEL PIER,  
HARBOR DREDGING AND OTHER IMPROVEMENTS.

DESIGN	200		
CONSTRUCTION		1,500	B
TOTAL FUNDING	200 B		
TRN	E	1,500	E

29. M09 KAHULUI HARBOR IMPROVEMENTS, MAUI

LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION FOR DREDGING, BERTHING,  
YARD, AND OTHER IMPROVEMENTS.

LAND	7,500		
DESIGN	100	500	
CONSTRUCTION	1,000		
TOTAL FUNDING	8,600 B		500 B
TRN			

- 29A. M01 KAHULUI HARBOR IMPROVEMENTS, MAUI

DESIGN AND CONSTRUCTION FOR THE  
DEMOLITION OF PIER 1B SHED, RENOVATE  
PIER 1A SHED AND OTHER IMPROVEMENTS.

DESIGN	100		
CONSTRUCTION	850		
TOTAL FUNDING	950 B		
TRN	B		

## TRN341 - KAUNAKAKAI HARBOR

30. M07 KAUNAKAKAI HARBOR IMPROVEMENTS, MOLOKAI

DESIGN AND CONSTRUCTION FOR THE  
LIGHTING OF CAUSEWAY, EXTEND SHED AND  
OTHER IMPROVEMENTS.

DESIGN	20		
CONSTRUCTION	75	200	
TOTAL FUNDING	95 B		200 B
TRN			

## TRN361 - NAWILIWILI HARBOR

31. K01 NAWILIWILI HARBOR IMPROVEMENTS, KAUAI

DESIGN FOR THE DEVELOPMENT OF PIER 1  
BACK-UP AREA AT NAWILIILILI AND OTHER  
IMPROVEMENTS.

DESIGN	900		
TOTAL FUNDING	900 B		
TRN			

32. K11 PIER 3 DEVELOPMENT AT NAWILIWILI HARBOR,  
KAUAI

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
CONSTRUCTION FOR THE DEVELOPMENT OF CARGO TERMINALS AT PIER 3 AND OTHER IMPROVEMENTS.							
		CONSTRUCTION			7,000		7,000
		TOTAL FUNDING	TRN		7,000 E		7,000 E
32A.	K06	NAWILIWILI HARBOR IMPROVEMENTS, KAUAI					
DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE WAREHOUSE BUILDING AND OTHER IMPROVEMENTS.							
		DESIGN				100	
		CONSTRUCTION				850	
		TOTAL FUNDING	TRN			950	B
<b>TRN363 - PORT ALLEN HARBOR</b>							
33.	K03	PORT ALLEN IMPROVEMENTS, KAUAI					
DESIGN AND CONSTRUCTION FOR THE PROVISION OF SURGE BUOY, APRON LIGHTING, WATER SYSTEM AND OTHER IMPROVEMENTS.							
		DESIGN			80		
		CONSTRUCTION			70		500
		TOTAL FUNDING	TRN		150 B		500 B
<b>TRN395 - HARBORS ADMINISTRATION</b>							
34.	I01	HARBOR PLANNING, STATEWIDE					
PLANS FOR THE CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCED PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.							
		PLANS			550		400
		TOTAL FUNDING	TRN		550 B		400 B
35.	I03	MISC IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
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		275 B		275 B
35A.	I02	WAVE AND CURRENT MONITORING, STATEWIDE					
PLANS FOR WAVE AND CURRENT MONITORING AT VARIOUS STATE COMMERCIAL HARBORS.							
		PLANS				300	
		TOTAL FUNDING	TRN			300 B	

## CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS  
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
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## TRN501 - OAHU HIGHWAYS

37. R76 KALANIANAOLE HIGHWAY, AINA KOA TO KEAHOLE STREET, OAHU

CONSTRUCTION FOR WIDENING KALANIANAOLE HIGHWAY TO A SIX LANE DIVIDED HIGHWAY FROM WEST HIND DRIVE TO KEAHOLE STREET; TO INCLUDE: SIDEWALKS, SHOULDERS, MEDIANAS, AND OTHER IMPROVEMENTS FROM AINA KOA TO KEAHOLE STREET, OAHU.

CONSTRUCTION		22,037	15,888
TOTAL FUNDING	TRN	6,611B	4,766B
	TRN	15,426K	11,122K

38. S21 CASTLE HILLS REPLACEMENT ACCESS ROAD, OAHU

DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE PRESENT CASTLE HILLS SUBDIVISION ACCESS ON LIKELIKE HIGHWAY WITH A NEW ROADWAY TO KEAAHALA ROAD.

DESIGN		270	
CONSTRUCTION		3,130	
TOTAL FUNDING	TRN	3,400D	D

39. Q62 INTERSTATE ROUTE H-1, PALI HIGHWAY OFF-RAMP IMPROVEMENTS, OAHU

LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ADDITIONAL EXCLUSIVE RIGHT-TURN LANE ON PALI HIGHWAY OFF-RAMP. IMPROVEMENTS INCLUDE ROADWAY WORK, DEMOLITION AND RECONSTRUCTION OF RETAINING WALL, UPGRADING TRAFFIC SIGNALS, RELOCATING HIGHWAY LIGHTING SYSTEM, DRAINAGE SYSTEM, NEW OVERHEAD EXPRESSWAY SIGNS, AND OTHER RELATED ROADWAY WORK.

(SPECIAL FUNDS FROM DUTY FREE)

LAND		1,000	
DESIGN		50	
CONSTRUCTION			500
TOTAL FUNDING	TRN	1,050B	500B

40. R30 INTERSTATE ROUTE H-3, JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU

DESIGN AND CONSTRUCTION FOR A DIVIDED HIGHWAY FROM JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU.

(SPECIAL FUNDS FROM DUTY FREE)

DESIGN		27,479	
CONSTRUCTION		416,506	4,000
TOTAL FUNDING	TRN	27,457B	B
	TRN	30,159E	4,000E
	TRN	386,369J	J

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
41.	R53	KAMEHAMEHA HIGHWAY, HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK, OAHU				
		CONSTRUCTION FOR REALIGNMENT AND IMPROVEMENT OF HIGHWAY FROM HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		17,000		
		TOTAL FUNDING	TRN	17,000 B		B
42.	R63	PUULOA ROAD-KAMEHAMEHA HIGHWAY TO PELTIER AVENUE, OAHU				
		LAND ACQUISITION AND CONSTRUCTION FOR WIDENING THE EXISTING TWO-LANE FACILITY FROM KAMEHAMEHA HIGHWAY TO SALT LAKE BOULEVARD. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		2,500		
		CONSTRUCTION			4,000	
		TOTAL FUNDING	TRN	2,500 B	4,000 B	
43.	R71	Likelike Hwy-Kahekili Hwy Interchange AND KAHEKILI HIGHWAY IMPROVEMENTS, OAHU				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR LIKELIKE HIGHWAY-KAHEKILI HIGHWAY INTERCHANGE AND KAHEKILI HIGHWAY IMPROVEMENTS, OAHU. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		2,246		
		DESIGN		308		
		CONSTRUCTION			6,000	
		TOTAL FUNDING	TRN	2,554 B	6,000 B	
44.	S08	PALI HIGHWAY, HIGHWAY LIGHTS, PALI TUNNEL TO WAOKANAKA STREET, OAHU				
		CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		1,400		
		TOTAL FUNDING	TRN	1,400 B		B
45.	S09	Likelike Highway, Highway Lights, Wilson Tunnel to Valley View Road, Oahu				
		CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS BETWEEN WILSON TUNNEL AND VALLEY VIEW ROAD, OAHU. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		1,800		
		TOTAL FUNDING	TRN	1,800 B		
46.	S80	HIGHWAY LIGHTING IMPROVEMENTS, ALA MOANA BOULEVARD AND VINEYARD BOULEVARD, OAHU				
		CONSTRUCTION FOR HIGHWAY LIGHTING				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		IMPROVEMENTS AT ALA MOANA BOULEVARD AND VINEYARD BOULEVARD. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		2,000		
		TOTAL FUNDING	TRN	2,000 B		B
47.	S82	NIMITZ HIGHWAY-MAKAI BOULEVARD IMPROVEMENTS, OAHU				
		DESIGN FOR IMPROVEMENTS TO NIMITZ HIGHWAY FROM KEEHI INTERCHANGE AT INTERSTATE H-1 ALONG THE MAKAI BOULEVARD NETWORK TO KAPIOLANI INTERCHANGE ON INTERSTATE H-1. (SPECIAL FUNDS FROM DUTY FREE)				
		DESIGN		1,500		
		TOTAL FUNDING	TRN	1,500 B		B
48.	S84	SAND ISLAND PARKWAY, SEWAGE TREATMENT PLANT TO SAND ISLAND PARK, OAHU				
		CONSTRUCTION FOR IMPROVEMENTS TO SAND ISLAND PARKWAY TO HELP CORRECT FLOODING CONDITIONS AT THE INDUSTRIAL PARK AREA AND TO PROVIDE FOR SMOOTHER TRAFFIC FLOW CONDITIONS. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		5,000		
		TOTAL FUNDING	TRN	5,000 B		B
49.	S86	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, OAHU				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO TRAFFIC SIGNALS LOCATED WITHIN TEN MILES FROM AIRPORTS. IMPROVEMENTS INVOLVE THE REPLACEMENT OF EXISTING NEMA CONTROLLERS WITH TYPE 170 CONTROLLERS, PROVIDE INTERCONNECTION OF TRAFFIC SIGNALS WHERE NECESSARY, AND OTHER RELATED WORK. (SPECIAL FUNDS FROM DUTY FREE)				
		DESIGN		50		
		CONSTRUCTION		300		
		TOTAL FUNDING	TRN	350 B		700 B
50.	91004	NORTH/SOUTH ROAD, PAPIPI ROAD TO INTERSTATE H-1, OAHU				
		DESIGN FOR A NEW FOUR LANE NORTH/SOUTH ROAD FROM PAPIPI ROAD TO INTERSTATE H-1, INCLUDING A NEW INTERCHANGE ON INTERSTATE H-1.				
		DESIGN		4,200		
		TOTAL FUNDING	TRN	4,200 B		B
51.	91005	KAMEHAMEHA HIGHWAY, LUMIAINA STREET TO WAPIO UKA STREET, OAHU				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF KAMEHAMEHA HIGHWAY FROM LUMAINA STREET TO WAPIO UKA STREET. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		168		
		DESIGN		113		
		CONSTRUCTION		1,137		
		TOTAL FUNDING	TRN	1,418 B		B
52.	91006	INTERSTATE H-1, WAIWAIA INTERCHANGE TO PALAILAI INTERCHANGE, OAHU				
		CONSTRUCTION FOR HIGHWAY LIGHTS ON INTERSTATE H-1 FROM WAIWAIA INTERCHANGE TO PALAILAI INTERCHANGE. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		2,325		
		TOTAL FUNDING	TRN	306 B		B
			TRN	2,019 J		J
53.	91007	KAMEHAMEHA HIGHWAY, KULEANA ROAD TO KALUAMOI DRIVE, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR STORAGE LANES AND DRAINAGE IMPROVEMENTS FOR LEFT TURN/U-TURN ON KAMEHAMEHA HIGHWAY BETWEEN KULEANA ROAD TO KALUAMOI STREET. (SPECIAL FUNDS FROM DUTY FREE)				
		PLANS		20		
		DESIGN		40		
		CONSTRUCTION		340		
		TOTAL FUNDING	TRN	400 B		B
54.	91008	KAMEHAMEHA HIGHWAY, PUU PONI STREET TO PUU MOMI STREET, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR STORAGE LANES AND DRAINAGE IMPROVEMENTS FOR LEFT TURN/U-TURN ON KAMEHAMEHA HIGHWAY BETWEEN PUU PONI STREET AND PUU MOMI STREET. (SPECIAL FUNDS FROM DUTY FREE)				
		PLANS		20		
		DESIGN		40		
		CONSTRUCTION		340		
		TOTAL FUNDING	TRN	400 B		B
55.	91009	PALI HIGHWAY, WYLLIE STREET TO AHI PLACE, OAHU				
		DESIGN AND CONSTRUCTION FOR SIDEWALKS ON PALI HIGHWAY FROM WYLLIE STREET TO AHI PLACE. (SPECIAL FUNDS FROM DUTY FREE)				
		DESIGN		.25		
		CONSTRUCTION		225		
		TOTAL FUNDING	TRN	250 B		B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
56.	91010	INTERSTATE H-1, KUNIA ROAD TO MIDDLE STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF TEN EMERGENCY PHONES ON INTERSTATE H-1 FROM KUNIA ROAD TO MIDDLE STREET.					
		DESIGN			1		
		CONSTRUCTION			59		
		TOTAL FUNDING	TRN		60B		B
57.	S17	FARRINGTON HIGHWAY IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR FARRINGTON HIGHWAY IMPROVEMENTS FROM HELEUMA STREET TO JADE STREET.					
		CONSTRUCTION			8,000		
		TOTAL FUNDING	TRN		8,000B		B
57A.		FARRINGTON HIGHWAY, PILIOKE BRIDGE TO ALA HEMA STREET, OAHU					
		DESIGN FOR ACCIDENT-REDUCING, SAFETY IMPROVEMENTS AND MODIFICATIONS TO FARRINGTON HIGHWAY FROM PILIOKOE BRIDGE TO ALA HEMA STREET.					
		DESIGN			115		
		TOTAL FUNDING	TRN			115	B
57B.		NIMITZ HIGHWAY VIADUCT, OAHU					
		DESIGN FOR A VIADUCT FROM INTERSTATE H-1 (KEEHI INTERCHANGE) TO PACIFIC STREET.					
		(SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN			1,200		
		TOTAL FUNDING	TRN			1,200B	B
58.	91011	HIGHWAY CONNECTOR AT THE ENTRANCE TO HALEIWA AND WAIALUA TOWNS, OAHU					
		DESIGN FOR A HIGHWAY CONNECTOR AT THE ENTRANCE TO HALEIWA AND WAIALUA TOWNS WITH THE HALEIWA BYPASS ROAD.					
		DESIGN			450		
		TOTAL FUNDING	TRN		450D		D
58A.	S131	KALAELOA BOULEVARD TRUCK WEIGHING STATION, OAHU					
		LAND ACQUISITION AND DESIGN FOR A ROADWAY, INSPECTION AREA, WEIGHT STATION PAD AND A WEIGHT HOUSE. PROJECT INCLUDES THE FURNISHING AND INSTALLATION OF A WEIGHT SCALE, COMPUTER EQUIPMENT, SIGNALS, SIGNS, AND OTHER APPURTENANCES.					
		LAND			4		
		DESIGN			60		
		TOTAL FUNDING	TRN			64B	B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
58B.	S16	RELOCATION OF THE KANEOHE BASEYARD, PHASE II, OAHU					
		DESIGN AND CONSTRUCTION FOR A NEW BASEYARD FACILITY TO REPLACE THE EXISTING BASEYARD, PHASE II, IN KANEOHE.					
		DESIGN					20
		CONSTRUCTION					650
		TOTAL FUNDING	TRN			B	670 B
58C.		MALAEKAHANA STREAM BRIDGE, OAHU					
		DESIGN FOR A NEW BRIDGE ON KAMEHAMEHA HIGHWAY AT MALAEKAHANA STREAM.					
		DESIGN					303
		TOTAL FUNDING	TRN			B	303 B
58D.		HALAWA CRUSHER ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF HALAWA CRUSHER ROAD FROM IWAIWA STREET TO ULUNE STREET. WORK TO INCLUDE EXCAVATION/EMBANKMENT, CONSTRUCT RETAINING WALLS, DEMOLITION, RECONSTRUCT DRAINAGE SYSTEM, NEW SIGNS AND MARKINGS, ASPHALT PAVING, NEW CURB AND GUTTERS, RELOCATION OF SPRINKLER SYSTEM, HIGHWAY LIGHTING SYSTEM, LANDSCAPING AND OTHER RELATED WORK. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					100
		CONSTRUCTION					1,300
		TOTAL FUNDING	TRN			B	1,400 B
58E.		FORT WEAVER ROAD, TRAFFIC SIGNAL INTERCONNECTION/SYNCHRONIZATION, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INTERCONNECTION AND SYNCHRONIZATION OF TRAFFIC SIGNALS ON FORT WEAVER ROAD.					
		DESIGN					50
		CONSTRUCTION					500
		TOTAL FUNDING	TRN			B	550 B
58F.		KAMEHAMEHA HIGHWAY, WAIPIO UKA STREET TO KA UKA BOULEVARD, OAHU					
		LAND ACQUISITION AND DESIGN FOR THE WIDENING OF KAMEHAMEHA HIGHWAY FROM WAIPIO UKA STREET TO KA UKA BOULEVARD. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					2,100
		DESIGN					500
		TOTAL FUNDING	TRN			B	2,600 B
58G.		NIMITZ HIGHWAY CORRIDOR IMPROVEMENTS, HIA TO WAIKIKI, OAHU					
		PLANS AND DESIGN FOR HIGHWAY					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		BEAUTIFICATION IMPROVEMENTS OF THE TRANSIT CORRIDOR THAT LINKS THE HONOLULU INTERNATIONAL AIRPORT WITH WAIKIKI. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS DESIGN					1 744 745 B
		TOTAL FUNDING	TRN		B		
58H.	Q53	INTERSTATE H-1, MIDDLE STREET TO KEEAUMOKU STREET, OAHU					
		DESIGN TO INCREASE THE CAPACITY OF THE HIGHWAY FROM MIDDLE STREET TO KEEAUMOKU STREET. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					349 349 B
		TOTAL FUNDING	TRN		B		
58I.		CASTLE JUNCTION INTERCHANGE, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A HIGHWAY INTERCHANGE AT THE INTERSECTION OF KAMEHAMEHA HIGHWAY AND PALI HIGHWAY.					
		LAND					2,500
		DESIGN					2,400
		CONSTRUCTION					32,000
		TOTAL FUNDING	TRN		E		36,900 E
<b>TRN511 - HAWAII HIGHWAYS</b>							
59.	T03	HAWAII BELT ROAD: HOLUALOA TO PAPA, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INCREMENTAL CONSTRUCTION OF TWO-LANE HIGHWAY FROM HOLUALOA TO PAPA.					
		LAND					400
		DESIGN					300
		CONSTRUCTION					2,300
		TOTAL FUNDING	TRN				1,245 3,000 B 1,245 B
60.	T09	KANOELIHUA AVENUE WIDENING BETWEEN KAMEHAMEHA AVE AND PUAINAKO ST, HAWAII					
		DESIGN AND CONSTRUCTION FOR AN ADDITIONAL LANE NORTHBOUND TO RELIEVE TRAFFIC CONGESTION AND PROVIDE A LANE FOR THRU TRAFFIC AND TURNING MOVEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					70
		CONSTRUCTION					2,007
		TOTAL FUNDING	TRN				2,007 B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
61.	T11	PUAINAKO STREET WIDENING, KOMOHANA STREET TO KILAUEA AVENUE, HAWAII					
		LAND ACQUISITION AND DESIGN FOR PUAINAKO STREET WIDENING, FROM KOMOHANA STREET TO KILAUEA AVENUE TO A FOUR-LANE HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				1,300	
		DESIGN				300	
		TOTAL FUNDING	TRN		B	1,600	B
62.	T64	KEAAU-PAHOA ROAD, KEAAU TOWN SECTION, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW ROADWAY AROUND KEAAU TOWN TO REDUCE TRAFFIC CONGESTION WITHIN THE TOWN. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS				600	
		LAND				2,000	
		DESIGN				600	
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN		B	3,200	B
						3,000	B
63.	T82	WIDENING OF QUEEN KAAHUMANU HIGHWAY, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR LANE DIVIDED HIGHWAY FROM PALANI ROAD TOWARD KAWAIHAE INCLUDING PAVED SHOULDERS FOR A BIKE ROUTE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				1,600	
		DESIGN				800	
		CONSTRUCTION				11,000	
		TOTAL FUNDING	TRN		B	2,400	B
						13,000	B
64.	T85	KEALAKEHE PARKWAY AND INTERCHANGE, HAWAII					
		PLANS, 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. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS				800	
		LAND				200	
		DESIGN				1,612	
		CONSTRUCTION				7,448	
		TOTAL FUNDING	TRN		B	9,860	B
						3,192	
						4,192	B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
65.	91012	HAWAII BELT ROAD, HILO TO PEPEKEO, HAWAII					
		PLANS FOR THE WIDENING OF HAWAII BELT ROAD TO A FOUR LANE HIGHWAY FROM HILO TO PEPEKEO, INCLUDING A FEASIBILITY STUDY IDENTIFYING POTENTIAL PROBLEMS IN ESTABLISHING A FOUR LANE HIGHWAY ALONG THE EXISTING ALIGNMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS			200		
		TOTAL FUNDING	TRN		200 B		B
65A.	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.					
		DESIGN			30		
		CONSTRUCTION			1,500		
		TOTAL FUNDING	TRN		1,530 B		B
65B.	T100	HAWAII BELT ROAD, WAIKOLU BRIDGE IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR A NEW PEDESTRIAN WALKWAY TO CROSS THE WAIKOLU BRIDGE ON THE HAWAII BELT ROAD IN NINOLE.					
		DESIGN			50		
		CONSTRUCTION			270		
		TOTAL FUNDING	TRN		320 B		B
65C.	KEAAU-PAHOA ROAD, HIGHWAY LIGHTING, HAWAII						
		PLANS, DESIGN, AND CONSTRUCTION FOR HIGHWAY LIGHTING ON THE KEAAU-PAHOA ROAD BETWEEN THE HAWAII BELT ROAD AND PAHOA.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			318		
		TOTAL FUNDING	TRN		320 B		B
65D.	KEAAU-PAHOA ROAD WIDENING, HAWAII						
		PLANS AND DESIGN FOR AN ADDITIONAL LANE CAPACITY FOR RELIEF OF TRAFFIC CONGESTION BETWEEN KEAAU AND PAHOA, EITHER BY WIDENING THE KEAAU-PAHOA ROAD OR BY ESTABLISHING A NEW CORRIDOR.					
		PLANS			1		

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		DESIGN TOTAL FUNDING	TRN			399 400 B
65E.	KEAAU-PAHOA ROAD WIDENING, KEAAU TO PAHOA BYPASS ROAD, HAWAII			B		
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF THE KEAAU-PAHOA ROAD FROM KEAAU TO PAHOA BYPASS ROAD.				
		LAND DESIGN CONSTRUCTION TOTAL FUNDING	TRN			4,195 2,000 18,305 24,500 E
65F.	T83 SADDLE ROAD IMPROVEMENTS, HAWAII			E		
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WIDENING AND REALIGNMENT OF EXISTING ROADWAY TO CURRENT DESIGN STANDARDS. PROJECT CONSTITUTES THE INITIAL IMPROVEMENTS TO BE MADE WHEN PHASE IV TAKEOVER OF COUNTY ROAD IS IMPLEMENTED.				
		LAND DESIGN CONSTRUCTION TOTAL FUNDING	TRN			85 730 1,781 2,596 B
		<b>TRN531 - MAUI HIGHWAYS</b>				
66.	V04 HONOAPIILANI HIGHWAY WIDENING, KUIHELANI HIGHWAY TO NORTH KIHEI ROAD, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM KUIHELANI HIGHWAY TO THE MAALAEA HARBOR ENTRANCE TO A FOUR-LANE DIVIDED HIGHWAY TO PROVIDE ADDITIONAL CAPACITY AT THE APPROXIMATE CONVERGENCE OF HONOAPIILANI HIGHWAY, SOUTH KIHEI ROAD, NORTH KIHEI ROAD, AND KUIHELANI HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND DESIGN CONSTRUCTION TOTAL FUNDING	TRN			5,900 300 6,200 B
67.	V10 KAHULUI BEACH ROAD AND WAIEHU BEACH ROAD IMPROVEMENTS, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO INCLUDE THE WIDENING OF THE HIGHWAY INTO A DIVIDED FOUR-LANE HIGHWAY, PROVIDING PAVED SHOULDERS, IMPROVING THE DRAINAGE,				5,000 5,000 B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		AND WIDENING OF IAO STREAM BRIDGE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			400		
		DESIGN			500		
		CONSTRUCTION				8,357	
		TOTAL FUNDING	TRN		900 B		8,357 B
68.	V14	KUIHELANI HIGHWAY WIDENING, HONOAPIILANI HIGHWAY TO PUUNENE AVENUE, MAUI					
		DESIGN FOR WIDENING THE EXISTING KUIHELANI HIGHWAY TO A FOUR-LANE, DIVIDED ARTERIAL BETWEEN PUUNENE AVENUE AND THE PROPOSED MAUI LANI PARKWAY TO PROVIDE ADDITIONAL CAPACITY THROUGH CENTRAL MAUI. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN				800	
		TOTAL FUNDING	TRN		B		800 B
69.	V41	HALEAKALA HIGHWAY, HANA HIGHWAY TO KULA HIGHWAY, MAKAWAO, MAUI					
		CONSTRUCTION FOR HALEAKALA HIGHWAY, FROM HALIIMAILE ROAD TO KULA JUNCTION, AND A TRUCK CLIMBING LANE FROM HANA HIGHWAY TO HALIIMAILE ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			7,000		
		TOTAL FUNDING	TRN		7,000 B		
70.	V42	HALEAKALA HIGHWAY WIDENING, PUKALANI BYPASS TO HANA HIGHWAY, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM 3 TO 4 LANES BETWEEN HALIIMAILE ROAD AND HANA HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			1,000		
		DESIGN			500		
		CONSTRUCTION				10,000	
		TOTAL FUNDING	TRN		1,500 B		10,000 B
70A.	V43	PIILANI HIGHWAY, KIHEI TO ULUPALAKUA, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR WIDENING, IMPROVEMENTS, AND INCREMENTAL CONSTRUCTION OF PIILANI HIGHWAY FROM KIHEI TO ULUPALAKUA.					
		PLANS			500		
		DESIGN			900		
		CONSTRUCTION				6,000	
		TOTAL FUNDING	TRN		B		7,400 B
71.	V51	HONOAPIILANI HWY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO PUAMANA, MAUI					

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF EXISTING HIGHWAY AND/OR TO CONSTRUCT A NEW ALIGNMENT FROM HONOKOWAI TO PUAMANA, LAHAINA. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		9,310		
		DESIGN			1,369	
		CONSTRUCTION			16,798	
		TOTAL FUNDING	TRN	9,310B		18,167 B
72.	V54	WAIKAPU BRIDGE WIDENING, MAUI				
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF WAIKAPU BRIDGE TO PROVIDE FOR A LEFT TURN STORAGE LANE ON HONOAPIILANI HIGHWAY IN WAIKAPU TOWN TO WILIKONA PLACE. (SPECIAL FUNDS FROM DUTY FREE)				
		DESIGN		75		
		CONSTRUCTION			825	
		TOTAL FUNDING	TRN	75 B		825 B
72A.	V48	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI				
		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. CONSTRUCTION				
		TOTAL FUNDING	TRN	B	1,400	1,400 B
72B.		HONOAPIILANI HIGHWAY WIDENING, LAHAINA TO MAALAEA, MAUI				
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM LAHAINA TO MAALAEA.				
		PLANS			2,000	
		LAND			12,000	
		DESIGN			5,000	
		CONSTRUCTION			21,000	
		TOTAL FUNDING	TRN	E	40,000 E	
72C.		MOKULELE HIGHWAY, KIHEI TO PUUNENE, MAUI				
		PLANS, DESIGN, AND CONSTRUCTION FOR SHOULDER IMPROVEMENTS OF THE MOKULELE HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)				
		PLANS			1	
		DESIGN			1	
		CONSTRUCTION			748	
		TOTAL FUNDING	TRN	B	750 B	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)					
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93			
<b>TRN541 - MOLOKAI HIGHWAYS</b>									
72D. 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.							
		DESIGN				60			
		CONSTRUCTION				600			
		TOTAL FUNDING	TRN		B	660 B			
72E. MOLOKAI HIGHWAY BEAUTIFICATION, MOLOKAI									
DESIGN AND CONSTRUCTION FOR HIGHWAY BEAUTIFICATION IMPROVEMENTS, TO INCLUDE MAUNALOA HIGHWAY.									
		DESIGN				1			
		CONSTRUCTION				49			
		TOTAL FUNDING	TRN		B	50 B			
72F. KAUNAKAKAI STREAM BRIDGE, MOLOKAI									
PLANS, DESIGN, AND CONSTRUCTION FOR A NEW BRIDGE OVER KAUNAKAKAI STREAM, MOLOKAI.									
		PLANS				1			
		DESIGN				1			
		CONSTRUCTION				298			
		TOTAL FUNDING	TRN		B	300 B			
<b>TRN551 - LANAI HIGHWAYS</b>									
73. W59 MANELE ROAD IMPROVEMENTS, LANAI CITY TO MANELE BAY, LANAI									
DESIGN AND CONSTRUCTION FOR THE WIDENING AND/OR REALIGNMENT OF MANELE ROAD. IMPROVEMENTS TO CONSIST OF TWO TRAVEL LANES, PAVED SHOULDERS, GUARDRAIL, AND OTHER IMPROVEMENTS. (SPECIAL FUNDS FROM DUTY FREE)									
		DESIGN			610				
		CONSTRUCTION				11,590			
		TOTAL FUNDING	TRN		305 B	5,795 B			
					305 R	5,795 R			
<b>TRN561 - KAUAI HIGHWAYS</b>									

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
74.	X61	NAWILIWILI ROAD-WAAPA ROAD INTERSECTION, KAUAI				
		CONSTRUCTION FOR THE REALIGNMENT OF THE HIGHWAY AT THE INTERSECTION OF NAWILIWILI ROAD AND WAAPA ROAD. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		1,035		
		TOTAL FUNDING	TRN	1,035 B		B
75.	X62	KUHIO HIGHWAY - WAILUA BRIDGE AND COCO PALMS INTERSECTION IMPROVEMENTS, KAUAI				
		CONSTRUCTION FOR KUHIO HIGHWAY INTERSECTION IMPROVEMENTS AT WAILUA BRIDGE AND COCO PALMS INTERSECTION. (SPECIAL FUNDS FROM DUTY FREE)				
		CONSTRUCTION		370		
		TOTAL FUNDING	TRN	370 B		B
76.	X47	MAALO ROAD WIDENING, KAUAI				
		LAND ACQUISITION AND CONSTRUCTION FOR UPGRADING THE ALIGNMENT AND PROVIDE STANDARD PAVEMENT/SHOULDERS, GUARDRAILS, AND DRAINAGE. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		400		
		CONSTRUCTION			4,000	
		TOTAL FUNDING	TRN	400 B	4,000 B	
77.	X56	KUHIO HIGHWAY SAFETY IMPROVEMENTS, VICINITY OF COCO PALMS HOTEL, KAUAI				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR OFF-STREET PARKING AREAS AND FENCING. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		100		
		DESIGN		23		
		CONSTRUCTION		300		
		TOTAL FUNDING	TRN	423 B		B
78.	X60	INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD, KAUAI				
		LAND ACQUISITION AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD, INCLUDING LEFT-TURN AND RIGHT-TURN LANES AND TRAFFIC SIGNAL SYSTEM TOGETHER WITH THE ADDITION OF TWO LANES TO LAWAII BRIDGE. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND		410		
		CONSTRUCTION			1,800	
		TOTAL FUNDING	TRN	410 B	1,800 B	
79.	X63	KAUMUALII HIGHWAY-SHORING CAUSEWAY, KAUAI				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		LAND ACQUISITION AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY, KUHIO HIGHWAY AND RICE STREET INTERSECTIONS. WORK INCLUDES REALIGNMENT OF KAUMUALII HIGHWAY, RELOCATION OF UTILITY POLES, DRAINAGE IMPROVEMENTS, AND RECONSTRUCTION OF THE TRAFFIC SIGNALS. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND			1,750	
		CONSTRUCTION			1,595	
		TOTAL FUNDING	TRN		3,345 B	B
80.	X66	KUHIO HIGHWAY, BYPASS AND/OR WIDENING FROM HANAMAULU THROUGH KAPAA, KAUAI				
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING AND/OR REALIGNING THE EXISTING KUHIO HIGHWAY FROM HANAMAULU TO KAPAA. (SPECIAL FUNDS FROM DUTY FREE)				
		PLANS			750	
		LAND				1
		DESIGN				950
		CONSTRUCTION				4,999
		TOTAL FUNDING	TRN		750 B	5,950 B
81.	X67	KUHIO HIGHWAY WIDENING FROM KAPULE HIGHWAY TO WAILUA BRIDGE, KAUAI				
		DESIGN FOR THE WIDENING OF THE EXISTING 2-LANE KUHIO HIGHWAY TO A 4-LANE HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)				
		DESIGN				1,400
		TOTAL FUNDING	TRN			1,400 B
82.	X68	KUHIO HIGHWAY, WIDENING AT WAIKAEA BRIDGE, KAUAI				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A FOUR-LANE BRIDGE AT WAIKAEA STREAM. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND				40
		DESIGN				80
		CONSTRUCTION				800
		TOTAL FUNDING	TRN		80 B	840 B
83.	X69	KUHIO HIGHWAY, TRAFFIC SIGNAL AT POINCIANA STREET, KAUAI				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF TRAFFIC SIGNAL LIGHTS ON KUHIO HIGHWAY AT THE INTERSECTION WITH POINCIANA STREET TO INCLUDE TURNING STORAGE LANES. (SPECIAL FUNDS FROM DUTY FREE)				
		LAND				30

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			20		
		CONSTRUCTION				180	
		TOTAL FUNDING	TRN		50 B		180 B
84.	X70	KAUMUALII HIGHWAY WIDENING, KAUAI					
		PLANS FOR THE WIDENING OF KAUMUALII HIGHWAY FROM THE VICINITY OF LIHUE MILL BRIDGE TO PUHI AND A WESTERLY BYPASS ALIGNMENT FROM THE VICINITY OF HANAMAU LU TO KIPU.					
		(SPECIAL FUNDS FROM DUTY FREE)					
		PLANS				800	
		TOTAL FUNDING	TRN		B		800 B
85.	X72	KAUMUALII HIGHWAY, WIDENING MP 5.4 TO MP 6.8, KAUAI					
		DESIGN FOR THE WIDENING OF THE EXISTING HIGHWAY FROM MALUHIA JUNCTION TO THE END OF THE NEW HULEIA BRIDGE PROJECT.					
		(SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN				500	
		TOTAL FUNDING	TRN		B		500 B
85A.	X77	KAUMUALII HIGHWAY WIDENING, HALA ROAD TO KIPU ROAD, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF KAUMUALII HIGHWAY, HALA ROAD TO KIPU ROAD.					
		(SPECIAL FUNDS FROM DUTY FREE)					
		LAND				1,000	
		DESIGN				500	
		CONSTRUCTION				6,300	
		TOTAL FUNDING	TRN		B		7,800 B
86.	X74	KAUMUALII HIGHWAY, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR KAUMUALII HIGHWAY, WIDENING OF WEOWEOPILAU, WAIHONU AND STRUCTURE 7.E BRIDGES TO FOUR-LANES.					
		(SPECIAL FUNDS FROM DUTY FREE)					
		LAND				150	
		DESIGN				70	
		CONSTRUCTION				700	
		TOTAL FUNDING	TRN		B		920 B
87.	X75	KAUMUALII HIGHWAY IMPROVEMENTS AT JUNCTION WITH HALEWILI ROAD, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR THE CONVERSION OF THE SKEWED INTERSECTION TO STANDARD INTERSECTION WITH PROVISIONS FOR LEFT-TURN STORAGE LANE ON KAUMUALII HIGHWAY AND PROVISIONS					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		FOR LEFT-TURN AND RIGHT-TURN LANES ON HALEWILI ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		120			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	620	B		B
88.	X76	KUAMOO ROAD, SAFETY IMPROVEMENTS, OPAEKAA FALLS LOOKOUT, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A PEDESTRIAN WALKWAY AND GUARDRAILS TO IMPROVE SAFETY OF ROADWAY ON KUAMOO ROAD AT OPAEKAA FALLS LOOKOUT. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					8
		DESIGN				15	
		CONSTRUCTION					80
		TOTAL FUNDING	TRN			15	B
						88	B
89.	91013	WAILUA RIVER BRIDGE, KAUAI					
		DESIGN AND CONSTRUCTION FOR A NEW TWO-LANE BRIDGE OVER THE WAILUA RIVER. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN		400			
		CONSTRUCTION		8,000			
		TOTAL FUNDING	TRN	8,400	B		B
89A.	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.					
		DESIGN					10
		CONSTRUCTION				690	
		TOTAL FUNDING	TRN			700	B
89B.	KAUMUALII HIGHWAY WIDENING, PUHI TO MALUHIA ROAD, KAUAI						
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF KAUMUALII HIGHWAY FROM PUHI TO MALUHIA ROAD.					
		PLANS		4,000			
		LAND		1,000			
		DESIGN		800			
		CONSTRUCTION		25,000			
		TOTAL FUNDING	TRN	30,800	E		E

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
89C. X65		PUHI AND KAPAA BYPASS ROAD, KAUAI					
		DESIGN AND CONSTRUCTION FOR A BYPASS ROAD BETWEEN PUHI AND KAPAA, KAUAI. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					1
		CONSTRUCTION					1,054
		TOTAL FUNDING	TRN				1,055 B
					B		
<b>TRN595 - HIGHWAYS ADMINISTRATION</b>							
90. X98		MISC IMPROVEMENTS TO EXISTING INTERSECTIONS & HIGHWAY FACIL, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY, INCLUDING ELIMINATION OF CONSTRICTIONS ON- AND OFF-SITE, EFFECTING EFFICIENT FLOW OF TRAFFIC ON INTERSTATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				335	
		CONSTRUCTION				2,215	
		TOTAL FUNDING	TRN			925 D	
			TRN			1,625 N	D N
91. X99		HIGHWAY PLANNING, STATEWIDE					
		PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH AND ADVANCED PLANNING OF FEDERAL-AID AND NON-FEDERAL-AID HIGHWAY PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS				3,080	
		TOTAL FUNDING	TRN			1,150 B	3,080
			TRN			950 D	2,100 B
			TRN			980 N	D
							980 N

**D. ENVIRONMENTAL PROTECTION****HTH840 - ENVIRONMENTAL MANAGEMENT**

1. 840201 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

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93

- PURSUANT TO CHAPTER 342-D, HRS.
- |               |     |  |  |         |  |   |
|---------------|-----|--|--|---------|--|---|
| CONSTRUCTION  |     |  |  | 3,000   |  |   |
| TOTAL FUNDING | HTH |  |  | 3,000 C |  | C |
2. ENVIRONMENTAL MANAGEMENT, STATEWIDE
- CONSTRUCTION FOR THE STATE REVOLVING FUND WHICH PROVIDES FINANCIAL ASSISTANCE TO LOCAL MUNICIPALITIES IN THE CONSTRUCTION OF WASTEWATER PROJECTS.
- |               |     |  |  |          |  |   |
|---------------|-----|--|--|----------|--|---|
| CONSTRUCTION  |     |  |  | 10,000   |  |   |
| TOTAL FUNDING | HTH |  |  | 10,000 C |  | C |
- LNR402 - FORESTS AND WILDLIFE RESOURCES
3. D05 KAHULUI BASEYARD OFFICE IMPROVEMENTS, MAUI
- PLANS, DESIGN, AND CONSTRUCTION FOR FOUR NEW OFFICE ROOMS FOR NEW DOFAW PERSONNEL AT KAHULUI BASEYARD, MAUI.
- |               |     |  |  |      |  |   |
|---------------|-----|--|--|------|--|---|
| PLANS         |     |  |  | 3    |  |   |
| DESIGN        |     |  |  | 2    |  |   |
| CONSTRUCTION  |     |  |  | 60   |  |   |
| TOTAL FUNDING | LNR |  |  | 65 C |  | C |
4. D06 KAUAI DLNR BASEYARD IMPROVEMENTS, PHASE 1 AND 2, KAUAI
- PLANS, DESIGN, AND CONSTRUCTION FOR AN ADDITION TO THE DLNR BASEYARD TO INCLUDE CONSTRUCTION OF AN ENCLOSED PARKING AND STORAGE BUILDING FOR FIRE EQUIPMENT, WAREHOUSE BUILDING AND COVERED PARKING BUILDING FOR OTHER DLNR DIVISIONS, EXTENSION OVER MECHANIC SHOP AND EXTENSION OVER CARPENTER SHOP.
- |               |     |  |  |       |  |   |
|---------------|-----|--|--|-------|--|---|
| PLANS         |     |  |  | 10    |  |   |
| DESIGN        |     |  |  | 230   |  |   |
| CONSTRUCTION  |     |  |  | 480   |  |   |
| TOTAL FUNDING | LNR |  |  | 480 C |  | C |
6. D09 HAWAII BRANCH, DOFAW HILO OFFICE COMPLEX, HAWAII
- PLANS AND DESIGN FOR AN OFFICE COMPLEX BUILDING AND APPURTENANT FACILITIES TO MEET THE HAWAII BRANCH'S OFFICE SPACE AND PUBLIC SERVICE FACILITY REQUIREMENTS.
- |               |     |  |  |       |  |   |
|---------------|-----|--|--|-------|--|---|
| PLANS         |     |  |  | 50    |  |   |
| DESIGN        |     |  |  | 175   |  |   |
| TOTAL FUNDING | LNR |  |  | 225 C |  | C |
7. D-23 HAWAII ENDANGERED SPECIES FACILITY, MAUI
- PLANS AND DESIGN FOR RENOVATION OF AN

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		ENDANGERED SPECIES FACILITY TO MAINTAIN AND BREED ENDANGERED SPECIES IN CAPTIVITY FOR RESEARCH AND RELEASE INTO THE WILD TO INCLUDE FACILITIES FOR RESEARCH, VETERINARY MEDICINE AND SECURITY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS			50	
		DESIGN			60	
		TOTAL FUNDING	LNR		110 C	
8.	D23A	OLINDA FACILITY NENE CARETAKER'S RESIDENCE, MAUI				
		PLANS, DESIGN, AND CONSTRUCTION FOR A TWO-BEDROOM ONE BATH RESIDENCE WITH WATER AND POWER UTILITIES AT THE OLINDA ENDANGERED SPECIES FACILITY TO PROVIDE SECURITY AND SURVEILLANCE FOR THE PIIHOLO ENTRANCE TO THE WATERFOWL COMPLEX AND FOR BIRDS MAINTAINED AT THAT LOCATION.				
		PLANS			4	
		DESIGN			6	
		CONSTRUCTION			50	
		TOTAL FUNDING	LNR		60 C	
8A.	D-12	DLNR BASEYARD, MOLOKAI				
		PLANS AND DESIGN FOR A DLNR BASEYARD ON MOLOKAI. THE IMPROVEMENTS SHALL CONSIST OF WAREHOUSING, MECHANICAL, CARPENTRY, FIRE CACHE, NURSERY, ADMINISTRATION OFFICE, SECURITY PARKING, HELIPAD AND OTHER APPURTENANT AND INCIDENTAL WORKS.				
		PLANS			25	
		DESIGN			125	
		TOTAL FUNDING	LNR		150 C	
8B.	D08A	DOFAW BASEYARD ADDITION, OAHU				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN OAHU DISTRICT DOFAW BASEYARD OFFICE REPLACEMENT. THE IMPROVEMENTS WILL PROVIDE SPACE FOR NEW AND EXISTING PROGRAMS AND PERSONNEL.				
		PLANS			10	
		DESIGN			50	
		CONSTRUCTION			410	
		EQUIPMENT			25	
		TOTAL FUNDING	LNR		495 C	

**LNR404 - WATER RESOURCES**

9. G75 HUALALAI WELL DEVELOPMENT, HAWAII

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS, LAND ACQUISITION, AND DESIGN FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS		30			
		LAND		10			
		DESIGN		100			
		TOTAL FUNDING	LNR	140C			C
10.	G94	WATER RESOURCES, DISTRICTS OF HAMAKUA AND WAIMEA (HONOKAA WELL DEV), HAWAII					
		CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER APPURTENANT WORK.					
		CONSTRUCTION		1,020			
		TOTAL FUNDING	LNR	1,020C			C
11.	J22	MAKAKILO WELLS DEVELOPMENT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS		25			
		DESIGN		75			
		CONSTRUCTION		750			
		TOTAL FUNDING	LNR	850C			C
12.	J32	WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT THE WAIMANALO WASTEWATER TREATMENT PLANT TO MEET DEPARTMENT OF HEALTH'S STATE WATER QUALITY STANDARDS.					
		PLANS		25			
		DESIGN		200			
		CONSTRUCTION		1,700			
		TOTAL FUNDING	LNR	1,700C			C
13.	G75A	WAHIKULI WELL DEVELOPMENT, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS		25			
		LAND		10			
		DESIGN		100			
		CONSTRUCTION		1,000			
		TOTAL FUNDING	LNR	1,135C			C
14.	G89B	ALTERNATIVE WATER SOURCE DEVELOPMENT, PEARL HARBOR SPRING WATER SUPPLY, OAHU					
		PLANS AND DESIGN FOR A DIVERSION SYSTEM TO INTERCEPT SPRING WATER IN THE PEARL HARBOR AREA.					
		PLANS		50			

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			100		
		TOTAL FUNDING	LNR		150 C		C

**14A. PUU ANAHULU WATER SYSTEM, HAWAII**

PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF THE PUUANAHULU WATER SYSTEM.

PLANS	25
DESIGN	50
CONSTRUCTION	875
TOTAL FUNDING	950 C

**LNR405 - CONSERVATION & RESOURCES ENFORCEMENT****15. A10 DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT ADMIN BLDG MAUNA KEA, HAWAII**

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING STRUCTURE TO SERVE AS AN ADMINISTRATIVE AND TRAINING FACILITY FOR DOCARE AND OTHER DEPARTMENTAL PERSONNEL, INCLUDING PARKING LOT, FENCING, AND OTHER INCIDENTAL AND RELATED WORK.

PLANS	10
DESIGN	20
CONSTRUCTION	300
EQUIPMENT	30
TOTAL FUNDING	330 C

**E. HEALTH****HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES****1. 111201 KALAUPAPA MAIN KITCHEN REFRIGERATION FACILITY, MOLOKAI**

DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO KALAUPAPA MAIN KITCHEN REFRIGERATION FACILITY, BUILDING 6. TO INCLUDE REPLACING EXISTING MEAT HOUSE - BUTCHER SHOP AND FREEZER, BUILDINGS 267 AND 268 WITH CENTRALIZED FACILITY LOCATED AT BUILDING 6.

DESIGN	36
CONSTRUCTION	374
TOTAL FUNDING	410 C

**2. IMPROVEMENTS TO KALAUPAPA BARGE WHARF HARBOR, MOLOKAI**

CONSTRUCTION FOR IMPROVEMENTS TO KALAUPAPA HARBOR TO INCLUDE THE

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

STRENGTHENING OF THE WHARF, REPAIR  
OF SEAWALL DREDGING (ROCK REMOVAL) OF  
BARGE BASIN AND OTHER IMPROVEMENTS.

CONSTRUCTION		200
TOTAL FUNDING	TRN	200 C

**HTH212 - HONOKAA HOSPITAL**

3. 212002 HONOKAA HOSPITAL, NEW HOSPITAL FACILITY,  
HAWAII

CONSTRUCTION AND EQUIPMENT FOR  
NEW HEALTH CARE FACILITIES WITH  
APPROXIMATELY 50 BEDS AT HONOKAA TO  
REPLACE PRESENT STRUCTURE THAT DOES  
NOT MEET MEDICARE STANDARDS.

CONSTRUCTION		4,119
EQUIPMENT		693
TOTAL FUNDING	AGS	4,812 C

**HTH215 - KONA HOSPITAL**

4. 215201 KONA HOSPITAL, RENOVATION AND EXPANSION,  
PHASE II, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR THE RENOVATION AND EXPANSION OF  
EXISTING FACILITY.

DESIGN		689
CONSTRUCTION		1
EQUIPMENT		239
TOTAL FUNDING	AGS	929 C

**HTH221 - MAUI MEMORIAL HOSPITAL**

5. 221201 MAUI MEMORIAL HOSPITAL, REPLACEMENT AND  
INSTALLATION OF INCINERATOR, MAUI

DESIGN AND CONSTRUCTION FOR  
REPLACEMENT AND INSTALLATION OF HOSPITAL  
INCINERATOR. PROJECT TO CORRECT  
DEFICIENCIES PERTAINING TO LIFE SAFETY  
CODES AND VIOLATIONS TO STATE AND  
FEDERAL ENVIRONMENTAL AIR QUALITY  
MANAGEMENT STANDARDS.

DESIGN		40
CONSTRUCTION		448
TOTAL FUNDING	AGS	488 C

6. 221002 MAUI MEMORIAL HOSPITAL, SECOND INCREMENT  
RENOVATION, MAUI

DESIGN FOR THE SECOND INCREMENT OF THE

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		RENOVATION OF MAUI MEMORIAL HOSPITAL.				
		DESIGN			311	
		TOTAL FUNDING	AGS		311 C	
						C
		<b>HTH222 - HANA MEDICAL CENTER</b>				
7.		222201 HANA MEDICAL CENTER, RENOVATION AND EXPANSION, MAUI				
		LAND ACQUISITION AND DESIGN FOR THE RENOVATION AND EXPANSION TO EXISTING FACILITY INCLUDING ACQUISITION OF ADJACENT LAND.				
		LAND			323	
		DESIGN			81	
		TOTAL FUNDING	AGS		404 C	
						C
		<b>HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL</b>				
8.		KAUAI VETERANS MEMORIAL HOSPITAL, MEDICAL BUILDING, KAUAI				
		CONSTRUCTION AND EQUIPMENT FOR A MEDICAL OFFICE BUILDING.				
		CONSTRUCTION			4,700	
		EQUIPMENT			300	
		TOTAL FUNDING	AGS		5,000 C	
						C
		<b>HTH241 - MALUHIA HOSPITAL</b>				
9.		MALUHIA DAY HOSPITAL ADDITION AND RENOVATIONS, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR THE ADDITION AND RENOVATION OF THE MALUHIA LONG TERM CARE HEALTH CENTER.				
		PLANS			1	
		DESIGN			180	
		CONSTRUCTION			1,067	
		TOTAL FUNDING	AGS		1,248 C	
						C
		<b>HTH420 - ADULT MENTAL HEALTH</b>				
10.		420201 HOUSING INITIATIVE FOR MENTAL HEALTH CONSUMERS, STATEWIDE				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ACQUISITION AND RENOVATION OF LIVING UNITS FOR CRISIS INTERVENTION, REHABILITATION/RESPITE, SPECIALIZED LONG TERM CARE, AND				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
INDEPENDENT LIVING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		LAND		2,670			
		DESIGN			30		
		CONSTRUCTION			300		
		TOTAL FUNDING	AGS		3,000	C	
11.	420202	HAWAII STATE HOSPITAL, FURNITURE AND EQUIPMENT, OAHU					
DESIGN AND EQUIPMENT FOR FURNITURE AND EQUIPMENT OF NEW HOSPITAL FACILITY.							
		DESIGN		60			
		EQUIPMENT			740		
		TOTAL FUNDING	AGS		800	C	
12.	420203	HAWAII STATE HOSPITAL-RENOVATE STRUCTURE FOR ADOLESCENT UNIT & ICF FOR MI, OAHU					
PLANS AND DESIGN FOR THE RENOVATION OF EXISTING BUILDING TO HOUSE ADOLESCENTS AND TO PROVIDE FOR AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY ILL.							
		PLANS		70			
		DESIGN			99		
		TOTAL FUNDING	AGS		169	C	
13.	420204	HAWAII STATE HOSPITAL, COVERED WALKS, OAHU					
DESIGN AND CONSTRUCTION FOR COVERED WALKS TO CONNECT THE BUILDINGS OF THE NEW FACILITY.							
		DESIGN		29			
		CONSTRUCTION			267		
		TOTAL FUNDING	AGS		296	C	
14.		FRIENDSHIP HOUSE, KAUAI					
PLANS, DESIGN, AND CONSTRUCTION FOR THE FRIENDSHIP HOUSE ON KAUAI.							
		PLANS		1			
		DESIGN			1		
		CONSTRUCTION			1,198		
		TOTAL FUNDING	AGS		1,200	C	
15.		HAWAII STATE HOSPITAL, EMPLOYEES' AND SPECIAL NEED GROUPS COTTAGES, OAHU					
PLANS, DESIGN, AND CONSTRUCTION FOR THE RELOCATION OF EMPLOYEES' COTTAGES AND THE CONSTRUCTION OF A SPECIAL NEED GROUPS FACILITY ON STATE LAND.							
		PLANS		50			
		DESIGN				1	
		CONSTRUCTION				499	
		TOTAL FUNDING	AGS		50	C	

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

**HTH501 - COMMUNITY SERVICES FOR DEV DIS & MENT RET**

16. 501004 HALE HAUOLI DAY CARE FACILITIES FOR THE MENTALLY RETARDED, KAUAI

DESIGN FOR DAY CARE FACILITIES FOR THE MENTALLY RETARDED.

DESIGN			120		
TOTAL FUNDING	AGS		120 C		C

17. HILO DAY ACTIVITY CENTER, HAWAII

PLANS FOR THE PROJECT DEVELOPMENT REPORT FOR A NEW HILO DAY ACTIVITY CENTER.

PLANS			60		
TOTAL FUNDING	AGS		60 C		C

**HTH610 - ENVIRONMENTAL HEALTH SERVICES**

- 17A. 610301 NEW VECTOR CONTROL FACILITY, OAHU

PLANS AND DESIGN FOR A NEW VECTOR CONTROL FACILITY TO REPLACE EXISTING FACILITY. FACILITY TO INCLUDE LABORATORY FACILITIES AND OFFICES FOR THE VECTOR ADMINISTRATION AND FIELD OPERATIONS.

PLANS			5		
DESIGN			466		
TOTAL FUNDING	AGS		471 C		C

**HTH710 - STATE LABORATORY SERVICES**

18. 901001 NEW LAB FACILITY - HANDICAP REQUIREMENTS AND COST OVERRUNS, OAHU

CONSTRUCTION FOR HANDICAP REQUIREMENTS AND COST OVERRUNS.

CONSTRUCTION			3,500		
TOTAL FUNDING	AGS		3,500 C		C

**HTH907 - GENERAL ADMINISTRATION**

19. 907201 DIAMOND HEAD HEALTH CENTER, UPGRADE AIR CONDITIONING SYSTEM, OAHU

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF AIR CONDITIONING SYSTEM FOR THE ENTIRE BUILDING.

DESIGN			162		
CONSTRUCTION			2,729		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	AGS		162 C		2,729 C
20.		NORTH HAWAII COMMUNITY HOSPITAL FACILITY, WAIMEA, HAWAII					
		CONSTRUCTION FOR A NEW ACUTE CARE FACILITY AT THE NORTH HAWAII COMMUNITY HOSPITAL. (GRANT-IN-AID)					
		CONSTRUCTION			12,500		
		TOTAL FUNDING	AGS		12,500 C		C
21.		WAILUKU HEALTH CENTER, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW HEALTH CENTER FACILITY FOR THE CHILDREN'S MENTAL HEALTH PROGRAM.					
		PLANS			60		
		DESIGN			100		
		CONSTRUCTION			340		
		TOTAL FUNDING	AGS		500 C		C
21A.		WEST MAUI ACUTE CARE HOSPITAL, MAUI					
		PLANS FOR A GENERAL ACUTE CARE HOSPITAL FACILITY IN LAHAINA, MAUI.					
		PLANS				300	
		TOTAL FUNDING	AGS			300 C	C
21B.		MOLOKAI RENAL DIALYSIS FACILITY, MOLOKAI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MOLOKAI RENAL DIALYSIS FACILITY, TO BE EXPENDED BY THE MOLOKAI COMMUNITY SERVICES COUNCIL.					
		(GRANT-IN-AID)					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				247	
		EQUIPMENT				1	
		TOTAL FUNDING	HTH			250 C	C

## F. SOCIAL SERVICES

## HMS501 - YOUTH SERVICES ADMINISTRATION

## 1. OYS 01 HYCF COMPLEX PROJECT, OAHU

PLANS, DESIGN, CONSTRUCTION, AND  
EQUIPMENT FOR FACILITIES ON THE HYCF  
COMPLEX GROUNDS AND SATELLITE ADJUNCTS,  
INCLUDING RENOVATIONS AND INFRASTRUCTURE  
SUPPORT AND IMPROVEMENTS.

PLANS	75	
DESIGN	1,000	
CONSTRUCTION	7,000	4,971

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		EQUIPMENT					240
		TOTAL FUNDING	AGS		8,075 C		5,211 C

**2. OYS 02 YOUTH SERVICE CENTERS PROJECT, STATEWIDE**

PLANS AND DESIGN FOR YOUTH SERVICE CENTERS AT VARIOUS SITES THROUGHOUT THE STATE.

PLANS	50
DESIGN	200
TOTAL FUNDING	250 C

**DEF112 - SERVICES TO VETERANS****3. OVS642 HAWAII STATE VETERANS CEMETERY, OAHU**

CONSTRUCTION AND EQUIPMENT FOR A STATE VETERANS CEMETERY ON OAHU. TO BE MATCHED WITH FEDERAL FUNDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION	5,000
EQUIPMENT	100
TOTAL FUNDING	2,550 C
AGS	2,550 N

**3A. KAUAI VETERAN'S CENTER, KAUAI**

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KAUAI VETERAN'S CENTER, TO INCLUDE SEWER, ELECTRICAL, WATER, AND PARKING.

PLANS	1
DESIGN	1
CONSTRUCTION	472
EQUIPMENT	1
TOTAL FUNDING	AGS

C 475 C

**HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE****4. HA9201 KAPAA SEWER LINE, KAUAI**

DESIGN AND CONSTRUCTION FOR SEWER LINE CONNECTING THE KAPAA PUBLIC HOUSING PROJECT TO THE NEW COUNTY SEWER TRUNK LINE. THE LINE WILL RUN FROM THE PROJECT TO LEHUA STREET WHERE THE NEW SEWER LINE WILL RUN.

DESIGN	50
CONSTRUCTION	500
TOTAL FUNDING	HMS 50 C 500 C

**5. HA9204 ACQUISITION OF WILIKINA APARTMENTS, OAHU**

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

LAND ACQUISITION FOR WILIKINA  
APARTMENTS, A 119-UNIT HIGHRISE BUILDING  
IN WAHIAWA.

LAND	HMS	9,210	
TOTAL FUNDING		9,210 C	C

## 6. HA9209 MINOR CIP, STATEWIDE

DESIGN AND CONSTRUCTION FOR MINOR CIP  
PROJECTS, STATEWIDE.

DESIGN		75	75
CONSTRUCTION		500	500
TOTAL FUNDING	HMS	575 C	575 C

7. HA9211 REPLACEMENT OF WATER LINE AT HALE  
HOONANEA, KAUAI

DESIGN AND CONSTRUCTION FOR  
REPLACEMENT OF PRIVATE WATER LINE AT  
HALE HOONANEA ON A PRO RATA BASIS WITH A  
NEW WATER LINE THAT WILL BE DEDICATED TO  
THE COUNTY.

DESIGN		5	
CONSTRUCTION		50	
TOTAL FUNDING	HMS	55 C	C

## HMS807 - TEACHER HOUSING

8. HA9207 DRIVEWAY FOR LANAI TEACHER COTTAGE,  
LANAI

DESIGN AND CONSTRUCTION FOR DRIVEWAY  
AT LANAI TEACHER COTTAGE.

DESIGN		5	
CONSTRUCTION		80	
TOTAL FUNDING	HMS	85 C	C

9. HA9208 PARKING AREA FOR KOHALA TEACHER COTTAGE,  
HAWAII

DESIGN AND CONSTRUCTION FOR PARKING  
AREA FOR KOHALA TEACHER COTTAGES.

DESIGN		4	
CONSTRUCTION		35	
TOTAL FUNDING	HMS	39 C	C

## 10. HA9210 TWO TEACHER COTTAGES AT WAIMEA, HAWAII

DESIGN AND CONSTRUCTION FOR TWO  
TEACHER COTTAGES IN WAIMEA, HAWAII.

DESIGN		1	
CONSTRUCTION		224	
TOTAL FUNDING	HMS	225 C	C

## HMS229 - HOUSING ASSISTANCE ADMINISTRATION

**ACT 300**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
11.	HA9202	HHA CENTRAL MAINTENANCE GAS TANK, OAHU				
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF HHA CENTRAL MAINTENANCE GAS TANK.				
		DESIGN			10	
		CONSTRUCTION			90	
		TOTAL FUNDING	HMS		100 C	
12.	HA9205	LOW INCOME PUBLIC HOUSING, STATEWIDE				
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE DEVELOPMENT OF LOW INCOME PUBLIC HOUSING - APPROXIMATELY 225 (0, 1, 2, 3) BEDROOM UNITS ON A STATEWIDE BASIS. ZERO, ONE, AND TWO BEDROOM UNITS PLANNED FOR THE ELDERLY. ONE, TWO, AND THREE BEDROOM UNITS ARE FOR LOW INCOME FAMILIES.				
		PLANS			400	
		LAND			3,250	
		DESIGN			2,800	
		TOTAL FUNDING	HMS		6,450 C	
13.		HOMELESS SHELTERS, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HOMELESS SHELTERS, STATEWIDE.				
		PLANS			1	
		LAND			1	
		DESIGN			1	
		CONSTRUCTION			5,996	
		EQUIPMENT			1	
		TOTAL FUNDING	HMS		6,000 C	
13A.		WAIANAE PUBLIC HOUSING PROJECT, WAIANAE, OAHU				
		CONSTRUCTION FOR THE WAIANAE PUBLIC HOUSING PROJECT IN CONJUNCTION WITH A FEDERALLY FUNDED LOW INCOME PUBLIC HOUSING PROJECT ON THE SAME SITE.				
		CONSTRUCTION			1	
		TOTAL FUNDING	HMS		1,000	
					1,000 A	
13B.		PALAMA ELDERLY HOUSING PROJECT, OAHU				
		CONSTRUCTION FOR THE PALAMA ELDERLY HOUSING PROJECT.				
		CONSTRUCTION			1	
		TOTAL FUNDING	HMS		4,760	
					4,760 A	
13C.		HONOKAA AND/OR WEST HAWAII PUBLIC HOUSING PROJECTS, HAWAII				
		CONSTRUCTION FOR THE HONOKAA AND/OR WEST HAWAII HOUSING PROJECTS IN CONJUNCTION WITH FEDERALLY FUNDED LOW				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
INCOME PUBLIC HOUSING PROJECTS ON THE SAME SITE.							
		CONSTRUCTION					
		TOTAL FUNDING	HMS			A	3,400
							3,400 A
<b>BUF225 - PRIVATE HOUSING DEVELOPMENT &amp; OWNERSHIP</b>							
14.	HF9203	CONSTRUCTION OF ELDERLY HOUSING AT CROWN PROPERTY, PHASE II, OAHU					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MID-RISE ELDERLY HOUSING COMPLEX, A COMMUNITY ROOM, PARKING STALLS, AND OTHER ANCILLARY FACILITIES.					
		LAND		1,600			
		DESIGN		355			
		CONSTRUCTION					12,600
		EQUIPMENT					150
		TOTAL FUNDING	BUF			A	12,750
			BUF	1,955 C			A
							C
15.	HF9205	SOURCE DEVELOPMENT OF WATER SYSTEM FOR LAHAINA MASTER PLANNED COMMUNITY, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, AND EQUIPMENT FOR TWO WELLS, ONE MILLION GALLON RESERVOIR, TRANSMISSION LINES AND APPURTENANT WORKS AT WAHIKULI, LAHAINA, MAUI.					
		PLANS		70			
		LAND		1,356			
		DESIGN		300			
		EQUIPMENT		400			
		TOTAL FUNDING	BUF			2,126 C	
							C
16.	HF9206	SEWER EXPANSION IMPROVEMENTS TO LAHAINA WASTEWATER TREATMENT PLANT, MAUI					
		PLANS AND DESIGN FOR IMPROVEMENTS TO EXPAND THE SEWAGE CAPACITY OF LAHAINA WASTEWATER TREATMENT PLANT, MAUI.					
		PLANS		320			
		DESIGN		1,000			
		TOTAL FUNDING	BUF			1,320 C	
							C
17.	P00048	WAILANI STREAM DRAINAGE IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR WAILANI STREAM DRAINAGE IMPROVEMENTS.					
		PLANS		10			
		DESIGN		100			
		CONSTRUCTION		2,000			
		TOTAL FUNDING	BUF			A	770
			BUF	2,110 C			770 A
							C

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
17A.		HOMES REVOLVING FUND, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FEASIBILITY STUDIES AND ALL COSTS RELATED TO THE HOMES REVOLVING FUND.					
		PLANS				100	
		LAND				100	
		DESIGN				100	
		CONSTRUCTION				119,600	
		EQUIPMENT				100	
		TOTAL FUNDING	BUF			120,000	C
18.	P00141	ELDERLY HOUSING FACILITIES, CROWN PROPERTY, WAIPAHU, OAHU					
		CONSTRUCTION FOR ELDERLY HOUSING FACILITIES IN WAIPAHU, OAHU.					
		CONSTRUCTION			2,000		1,700
		TOTAL FUNDING	BUF	BUF	2,000	A	1,700 A
						C	
18A.	HF9301	AFFORDABLE RENTAL HOUSING PROJECT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A MIXED-USE AFFORDABLE RENTAL HOUSING PROJECT ON THE SITE OF THE FORMER KAPIOLANI COMMUNITY COLLEGE PENSACOLA CAMPUS.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				27,998	
		TOTAL FUNDING	BUF			28,000	A
<b>HHL602 - PLANNING, DEV, MGT &amp; GEN SPPT FOR HAWN HMSTDs</b>							
19.	H-30-C	MOLOKAI WATER SYSTEM IMPROVEMENTS, PHASE IIIIC, MOLOKAI					
		CONSTRUCTION FOR THE UPGRADE AND EXPANSION OF THE EXISTING WATER SYSTEM ON MOLOKAI TO COUNTY OF MAUI STANDARDS AND TO THE STANDARDS OF THE FEDERAL AND STATE SAFE DRINKING WATER REGULATIONS.					
		CONSTRUCTION			2,400		
		TOTAL FUNDING	HHL		2,400	C	
20.	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 (EX. GRADING, ROADS AND UTILITIES) AND OFF-SITE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		IMPROVEMENTS AND TO PROVIDE FOR LOAN CAPITALIZATION. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER.					
		CONSTRUCTION				5,500	13,010
		TOTAL FUNDING	HHL			5,500 C	13,010 C
21.	LMD006	WAIANAE VALLEY INTERCEPTOR SEWER, OAHU					
		CONSTRUCTION FOR A GRAVITY SEWER SYSTEM FOR SEWER DISPOSAL FOR EXISTING AND FUTURE HOMESTEADERS OF WAIANAE RESIDENCE LOTS, WAIANAE VALLEY, OAHU. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS.					
		CONSTRUCTION				2,500	
		TOTAL FUNDING	HHL			2,500 C	C
22.	HAWAIIAN HOME LANDS	MULTI-FAMILY AND WATER DEVELOPMENT PROJECTS, STATEWIDE					
		DESIGN FOR THE DEVELOPMENT OF MULTI-FAMILY AND MULTI-USE PROJECTS IN WAIMANALO, PAPAKOLEA, KALAWAHINE, AND WAIANAE, AND TO DEVELOP WATER IMPROVEMENTS, STATEWIDE.					
		DESIGN				700	
		TOTAL FUNDING	HHL			700 C	C
23.	KULA WATER SYSTEM, MAUI						
		CONSTRUCTION FOR A TWO-MILE EXTENSION OF THE LOWER KULA WATERLINE TO HAWAIIAN HOME LANDS AT KEOKEA, MAUI.					
		CONSTRUCTION				1,470	
		TOTAL FUNDING	HHL			1,470 C	C
24.	PANAELWA FARM LOTS, PHASE 2, HAWAII						
		CONSTRUCTION FOR WATER AND ELECTRICAL COSTS, AS WELL AS ON-SITE CONSTRUCTION COSTS FOR ROADS AND DRAINAGE WHICH WILL SERVICE 86 FARM LOTS IN PANAELWA, HAWAII.					
		CONSTRUCTION				264	
		TOTAL FUNDING	HHL			264 C	C
25.	ANAHOLA WATER SYSTEM, KAUAI						
		CONSTRUCTION FOR THE EXPANSION AND IMPROVEMENTS OF THE DEPARTMENT'S ANAHOLA WATER SYSTEM BY CONSTRUCTING AN ALTERNATE BACK-UP SOURCE, BOOSTER PUMP STATION, AND WATER TRANSMISSION LINES TO SERVICE 46 EXISTING FARM LOTS AND 61 UNDEVELOPED RESIDENTIAL LOTS.					
		CONSTRUCTION				500	
		TOTAL FUNDING	HHL			500 C	C
26.	NANAKULI GRAVITY SEWER SYSTEM, OAHU						

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION FOR THE COMPLETION OF THE NANAKULI GRAVITY SEWER SYSTEM WHICH SERVICES OVER 300 EXISTING HOMESTEAD LOTS AND 1000 FUTURE LOTS.					
		CONSTRUCTION				200	
		TOTAL FUNDING	HHL			200 C	C
27.	NANAKULI RESIDENCE LOTS, SERIES 5-3, OAHU						
		CONSTRUCTION FOR WATER FACILITY CHARGES AND CONSTRUCTION OF AN ELECTRICAL SYSTEM, AS WELL AS ON-SITE CONSTRUCTION COSTS FOR ROADS, DRAINAGE, AND LOT GRADING FOR 37 LOTS IN NANAKULI, OAHU.					
		CONSTRUCTION				165	
		TOTAL FUNDING	HHL			165 C	C
28.	NANAKULI RESIDENTIAL LOTS, SERIES 7, OAHU						
		CONSTRUCTION FOR WATER FACILITY CHARGES AND CONSTRUCTION OF AN ELECTRICAL SYSTEM, AS WELL AS ON-SITE CONSTRUCTION COSTS FOR ROADS, DRAINAGE, AND LOT GRADING FOR 167 LOTS IN NANAKULI, OAHU.					
		CONSTRUCTION				756	
		TOTAL FUNDING	HHL			756 C	C
<b>GOV602 - ELDERLY</b>							
28A.	P10004 MULTI-PURPOSE SENIOR CENTER, WAIPAHU, OAHU						
		LAND ACQUISITION AND DESIGN FOR A MULTI-PURPOSE SENIOR CENTER IN WAIPAHU.					
		LAND				750	
		DESIGN				223	
		TOTAL FUNDING	AGS			973 A	A
28B.	LANAKILA MULTI-PURPOSE SENIOR CENTER, OAHU						
		DESIGN AND CONSTRUCTION FOR RENOVATIONS, IMPROVEMENTS, AND OTHER RELATED WORK FOR THE LANAKILA MULTI-PURPOSE SENIOR CENTER.					
		DESIGN				1	
		CONSTRUCTION				173	
		TOTAL FUNDING	AGS			174 A	A

**HMS904 - GENERAL ADMINISTRATION (DSSH)**

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93

29. 904-01 RENOVATION OF ISO BASEMENT FACILITY AND FIRST FLOOR OFFICES, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF EXISTING WALLS TO GLASS WALLS IN COMPUTER ROOM; INSTALLATION OF AUTOMATIC SLIDING DOORS IN COMPUTER ROOM AND DATA CONTROL SECTION; AND INSTALLATION OF ELECTRONIC KEY LOCK FOR EXTERNAL DOORS OF BASEMENT FACILITY AND FIRST FLOOR OFFICES AND ADDITIONAL ELECTRICAL LINES FOR COMPUTER HARDWARE.

PLANS	10
DESIGN	10
CONSTRUCTION	150
EQUIPMENT	50
TOTAL FUNDING	220 C

C

## G. FORMAL EDUCATION

## EDN105 - REGULAR INSTRUCTION PROGRAM

1. 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	100	100
CONSTRUCTION	900	900
TOTAL FUNDING	1,000 B	1,000 B

2. 020 LUMP SUM CIP-COUNTY BUILDING PERMIT REQUIREMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR ON-SITE AND OFF-SITE IMPROVEMENTS, AS REQUIRED BY THE COUNTIES.

DESIGN	125	
CONSTRUCTION	1,875	
TOTAL FUNDING	2,000 B	B

3. 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	100	100
CONSTRUCTION	500	500
TOTAL FUNDING	600 B	600 B

4. 003 LUMP SUM CIP-MASTER PLANS, SITE STUDIES, AND MINOR LAND ACQUISITIONS, STATEWIDE

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORSEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS			395		400
		LAND			5		
		TOTAL FUNDING	AGS		400 B		400 B
5.	002	LUMP SUM CIP-MINOR RENOVATIONS AND IMPROVEMENTS TO BUILDINGS & SCHOOL SITES					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO BUILDINGS AND SCHOOLS SITES.					
		DESIGN			40		80
		CONSTRUCTION			450		700
		EQUIPMENT			10		20
		TOTAL FUNDING	AGS		500 B		800 B
6.	011	LUMP SUM CIP-PROJECT ADJUSTMENT FUND					
		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			400		200
		CONSTRUCTION			2,500		3,500
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		3,000 B		3,800 B
7.	001	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORSEEN EMERGENCIES AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION. THESE FUNDS ARE ALSO FOR SECONDARY SCHOOLS.					
		DESIGN			175		175
		CONSTRUCTION			3,665		3,665
		EQUIPMENT			160		160
		TOTAL FUNDING	AGS		4,000 B		4,000 B
8.	021	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS TO ACCOMMODATE CLASS SIZE REDUCTION.							
		DESIGN			40		40
		CONSTRUCTION			930		930
		EQUIPMENT			30		30
		TOTAL FUNDING	AGS		1,000 B		1,000 B
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			250		250
		TOTAL FUNDING	AGS		300 B		300 B
9A.	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 AND SAFETY REQUIREMENTS/LAWS AND ORDINANCES.							
		DESIGN			75		
		CONSTRUCTION			725		
		TOTAL FUNDING	AGS		B		800 B
10.	012	LUMP SUM CIP-TELECOMMUNICATION AND POWER INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATION AND POWER INFRASTRUCTURE REQUIREMENTS.							
		DESIGN			400		
		CONSTRUCTION			1,500		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		2,000 B		B
11.	302005	CAMPBELL HIGH SCHOOL, OAHU					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, APPURTENANCES, GROUND AND SITE IMPROVEMENTS.							
		CONSTRUCTION			2,650		
		EQUIPMENT			10		
		TOTAL FUNDING	AGS		2,660 B		B
12.	104001	CENTRAL INTERMEDIATE SCHOOL, OAHU					
DESIGN FOR THE FIRST INCREMENT OF REPLACEMENT PROGRAM.							
		DESIGN			135		
		TOTAL FUNDING	AGS		135 B		B

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
13.	303005	EWA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN					
		TOTAL FUNDING	AGS			150	
						150 B	
14.	303003	EWA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR SEWER CONNECTION; GROUND AND SITE IMPROVEMENTS.					
		DESIGN				20	
		CONSTRUCTION				250	
		TOTAL FUNDING	AGS			270 B	
							B
15.	343005	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN					
		TOTAL FUNDING	AGS			165	
						165 B	
16.	343004	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN				375	
		CONSTRUCTION					
		EQUIPMENT				8,050	
		TOTAL FUNDING	AGS			85	
						375 B	
						8,135 B	
17.	502007	HILO HIGH SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN					
		TOTAL FUNDING	AGS			140	
						140 B	
18.	507005	HONOKAA HIGH SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN				375	
		TOTAL FUNDING	AGS			375 B	
							B
19.	508001	HOOKENA ELEMENTARY SCHOOL, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR CLASSROOMS AND APPURTEANCES.					
		LAND				400	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			139		
		CONSTRUCTION			1		
		TOTAL FUNDING	AGS		540 B		B
20.	603009	IAO INTERMEDIATE SCHOOL, MAUI					
		LAND ACQUISITION FOR IAO INTERMEDIATE SCHOOL.					
		LAND			800		300
		TOTAL FUNDING	AGS		800 B		300 B
21.	532006	KAHAKAI ELEMENTARY SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			140		
		TOTAL FUNDING	AGS		140 B		B
22.	410023	KAHUKU HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN			250		
		CONSTRUCTION				4,490	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS		250 B		4,540 B
23.	625005	KALAMA INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			225		
		CONSTRUCTION				3,925	
		EQUIPMENT				40	
		TOTAL FUNDING	AGS		225 B		3,965 B
24.	625004	KALAMA INTERMEDIATE SCHOOL, MAUI					
		LAND ACQUISITION FOR KALAMA INTERMEDIATE SCHOOL.					
		LAND			350		
		TOTAL FUNDING	AGS		350 B		B
25.	324004	KALEIOPUU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN			165		
		CONSTRUCTION			600		2,725
		EQUIPMENT				48	
		TOTAL FUNDING	AGS		765 B		2,773 B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
26.	342007	KAMAILE ELEMENTARY SCHOOL, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.				
		DESIGN		150		
		CONSTRUCTION			2,450	
		EQUIPMENT			32	
		TOTAL FUNDING	AGS	150 B		2,482 B
27.	717002	KAPAA INTERMEDIATE SCHOOL (NEW), KAUAI				
		DESIGN FOR THE FIRST INCREMENT OF THE NEW SCHOOL TO INCLUDE GROUND AND SITE IMPROVEMENTS.				
		DESIGN			375	
		TOTAL FUNDING	AGS	B		375 B
28.	716001	KAPAA II ELEMENTARY SCHOOL, KAUAI				
		PLANS AND LAND ACQUISITION FOR KAPAA II ELEMENTARY SCHOOL TO INCLUDE A MASTER PLAN.				
		PLANS		75		
		LAND		600		
		TOTAL FUNDING	AGS	675 B		
					B	
29.	717001	KAPAA INTERMEDIATE SCHOOL, KAUAI				
		PLANS AND LAND ACQUISITION FOR EIS, SITE SELECTION AND MASTER PLAN.				
		PLANS		75		100
		LAND			1,200	
		TOTAL FUNDING	AGS	75 B		1,300 B
30.	347002	KAPOLEI ELEMENTARY SCHOOL, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.				
		DESIGN		150		
		CONSTRUCTION			2,350	
		EQUIPMENT			32	
		TOTAL FUNDING	AGS	150 B		2,382 B
31.	347001	KAPOLEI ELEMENTARY SCHOOL, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR A NEW ELEMENTARY SCHOOL.				
		CONSTRUCTION		8,450		
		EQUIPMENT		100		
		TOTAL FUNDING	AGS	8,550 B		
					B	
32.	718001	KAUAI INTERMEDIATE SCHOOL, KAUAI				
		LAND ACQUISITION FOR KAUAI INTERMEDIATE SCHOOL.				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		LAND			500		
		TOTAL FUNDING	AGS		500 B		B
33.	513007	KEAAU ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			175		
		CONSTRUCTION			1,175		
		EQUIPMENT			12		
		TOTAL FUNDING	AGS		1,362 B		B
34.	538001	KEAAU HIGH SCHOOL, HAWAII					
		PLANS FOR EIS, SITE SELECTION, AND MASTER PLAN.					
		PLANS			75		
		TOTAL FUNDING	AGS		75 B		B
35.	537001	KEAAU II ELEMENTARY SCHOOL, HAWAII					
		PLANS FOR EIS AND SITE SELECTION OF KEAAU II ELEMENTARY SCHOOL.					
		PLANS			75		
		TOTAL FUNDING	AGS		75 B		B
36.	536001	KEALAKEHE HIGH SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT: GROUND AND SITE IMPROVEMENTS, CLASSROOMS, ADMINISTRATION BUILDING, ACCESS ROAD, PARKING, EQUIPMENT AND APPURTEANCES.					
		DESIGN			1,400		
		CONSTRUCTION			8,150		
		EQUIPMENT			130		
		TOTAL FUNDING	AGS		1,400 B		B
					8,293 B		
37.	533007	KEALAKEHE INTERMEDIATE SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN				150	
		TOTAL FUNDING	AGS			150 B	B
38.	533001	KEALAKEHE INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; PARKING AND ACCESS ROAD.					
		DESIGN			150		
		CONSTRUCTION			2,250		
		EQUIPMENT			6		
		TOTAL FUNDING	AGS		150 B		B
					2,256 B		

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
39.	534004	KEONEPOKO ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION FOR CLASSROOMS; PARKING; COVERED WALKWAYS; EQUIPMENT AND APPURTEANCES.					
		CONSTRUCTION			3,950		
		TOTAL FUNDING	AGS		3,950 B		B
40.	608008	KIHEI ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			195		
		CONSTRUCTION				3,225	
		EQUIPMENT				32	
		TOTAL FUNDING	AGS		195 B		3,257 B
41.	630002	KIHEI II ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN				695	
		TOTAL FUNDING	AGS			B	695 B
42.	630001	KIHEI II ELEMENTARY SCHOOL, MAUI					
		PLANS AND LAND ACQUISITION FOR KIHEI II ELEMENTARY SCHOOL TO INCLUDE A MASTER PLAN.					
		PLANS			75		
		LAND			600		2,400
		TOTAL FUNDING	AGS		675 B		2,400 B
43.	715006	KING KAUMUALII ELEMENTARY SCHOOL, KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		CONSTRUCTION			2,720		
		EQUIPMENT			32		
		TOTAL FUNDING	AGS		2,752 B		B
44.	517004	KONAWAENA ELEMENTARY SCHOOL, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT: CLASSROOMS; COVERED WALKWAYS; ACCESS ROAD; PARKING; GROUND AND SITE IMPROVEMENTS; PLAYFIELD; PORTABLE RELOCATION AND APPURTEANCES.					
		PLANS			20		
		LAND				700	
		DESIGN				10	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION		6,900			9
		EQUIPMENT					1
		TOTAL FUNDING	AGS	6,900 B			740 B
45.	632002	LAHAINA ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					375
		TOTAL FUNDING	AGS				375 B
46.	632001	LAHAINA ELEMENTARY SCHOOL, MAUI					
		PLANS FOR EIS; SITE SELECTION; MASTER PLAN.					
		PLANS		200			
		TOTAL FUNDING	AGS	200 B			B
47.	612004	LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		100			
		CONSTRUCTION		2,537			
		EQUIPMENT		32			
		TOTAL FUNDING	AGS	2,669 B			B
48.	612002	LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO WATER SYSTEM.					
		DESIGN		175			
		CONSTRUCTION		1,050			
		TOTAL FUNDING	AGS	1,225 B			B
49.	629003	LOKELANI INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		185			
		CONSTRUCTION					3,180
		EQUIPMENT					40
		TOTAL FUNDING	AGS	185 B			3,220 B
50.	633002	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		DESIGN				375
		TOTAL FUNDING	AGS		B	375 B
51.	633001	MAUI LANI ELEMENTARY SCHOOL, MAUI				
		PLANS FOR EIS; SITE SELECTION; MASTER PLAN.				
		PLANS			200	
		TOTAL FUNDING	AGS		200 B	
52.	626007	MAUI WAENA INTERMEDIATE SCHOOL, MAUI				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.				
		DESIGN			190	
		CONSTRUCTION				2,950
		EQUIPMENT				40
		TOTAL FUNDING	AGS		190 B	2,990 B
53.	140007	MCKINLEY HIGH SCHOOL, OAHU				
		DESIGN FOR RENOVATION OF BUILDING A. RELOCATE OR CONSTRUCT PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.				
		DESIGN				50
		TOTAL FUNDING	AGS		B	50 B
54.	215408	MILILANI HIGH SCHOOL, OAHU				
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.				
		DESIGN			150	
		TOTAL FUNDING	AGS		150 B	
55.	241006	MILILANI-MAUKA ELEMENTARY SCHOOL, OAHU				
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.				
		DESIGN				165
		TOTAL FUNDING	AGS		B	165 B
56.	241002	MILILANI-MAUKA ELEMENTARY SCHOOL, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.				
		DESIGN			195	
		CONSTRUCTION				3,275
		EQUIPMENT				50
		TOTAL FUNDING	AGS		195 B	3,325 B
57.	241001	MILILANI-MAUKA ELEMENTARY SCHOOL, OAHU				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT OF A NEW SCHOOL; CLASSROOMS; LIBRARY; ADMINISTRATION; CAFETERIUM; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS.				
		CONSTRUCTION		18,600		
		EQUIPMENT			175	
		TOTAL FUNDING	AGS	18,775	B	
58.	520005	MT. VIEW ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII				B
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.				
		DESIGN		160		
		TOTAL FUNDING	AGS	160	B	
58A.	343002	NEW EWA II ELEMENTARY SCHOOL, OAHU				B
		LAND ACQUISITION FOR NEW EWA II ELEMENTARY SCHOOL.				
		LAND			200	
		TOTAL FUNDING	AGS		200	B
59.	523012	PAHOA HIGH AND ELEMENTARY SCHOOL, HAWAII				
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.				
		DESIGN		185		
		TOTAL FUNDING	AGS	185	B	
59A.	242001	ROYAL KUNIA ELEMENTARY SCHOOL, OAHU				B
		PLANS AND LAND ACQUISITION FOR ROYAL KUNIA SCHOOL TO INCLUDE MASTER PLAN AND SITE ADEQUACY STUDY.				
		PLANS			125	
		LAND			100	
		TOTAL FUNDING	AGS		225	B
60.	628007	UPCOUNTRY HIGH SCHOOL, MAUI				
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.				
		DESIGN		500		
		TOTAL FUNDING	AGS	500	B	
61.	628004	UPCOUNTRY HIGH SCHOOL, MAUI				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.				
		DESIGN		1,400		

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		CONSTRUCTION EQUIPMENT				16,680 150
		TOTAL FUNDING	AGS		1,400 B	16,830 B
61A.	628002	UPCOUNTRY HIGH SCHOOL, MAUI				
		LAND ACQUISITION FOR THE NEW UPCOUNTRY HIGH SCHOOL.				
		LAND				1,185
		TOTAL FUNDING	AGS		B	1,185 B
62.	525008	WAIAKEA HIGH SCHOOL, HAWAII				
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.				
		DESIGN			165	
		TOTAL FUNDING	AGS		165 B	B
63.	235002	WAIALUA HIGH SCHOOL, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.				
		CONSTRUCTION EQUIPMENT				2,270 24
		TOTAL FUNDING	AGS		B	2,294 B
64.	325005	WAIANAE HIGH SCHOOL, OAHU				
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.				
		DESIGN			185	
		TOTAL FUNDING	AGS		185 B	B
65.	622001	WAIHEE ELEMENTARY SCHOOL, MAUI				
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.				
		CONSTRUCTION			3,475	
		EQUIPMENT			32	
		TOTAL FUNDING	AGS		3,507 B	B
66A.	539001	WAIKOLOA ELEMENTARY SCHOOL, HAWAII				
		DESIGN FOR THE FIRST INCREMENT OF CLASSROOMS; ADMINISTRATION; GROUND AND SITE IMPROVEMENTS; PARKING; AND OTHER APPURTENANCES.				
		DESIGN				
		TOTAL FUNDING	AGS		B	200
						200 B
67.	623007	WAILUKU ELEMENTARY SCHOOL, MAUI				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		IMPROVEMENTS.					
		DESIGN			175		
		CONSTRUCTION				2,815	
		EQUIPMENT				32	
		TOTAL FUNDING	AGS		175 B		2,847 B
68.	631001	WAILUKU II ELEMENTARY SCHOOL, MAUI					
		PLANS FOR EIS; SITE SELECTION; MASTER PLANS.					
		PLANS			200		
		TOTAL FUNDING	AGS		200 B		B
69.	631002	WAILUKU II ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				375	
		TOTAL FUNDING	AGS			375 B	
70.	714001	WAIMEA CANYON ELEMENTARY AND INTERMEDIATE SCHOOL, KAUAI					
		CONSTRUCTION FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			1,000		
		TOTAL FUNDING	AGS		1,000 B		B
71.	528005	WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B
72.	712008	WAIMEA HIGH SCHOOL, KAUAI					
		DESIGN FOR CLASSROOMS OR RENOVATION OF CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B
73.	535004	WEST HAWAII ELEMENTARY SCHOOL, HAWAII					
		PLANS AND LAND ACQUISITION FOR WEST HAWAII ELEMENTARY SCHOOL. PROJECT TO INCLUDE SITE ADEQUACY STUDY AND MASTER PLAN.					
		PLANS			125		
		LAND			250		
		TOTAL FUNDING	AGS		375 B		B

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
74.	238001	WHEELER INTERMEDIATE SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; CONVERT BUILDING D TO CLASSROOMS; EQUIPMENT AND APPURTENCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150	B	
75.	KALIHI-WAENA ELEMENTARY SCHOOL, OAHU						
		DESIGN AND CONSTRUCTION FOR THE ENLARGEMENT OF THE PLAYCOURT AREA.					
		DESIGN			1		
		CONSTRUCTION			249		
		TOTAL FUNDING	AGS		250	C	
76.	FARRINGTON HIGH SCHOOL, OAHU						
		DESIGN FOR A VOCATIONAL EDUCATION BUILDING AT FARRINGTON HIGH SCHOOL.					
		DESIGN			100		
		TOTAL FUNDING	AGS		100	C	
77.	WAIPAHU ELEMENTARY SCHOOL, OAHU						
		DESIGN AND CONSTRUCTION FOR THE COMPLETION OF THE HOLLOW TILE WALL ALONG ANIANI PLACE SCHOOL BOUNDARY.					
		DESIGN			13		
		CONSTRUCTION			75		
		TOTAL FUNDING	AGS		88	C	
78.	WAIPAHU INTERMEDIATE SCHOOL, OAHU						
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE PHYSICAL EDUCATION COMPLEX, THREE CLASSROOMS, AND TWO LOCKER/SHOWER ROOMS.					
		DESIGN			62		
		CONSTRUCTION			524		
		TOTAL FUNDING	AGS		586	C	
79.	AIEA HIGH SCHOOL, OAHU						
		DESIGN FOR A SHOWER/LOCKER AND WEIGHT TRAINING ROOMS AT AIEA HIGH SCHOOL'S GYMNASIUM.					
		DESIGN			200		
		TOTAL FUNDING	AGS		200	C	
80.	NOELANI ELEMENTARY SCHOOL, OAHU						
		PLANS AND DESIGN FOR MULTIPURPOSE CLASSROOMS AT NOELANI ELEMENTARY SCHOOL.					
		PLANS			1		
		DESIGN			99		
		TOTAL FUNDING	AGS		100	C	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
81.		ALIIOLANI ELEMENTARY SCHOOL, OAHU				
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF IDENTIFIED ASBESTOS MATERIALS IN THE SCHOOL.				
		DESIGN			1	
		CONSTRUCTION			226	
		TOTAL FUNDING	AGS		227 C	C
82.		KAHUKU HIGH SCHOOL, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM PILOT PROJECT AT KAHUKU HIGH SCHOOL.				
		DESIGN			1	
		CONSTRUCTION			73	
		EQUIPMENT			1	
		TOTAL FUNDING	AGS		75 C	C
83.		WAIAKEA ELEMENTARY SCHOOL, HAWAII				
		CONSTRUCTION FOR A SIX CLASSROOM BUILDING AT WAIAKEA ELEMENTARY SCHOOL.				
		CONSTRUCTION			2,000	
		TOTAL FUNDING	AGS		2,000 C	C
84.		KAUAI ENVIRONMENTAL EDUCATION FACILITY/ CAMP, KAUAI				
		PLANS AND DESIGN FOR AN ENVIRONMENTAL EDUCATION FACILITY/CAMP ON KAUAI.				
		PLANS			20	
		DESIGN			130	
		TOTAL FUNDING	AGS		150 C	C
85.	234002	WAIALUA ELEMENTARY SCHOOL, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR AN (8) CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENCES.				
		CONSTRUCTION			2,719	
		EQUIPMENT			32	
		TOTAL FUNDING	AGS		2,751 C	C
86.		KAPAA ELEMENTARY SCHOOL, KAUAI				
		DESIGN AND CONSTRUCTION FOR A COVERED STUDENT PLAYGROUND AREA AND OTHER SAFETY SITE IMPROVEMENTS INCLUDING PAVING THE ENTRY, DROP-OFF, PICK-UP, AND PARKING AREAS.				
		DESIGN			1	
		CONSTRUCTION			449	
		TOTAL FUNDING	AGS		450 C	C

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
87.	KAUAI HIGH SCHOOL, KAUAI						
	DESIGN AND CONSTRUCTION FOR PORTABLE CLASSROOMS AT KAUAI HIGH SCHOOL.						
	DESIGN				1		
	CONSTRUCTION				119		
	TOTAL FUNDING		AGS		120 C		C
88.	KALAHEO ELEMENTARY SCHOOL, KAUAI						
	DESIGN AND CONSTRUCTION FOR A COVERED STUDENT DROP-OFF AREA AND MAKE OTHER SAFETY SITE IMPROVEMENTS.						
	DESIGN				1		
	CONSTRUCTION				149		
	TOTAL FUNDING		AGS		150 C		C
89.	SALT LAKE ELEMENTARY SCHOOL, OAHU						
	DESIGN AND CONSTRUCTION FOR IMPROVEMENTS, EXPANSIONS AND/OR RENOVATIONS TO EXISTING FACILITIES AND GROUNDS.						
	DESIGN				23		
	CONSTRUCTION				150		
	TOTAL FUNDING		AGS		173 C		C
90.	KALIHI ELEMENTARY SCHOOL, OAHU						
	LAND ACQUISITION FOR THE FUTURE EXPANSION OF THE SCHOOL.						
	LAND				800		
	TOTAL FUNDING		AGS		800 C		C
91.	WAIANAE HIGH SCHOOL, OAHU						
	CONSTRUCTION FOR A PRESSROOM, GROUND AND SITE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS.						
	CONSTRUCTION				109		
	TOTAL FUNDING		AGS		109 C		C
91A.	KAHALA ELEMENTARY SCHOOL, OAHU						
	DESIGN AND CONSTRUCTION FOR A FENCE AT KAHALA ELEMENTARY SCHOOL.						
	DESIGN				1		
	CONSTRUCTION				29		
	TOTAL FUNDING		AGS		30 A		A
91B.	KAUAI HIGH AND INTERMEDIATE SCHOOL, KAUAI						
	DESIGN FOR NIGHT LIGHTS FOR THE PARKING LOT AND THE WALKWAY TO THE MUSIC BUILDING AND GYM.						
	DESIGN				70		
	TOTAL FUNDING		AGS		70 A		A

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
91C.	WAIPAHU INTERMEDIATE SCHOOL, OAHU	DESIGN AND CONSTRUCTION FOR A SECOND DOOR TO TWELVE CLASSROOMS IN BUILDING J.				
		DESIGN				6
		CONSTRUCTION				24
		TOTAL FUNDING	AGS		A	30A
91D.	616002 MAUI HIGH SCHOOL, MAUI	DESIGN AND CONSTRUCTION FOR ATHLETIC FIELD WITH STORAGE AND TOILET FACILITIES.				
		DESIGN				1
		CONSTRUCTION				999
		TOTAL FUNDING	AGS		A	1,000 A
91E.	FARRINGTON HIGH SCHOOL, OAHU	DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE PUBLIC ADDRESS SYSTEM AT FARRINGTON HIGH SCHOOL TO A TWO-WAY SYSTEM.				
		DESIGN				1
		CONSTRUCTION				64
		TOTAL FUNDING	AGS		A	65 A
91F.	PAAUULO ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO PORTABLE CLASSROOM BUILDINGS AT PAAUULO ELEMENTARY AND INTERMEDIATE SCHOOL.				
		DESIGN				19
		CONSTRUCTION				184
		EQUIPMENT				1
		TOTAL FUNDING	AGS		A	204 A

## EDN107 - SPECIAL EDUCATION

92. 005 LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOM IMPROVEMENTS

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	7,600	7,954
TOTAL FUNDING	8,000 B	8,354 B

93. 013 LUMP SUM CIP-SPECIAL EDUCATION PROGRAM, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE RENOVATION OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION.

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		DESIGN			50	50
		CONSTRUCTION			250	250
		TOTAL FUNDING	AGS		300 B	300 B

**EDN203 - SCHOOL ADMINISTRATION**

## 94. WAIPAHU INTERMEDIATE, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ADMINISTRATION BUILDING, TO INCLUDE THE DEMOLITION OF THE EXISTING FACILITY.

DESIGN		1	
CONSTRUCTION		1,698	
EQUIPMENT		1	
TOTAL FUNDING	AGS	1,700 C	C

## 96. WHEELER ELEMENTARY SCHOOL, OAHU

DESIGN TO RENOVATE TYPE 4 CLASSROOMS (BLDG. B) INTO AN ADMINISTRATIVE OFFICE AND LIBRARY.

DESIGN		145	
TOTAL FUNDING	AGS	145 C	C

**EDN204 - INSTRUCTIONAL MEDIA**

## 97. KALIHI KAI ELEMENTARY SCHOOL, OAHU

DESIGN AND CONSTRUCTION FOR THE CONVERSION OF THE OLD CAFETERIA INTO A LIBRARY, TO INCLUDE THE REMOVAL OF ASBESTOS IN THE FACILITY.

DESIGN		1	
CONSTRUCTION		799	
TOTAL FUNDING	AGS	800 C	C

## 97A. KALAEHO ELEMENTARY SCHOOL, KAUAI

DESIGN FOR A LIBRARY FACILITY AT KALAEHO ELEMENTARY SCHOOL.

DESIGN		150	
TOTAL FUNDING	AGS	150 A	A

## 97B. KANOELANI ELEMENTARY SCHOOL, OAHU

PLANS AND DESIGN FOR A NEW LIBRARY FACILITY AT KANOELANI ELEMENTARY SCHOOL.

PLANS		30	
DESIGN		200	
TOTAL FUNDING	AGS	230 A	A

## 97C. HILO HIGH SCHOOL, HAWAII

DESIGN FOR EXPANSION, RENOVATION,

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

IMPROVEMENTS, AND APPURTENANCES FOR THE LIBRARY.

DESIGN

TOTAL FUNDING

AGS

80

C

80 C

## EDN305 - SCHOOL FOOD SERVICES

98. LINAPUNI ELEMENTARY SCHOOL, OAHU

DESIGN FOR A NEW CAFETERIORUM AT LINAPUNI ELEMENTARY SCHOOL.

DESIGN

TOTAL FUNDING

AGS

100

100 C

C

99. WILSON ELEMENTARY SCHOOL, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAFETERIORUM IMPROVEMENTS TO INCLUDE, BUT NOT LIMITED TO: CEILING FANS IN THE KITCHEN AND CAFETERIA; INSTALL A NEW LIGHTING SYSTEM; INSTALL A PUBLIC ADDRESS SYSTEM; AND OTHER RELATED IMPROVEMENTS.

PLANS

20

DESIGN

50

CONSTRUCTION

150

EQUIPMENT

20

TOTAL FUNDING

AGS

240 C

C

99A. SUNSET BEACH ELEMENTARY SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA AT SUNSET BEACH ELEMENTARY SCHOOL.

DESIGN

1

CONSTRUCTION

998

EQUIPMENT

1

TOTAL FUNDING

AGS

A

1,000 A

## EDN407 - PUBLIC LIBRARIES

100. 001-2 HAWAII STATE PUBLIC LIBRARY, OAHU

EQUIPMENT FOR THE EXPANSION AND RENOVATION OF THE HAWAII STATE LIBRARY.

EQUIPMENT

1,500

TOTAL FUNDING

AGS

1,500 C

C

101. 037-1 WAIPAHU PUBLIC LIBRARY, OAHU

DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.

DESIGN

200

TOTAL FUNDING

AGS

200 C

C

**ACT 300**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
102.	044-1	NANAKULI PUBLIC LIBRARY, OAHU					
		PLANS FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		PLANS					
		TOTAL FUNDING	AGS			100	
						100 C	
							C
103.	059-3	KIHEI PUBLIC LIBRARY, MAUI					
		PLANS AND DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		PLANS				1	
		DESIGN				149	
		TOTAL FUNDING	AGS			150	
						150 C	
							C
104.	070-4	HILO LIBRARY EXPANSION, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR EXPANSION OF THE HILO PUBLIC LIBRARY.					
		CONSTRUCTION				200	
		EQUIPMENT				250	
		TOTAL FUNDING	AGS			450	
						450 C	
							C
105.	085-11	LUMP SUM CIP-ASBESTOS ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ASBESTOS ABATEMENT IN PUBLIC LIBRARIES.					
		DESIGN				50	
		CONSTRUCTION				500	
		TOTAL FUNDING	AGS			550	
						550 C	
							C
106.	800-01	LUMP SUM CIP-ARCHITECTURAL BARRIERS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER CORRECTIONS.					
		DESIGN				641	
		CONSTRUCTION				1,359	
		TOTAL FUNDING	AGS			2,000	
						2,000 C	
							C
107.	800-03	LUMP SUM CIP-ENVIRONMENTAL CONTROLS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF ENVIRONMENTAL CONTROLS TO BUILDINGS AND LIBRARY SITES.					
		DESIGN				100	
		CONSTRUCTION				400	
		TOTAL FUNDING	AGS			500	
						500 C	
							C
108.	800-07	LUMP SUM CIP-SITE SELECTION MASTER PLAN, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR SITE SELECTION MASTER PLANNING AND DAGS ASSISTANCE FUNDS.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		PLANS		100		
		LAND		100		
		TOTAL FUNDING	AGS	200	C	
109.	800-08	LUMP SUM CIP-FIRE PROTECTION SYSTEM, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRE PROTECTION SYSTEMS.				
		PLANS		30		
		DESIGN		100		
		CONSTRUCTION		500		
		EQUIPMENT		20		
		TOTAL FUNDING	AGS	650	C	
110.	800-10	LUMP SUM CIP-COUNTY BUILDING REQUIREMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR REQUIREMENTS BY COUNTIES TO OBTAIN BUILDING PERMITS.				
		DESIGN		50		
		CONSTRUCTION		200		
		TOTAL FUNDING	AGS	250	C	
111.	900-21	LIHUE PUBLIC LIBRARY-FACILITY IMPROVEMENTS, KAUAI				
		DESIGN FOR A REVISED PHYSICAL LAYOUT IN THE LIBRARY TO ALLEVIATE CRAMPED WORK AREAS, READING AREAS, BOOK SHELVES, AND OFFICE AREAS.				
		DESIGN		45		
		TOTAL FUNDING	AGS	45	C	
112.	800-02	LUMP SUM CIP-MINOR IMPROVEMENTS, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR IMPROVEMENTS TO BUILDINGS AND LIBRARY SITES.				
		PLANS		30		
		DESIGN		100		
		CONSTRUCTION		506		
		EQUIPMENT		20		
		TOTAL FUNDING	AGS	656	C	
113.		KOHALA PUBLIC LIBRARY, HAWAII				
		PLANS FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.				
		PLANS		100		
		TOTAL FUNDING	AGS	100	C	
114.		HANAPEPE PUBLIC LIBRARY, KAUAI				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AN AIR				

**ACT 300**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		CONDITIONING SYSTEM.				
		DESIGN			1	
		CONSTRUCTION			178	
		EQUIPMENT			1	
		TOTAL FUNDING	AGS		180	C
		<b>UOH101 - INSTRUCTION - UOH, MANOA</b>				
115.	078	UHM, SCHOOL OF ARCHITECTURE/PARKING FACILITIES, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES FOR THE SCHOOL OF ARCHITECTURE AND ADJOINING PARKING FACILITIES.				
		DESIGN			50	
		CONSTRUCTION			1,042	
		EQUIPMENT			522	
		TOTAL FUNDING	AGS		1,614	C
116.	085	UHM, CENTER FOR HAWAIIAN STUDIES, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES FOR THE HAWAIIAN STUDIES PROGRAM.				
		DESIGN			336	34
		CONSTRUCTION			3,928	2,584
		EQUIPMENT				372
		TOTAL FUNDING	AGS		4,264	C
117.	088	UHM, WIST HALL RENOVATIONS, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES FOR THE COLLEGE OF EDUCATION.				
		DESIGN			55	
		CONSTRUCTION			1	
		EQUIPMENT			685	
		TOTAL FUNDING	AGS		741	C
118.	092	UHM, PACIFIC OCEAN SCIENCE AND TECHNOLOGY CENTER, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR INSTRUCTIONAL AND RESEARCH FACILITIES FOR THE PACIFIC OCEAN SCIENCE AND TECHNOLOGY PROGRAMS. ALSO, RENOVATION OF FACILITIES FOR PROGRAMS AFFECTED BY DEMOLITION AND SITE PREPARATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION			18,901	
		EQUIPMENT			6,000	
		TOTAL FUNDING	AGS		18,901	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
119.	097	UHM, WEBSTER AND SPALDING HALLS/SCHOOL OF NURSING RENOVATIONS, PHASE I, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES FOR THE SCHOOL OF NURSING AND OTHER ACADEMIC PROGRAMS.				
		DESIGN		54		
		CONSTRUCTION		7,618		
		EQUIPMENT		750		
		TOTAL FUNDING	AGS	8,422	C	
120.	P00080	UHM, AGRICULTURAL SCIENCE FACILITIES, PHASE III, OAHU				
		DESIGN AND EQUIPMENT FOR FACILITIES FOR THE COLLEGE OF TROPICAL AGRICULTURE AND HUMAN RESOURCES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		1,554		
		EQUIPMENT		3,600		
		TOTAL FUNDING	AGS	2,266	C	
			AGS	2,888	N	
121.	066	UHM, KENNEDY THEATRE ADDITION/PARKING STRUCTURE, OAHU				
		DESIGN FOR AN ADDITION TO KENNEDY THEATRE AND A PARKING STRUCTURE.				
		DESIGN		750		
		TOTAL FUNDING	AGS	750	C	
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 IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION			16,000	
		TOTAL FUNDING	AGS		11,000	C
			AGS		5,000	N

## UOH102 - ORGANIZED RESEARCH - UOH, MANOA

123. 171 UHM, SCHOOL OF MEDICINE RENOVATION, OAHU

DESIGN AND CONSTRUCTION FOR THE RENOVATION OF LABORATORIES REQUIRED BY THE NUCLEAR REGULATORY COMMISSION (NRC)

**ACT 300**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
AT THE BIOMEDICAL SCIENCES BUILDING AND AT LEAHI HOSPITAL.							
		DESIGN				20	
		CONSTRUCTION				490	
		TOTAL FUNDING	AGS			510 C	
124.	691	UHM, WAIALEE LIVESTOCK RESEARCH CENTER, SEWAGE SYSTEM, OAHU					C
DESIGN AND CONSTRUCTION OF A SECOND OXIDATION POND, REHABILITATION OF THE EXISTING POND AND OTHER NECESSARY REPAIRS TO PROVIDE A SEWAGE DISPOSAL SYSTEM THAT MEETS HEALTH CODE REQUIREMENTS.							
		DESIGN				115	
		CONSTRUCTION				1,767	
		TOTAL FUNDING	AGS			1,882 C	
125.	694	UHM, EXPERIMENT STATIONS - FUEL STORAGE TANKS, STATEWIDE					C
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF FUEL STORAGE TANKS.							
		DESIGN				99	
		CONSTRUCTION				848	
		EQUIPMENT				60	
		TOTAL FUNDING	AGS			1,007 C	
126.	532	UHM, MKO, HEADQUARTER FACILITY, HAWAII					C
PLANS FOR A NEW HEADQUARTER FACILITY IN HILO FOR OBSERVATORY PERSONNEL.							
		PLANS				252	
		TOTAL FUNDING	UOH			252 C	
126A.	UHM, COCONUT ISLAND RESEARCH FACILITY, OAHU						C
PLANS AND LAND ACQUISITION FOR THE ACQUISITION OF COCONUT ISLAND TO BE USED AS A RESEARCH FACILITY.							
		PLANS				1	
		LAND				49	
		TOTAL FUNDING	UOH			50 C	
<b>UOH104 - ACADEMIC SUPPORT - UOH, MANOA</b>							
127.	181	UHM, KRAUSS HALL RENOVATIONS, OAHU					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF OLD KRAUSS HALL.							
		DESIGN				135	
		CONSTRUCTION				1,270	
		EQUIPMENT				130	
		TOTAL FUNDING	AGS			1,535 B	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
128.	178	UHM, HAMILTON LIBRARY, PHASE III AND RENOVATION OF EXISTING LIBRARY, OAHU					
DESIGN FOR HAMILTON LIBRARY, PHASE III AND THE RENOVATION OF EXISTING LIBRARY.							
	DESIGN				220		2,800
	TOTAL FUNDING		AGS		A		2,800 A
			AGS		220 C		C
<b>UOH105 - STUDENT SERVICES - UOH, MANOA</b>							
129.	287	UHM, STUDENT SERVICES CENTER, OAHU					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE STUDENT SERVICES CENTER TO ACCOMMODATE STUDENT SERVICES AND ADMINISTRATIVE PERSONNEL HOUSED IN TEMPORARY AND SEPARATE FACILITIES ON THE MANOA CAMPUS.							
	DESIGN				153		176
	CONSTRUCTION				4,357		
	EQUIPMENT					1	
	TOTAL FUNDING		AGS		4,510 C		177 C
130.	M84	UHM, HPER - SPECIAL EVENTS COMPLEX, OAHU					
PLANS, DESIGN, AND CONSTRUCTION FOR THE HPER - SPECIAL EVENTS COMPLEX FACILITY, TRAFFIC CIRCULATION, AND OTHER INFRASTRUCTURE IMPROVEMENTS. FUNDS MAY ALSO BE USED FOR THE DEMOLITION OF EXISTING FACILITIES AND RELOCATION AND RENOVATION FOR PROGRAMS AFFECTED BY THIS PROJECT.							
	PLANS				581		
	DESIGN				3,376		
	CONSTRUCTION				1,027		
	TOTAL FUNDING		AGS		4,984 C		C
130A.	UHM, STUDENT HOUSING FACILITIES, OAHU						
DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS TO STUDENT HOUSING COMPLEXES.							
	DESIGN				100		
	CONSTRUCTION				4,900		
	TOTAL FUNDING		UOH		5,000 E		E
<b>UOH106 - INSTITUTIONAL SUPPORT - UOH, MANOA</b>							
131.	M71	UHM, UNIVERSITY CLUB, OAHU					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FACILITY TO PROMOTE INTERACTION BETWEEN UNIVERSITY STAFF AND MEMBERS OF							

**ACT 300**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		THE COMMUNITY.				
		DESIGN		1		20
		CONSTRUCTION		2,347		1
		EQUIPMENT				224
		TOTAL FUNDING	AGS	2,348 R		245 R
132.	M73	UHM, ELECTRICAL POWER DISTRIBUTION SYSTEM, PHASE II, OAHU				
		DESIGN AND CONSTRUCTION FOR THE NECESSARY ELECTRICAL INFRASTRUCTURE AS DETERMINED BY THE ELECTRICAL POWER DISTRIBUTION MASTER PLAN. ALSO, TO INCLUDE TELECOMMUNICATIONS INFRASTRUCTURE AS REQUIRED.				
		DESIGN		1		
		CONSTRUCTION		4,999		
		TOTAL FUNDING	AGS	5,000 C		
133.	277	UHM, REMOVAL, ENCAPSULATION AND ENCLOSURE OF ASBESTOS MATERIAL, OAHU				
		DESIGN AND CONSTRUCTION FOR THE RENOVATIONS TO UNIVERSITY BUILDINGS WITH IDENTIFIED ASBESTOS HAZARDS.				
		DESIGN		50		49
		CONSTRUCTION		919		919
		TOTAL FUNDING	AGS	969 C		968 C
134.	279	UHM, REPLACEMENT OF TRANSFORMERS WITH PCB, OAHU				
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TRANSFORMERS WITH PCB, A RECOGNIZED CARCINOGEN, TO MEET EPA REGULATIONS.				
		DESIGN		57		57
		CONSTRUCTION		1,134		691
		TOTAL FUNDING	AGS	1,191 C		748 C
135.	280	UHM, MODIFICATION 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 AND OTHER CODE REQUIREMENTS.				
		DESIGN		230		
		CONSTRUCTION		4,060		
		TOTAL FUNDING	AGS	4,290 C		
136.	M-79	UHM, TELECOMMUNICATIONS INFRASTRUCTURE NETWORK, OAHU				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UNIFORM CABLE DISTRIBUTION SYSTEM OF OUTSIDE PLANT AND BUILDING WIRING AND FIBER-OPTIC CABLES				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
FOR VOICE, VIDEO, AND DATA TRANSMISSIONS.						
		PLANS			1	
		DESIGN			1	
		CONSTRUCTION		11,997		4,136
		EQUIPMENT			1	
		TOTAL FUNDING	UOH	12,000	E	4,136 E

## 137. M72 UHM, FOOD SERVICE FACILITY, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF THE HAMILTON SNACK BAR TO MAKE WAY FOR THE CONSTRUCTION OF HAMILTON LIBRARY, PHASE III ON MAILE WAY. FUNDING FOR THIS PROJECT WILL BE MATCHED BY THE MARRIOTT EDUCATION SERVICES.

DESIGN		342	
CONSTRUCTION		5,282	
EQUIPMENT		754	
TOTAL FUNDING	UOH	3,189 C	C
	UOH	3,189 R	R

## 137A. 233 UHM, PARKING STRUCTURE, PHASE IIA AND IIB, OAHU

DESIGN AND CONSTRUCTION FOR THE SECOND PARKING STRUCTURE ON THE MAKAI CAMPUS, TO INCLUDE TRANSPORTATION SERVICES FACILITIES, THE RENOVATION OF PHASE I, TRAFFIC CIRCULATION, AND OTHER INFRASTRUCTURE IMPROVEMENTS. FUNDS MAY ALSO BE USED FOR THE DEMOLITION OF EXISTING FACILITIES, RELOCATION AND RENOVATION FOR PROGRAMS Affected BY THIS PROJECT.

DESIGN		1,500	
CONSTRUCTION		21,000	
TOTAL FUNDING	AGS	22,500 C	C

## UOH215 - STUDENT SERVICES - UOH, HILO

## 138. 411A UHH, STUDENT HOUSING FACILITIES, PHASE IA, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COVERED PLAZA.

DESIGN		15	
CONSTRUCTION		160	
EQUIPMENT		10	
TOTAL FUNDING	AGS	185 C	C

## UOH216 - INSTITUTIONAL SUPPORT - UOH, HILO

## 139. 448 UHH, CAMPUS LIGHTING IMPROVEMENTS, HAWAII

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

DESIGN AND CONSTRUCTION FOR CAMPUS  
LIGHTING IMPROVEMENTS.

DESIGN	50
CONSTRUCTION	350
TOTAL FUNDING	400

140. 440 UHH, UNIVERSITY PARK, HAWAII

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.

DESIGN	500
CONSTRUCTION	1,282
TOTAL FUNDING	1,782

C

C

**UOH301 - INSTRUCTION - HONOLULU COMMUNITY COLLEGE**

141. A25 HCC, HUMAN RESOURCES LABORATORY AND  
SITE IMPROVEMENTS, PHASE I, OAHU

DESIGN AND CONSTRUCTION FOR NEW  
CLASSROOMS, LABORATORIES, FACULTY  
OFFICES AND SUPPORT FACILITIES FOR THE  
HUMAN RESOURCES PROGRAM, INCLUDING EARLY  
CHILDHOOD EDUCATION. ALSO, FOR SITE  
WORK FOR THE HUMAN RESOURCES PROGRAM,  
EXPANSION OF PARKING AREA NO. 4,  
DEMOLITION, CLEARING, GRADING,  
LANDSCAPING, ROADWAYS, WALKWAYS,  
LIGHTING, AND UTILITIES.

DESIGN	274
CONSTRUCTION	510
TOTAL FUNDING	784

C

C

**UOH311 - INSTRUCTION - KAPIOLANI COMMUNITY COLLEGE**

142. B-102 KDH, NEW CAMPUS DEVELOPMENT, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR NEW FACILITIES INCLUDING SITE WORK,  
UTILITIES, ROADWAYS AND BUILDINGS, AND  
OFF-SITE ROADWAY IMPROVEMENTS, CHILD  
CARE FACILITIES, AND COMMUNITY SERVICES  
FACILITIES.

DESIGN	1
CONSTRUCTION	17,935
EQUIPMENT	1
TOTAL FUNDING	17,937

C

**UOH331 - INSTRUCTION-WINDWARD COMMUNITY COLLEGE**

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
143.	W-100	WIN, NEW CAMPUS DEVELOPMENT, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES, INCLUDING SITE WORK, UTILITIES, BUILDINGS, AND RENOVATIONS TO EXISTING FACILITIES (INCLUDING LOKAI AND SCIENCE BUILDINGS).				
		DESIGN		310		
		CONSTRUCTION			12,052	
		EQUIPMENT			206	
		TOTAL FUNDING	AGS			12,258
			AGS	310 C	A	A C

## UOH501 - INSTRUCTION-MAUI COMMUNITY COLLEGE

144. M-100 MAU, NEW CAMPUS DEVELOPMENT, PHASE I, (SITE/INFRASTRUCTURE IMPROVEMENTS), MAUI

DESIGN AND CONSTRUCTION FOR SITE AND INFRASTRUCTURE IMPROVEMENTS INCLUDING DEMOLITION, CLEARING, GRADING, LANDSCAPING, ROADWAYS, WALKWAYS, LIGHTING AND UTILITIES. ALSO, FOR THE CONSTRUCTION OF BUILDING J.

DESIGN			1
CONSTRUCTION			14,053
TOTAL FUNDING	AGS	C	14,054 C

## UOH901 - ACADEMIC SUPPORT-UOH, SYSTEM-WIDE SUPPORT

145. 503 SYS, LONG RANGE DEVELOPMENT PLANS, STATEWIDE

PLANS FOR LONG RANGE DEVELOPMENT PLANS, INCLUDING UPDATES OF LONG RANGE DEVELOPMENT PLANS FOR VARIOUS UNIVERSITY CAMPUSES.

PLANS		900	
TOTAL FUNDING	UOH	900 C	C

## UOH903 - INSTITUTIONAL SPPT-UOH, SYSTEM-WIDE SPPT

146. 531 SYS, MODIFICATIONS FOR THE HANDICAPPED, STATEWIDE

PLANS AND DESIGN FOR MODIFICATIONS FOR THE HANDICAPPED TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES.

PLANS		500	
DESIGN		500	
TOTAL FUNDING	AGS	1,000 C	500 C

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O

**UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT**

147. C-03 CCS, REMOVAL/ENCAPSULATION AND ENCLOSURE OF ASBESTOS MATERIALS, STATEWIDE

PLANS FOR THE RENOVATION OF COMMUNITY COLLEGE BUILDINGS TO REMOVE, ENCAPSULATE, AND/OR ENCLOSE ASBESTOS MATERIALS.

PLANS	150
TOTAL FUNDING	150C

AGS
-----

**H. CULTURE AND RECREATION****UOH881 - AQUARIA**

1. 577 UHM, WAIKIKI AQUARIUM REVITALIZATION, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE NEW OCEAN SCIENCE CENTER, ADDITIONS AND IMPROVEMENTS TO EXISTING FACILITIES INCLUDING PUBLIC AMENITIES, UTILITIES AND SITE IMPROVEMENTS, AND OTHER RELATED WORK.

PLANS	200
DESIGN	1
CONSTRUCTION	409
TOTAL FUNDING	610C

AGS
-----

490
490C

**CCA701 - HAWAII PUBLIC BROADCASTING**

2. HPBA05 HPBA INTERACTIVE, CLOSED CIRCUIT EDUCATIONAL TELEVISION SYSTEM, STATEWIDE

LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN HPBA STATEWIDE, INTERACTIVE, CLOSED CIRCUIT, EDUCATIONAL TELEVISION SYSTEM USING "INSTRUCTIONAL TELEVISION FIXED SERVICE" (ITFS) FREQUENCIES RESERVED FOR EDUCATIONAL USE BY THE FEDERAL COMMUNICATIONS COMMISSION.

LAND	50	1
DESIGN	15	1
CONSTRUCTION	85	812
EQUIPMENT	30	10
TOTAL FUNDING	180C	824C

AGS
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3. HPBA07 HPBA INTERACTIVE, CLOSED CIRCUIT, TELEVISION SYSTEM, STATEWIDE

LAND ACQUISITION AND DESIGN FOR HPBA STATEWIDE, INTERACTIVE, CLOSED CIRCUIT, EDUCATIONAL TELEVISION SYSTEM USING

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		"INSTRUCTIONAL TELEVISION FIXED SERVICE" (ITFS) FREQUENCIES RESERVED FOR EDUCATIONAL USE BY THE FEDERAL COMMUNICATIONS COMMISSION. THIS PROJECT WILL EXTEND THE HITS COVERAGE IN HAWAII AND TO WAIANAE.				

LAND  
DESIGN  
TOTAL FUNDING

20  
200  
220 C

C

4. HPBA08 HPBA INTERACTIVE CLOSED CIRCUIT  
EDUCATIONAL TELEVISION SYSTEM, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR ADDITION TO INTERACTIVE CLOSED  
CIRCUIT, EDUCATIONAL TELEVISION SYSTEM  
USING "INSTRUCTIONAL TELEVISION FIXED  
SERVICE" (ITFS) FREQUENCIES RESERVED FOR  
EDUCATIONAL USE BY THE FEDERAL  
COMMUNICATIONS COMMISSION.

DESIGN	120	50
CONSTRUCTION	423	
EQUIPMENT	600	400
TOTAL FUNDING	1,143 C	450 C

## AGS881 - PERFORMING &amp; VISUAL ARTS EVENTS

- 4A. 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.

(GRANT-IN-AID)

CONSTRUCTION	3,000
TOTAL FUNDING	3,000 C

- 4B. PALACE THEATRE, HILO, HAWAII

DESIGN AND CONSTRUCTION FOR THE  
RESTORATION, RENOVATIONS, AND  
IMPROVEMENTS TO THE PALACE THEATRE TO BE  
USED AS A MULTIPURPOSE PERFORMING ARTS  
CENTER IN HILO.

DESIGN	30
CONSTRUCTION	350
TOTAL FUNDING	380 C

## LNR802 - HISTORIC PRESERVATION

5. A31 KONA SATELLITE MUSEUM FACILITY, HAWAII

PLANS FOR A SATELLITE MUSEUM FACILITY  
IN KONA.

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		PLANS		75		
		TOTAL FUNDING	LNR	75 C		C
6.	A30	MANAGEMENT AND PRESERVATION OF THE HULA PLATFORM AND ENVIRONS AT KE'E, KAUAI				
		PLANS, DESIGN, AND CONSTRUCTION FOR THE IMPLEMENTATION OF A JOINT MANAGEMENT PLAN AND THE REHABILITATION OF BUILDINGS ON THE PREMISES.				
		PLANS		1		
		DESIGN		74		
		CONSTRUCTION		225		
		TOTAL FUNDING	LNR	300 C		C
6A.	WAIALUA COURTHOUSE, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND RESTORATION OF THE WAIALUA COURTHOUSE AND THE SURROUNDING GROUNDS.				
		DESIGN		1		
		CONSTRUCTION		458		
		EQUIPMENT		1		
		TOTAL FUNDING	LNR	C		460 C
		<b>LNR804 - FOREST RECREATION</b>				
7.	D11	"NIKE" SITE RESTORATION, OAHU				
		CONSTRUCTION FOR PROJECT WHICH INVOLVES THE RESTORATION OF TWO BUILDINGS AT THE "NIKE" SITE FOR THE PURPOSE OF ENVIRONMENTAL EDUCATION WITHIN THE MOKULEIA FOREST RESERVE.				
		CONSTRUCTION		200		
		TOTAL FUNDING	LNR	200 C		C
8.	D02K	FOREST TRAILS AND ACCESS, WAIOLI-HANALEI, KAUAI				
		PLANS FOR TRAILS ON AN INCREMENTAL BASIS. TRAILS TO BE AT LEAST THREE FEET WIDE AND CLEARED FOR EASY ACCESS. TRAILS PROVIDE: REMOTE OUTDOOR RECREATION OPPORTUNITIES, ACCESS FOR CONTROL OF FIRE AND PESTS, ROUTE FOR RESCUE OPERATIONS, ETC.				
		PLANS		125		
		TOTAL FUNDING	LNR	125 C		C
9.	D61	ACQUISITION OF KA'IWA RIDGE, OAHU				
		LAND ACQUISITION FOR KA'IWA RIDGE IN LANIKAI TO BE INCORPORATED INTO THE NA ALA HELE TRAIL SYSTEM.				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		LAND			500		
		TOTAL FUNDING	LNR		500 C		C
<b>LNR806 - HERITAGE &amp; RECREATION PARKS</b>							
10.	F11	IOLANI PALACE RESTORATION, OAHU					
		DESIGN AND CONSTRUCTION FOR MAJOR RECONSTRUCTION OF PALACE BASEMENT, RELOCATION OF MAINTENANCE FACILITIES AND OTHER MAJOR REPAIR OR REPLACEMENT WORK.					
		DESIGN			60		
		CONSTRUCTION			250		
		TOTAL FUNDING	LNR		310 C		C
11.	F13	LAPAKAHI STATE HISTORICAL PARK, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF LAPAKAHI AHUPUA'A ARCHAEOLOGICAL FEATURES WHICH OFFERS AN OPPORTUNITY FOR PUBLIC INTERPRETATION OF EARLY HAWAIIAN FISHING AND FARM SYSTEM. DEVELOPMENT OF PARK SERVICES INCLUDING WATER SYSTEM IMPROVEMENTS AND A BASEYARD FACILITY.					
		PLANS			50		
		DESIGN			50		
		CONSTRUCTION			200		
		TOTAL FUNDING	LNR		300 C		C
12.	F14	KEALAKEKUA BAY, HAWAII					
		PLANS FOR THE CONTINUED PLANNING, RESEARCH AND DESIGN TOGETHER WITH INCREMENTAL PARK DEVELOPMENT OF A MAJOR HISTORIC PARK INVOLVING A MOST IMPORTANT HISTORIC AND ARCHAEOLOGICAL PLACE IN THE STATE.					
		PLANS			250		
		TOTAL FUNDING	LNR		250 C		C
13.	F15	ROYAL MAUSOLEUM - NUUANU PETROGLYPHS, OAHU					
		CONSTRUCTION FOR RESEARCH OF SITE; TO INCLUDE: INTERPRETIVE VALUES, RESTORATION OF CRYPT, LANDSCAPING, REPLACEMENT OF CARETAKER'S HOUSE AND RESTROOMS, IMPROVEMENTS OF LANDSCAPING AND DRIVEWAY. TO BE FOLLOWED BY AN ADDITIONAL DEVELOPMENT ALONG NUUANU STREAM.					
		CONSTRUCTION			400		
		TOTAL FUNDING	LNR		400 C		C

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
14.	F40	LAIE POINT STATE PARK, OAHU					
		LAND ACQUISITION FOR DEVELOPMENT OF A STATE PARK AT LAIE POINT.					
		LAND					
		TOTAL FUNDING	LNR				20 20 C
15.	F46	KOKEE/WAIMEA CANYON COMPLEX, KAUAI					
		PLANS FOR CONTINUED PARK DEVELOPMENT AND REPLACEMENT OF OLDER FACILITIES, MASTER PLAN FOR THE IMPROVEMENT AND MANAGEMENT OF THE PARK, AND THE ADDITION OF INTERPRETIVE FACILITIES.					
		PLANS					
		TOTAL FUNDING	LNR				100 100 C
16.	F57	KAHANA VALLEY STATE PARK, OAHU					
		CONSTRUCTION FOR THE INCREMENTAL DEVELOPMENT OF THE PARK, INCLUDING THE DEVELOPMENT OF A "LIVING PARK" WITH VALLEY RESIDENTS. PLAN AND RESEARCH IN COOPERATION WITH THE KAHANA ADVISORY COUNCIL AND OTHERS.					
		CONSTRUCTION					
		TOTAL FUNDING	LNR				3,000 3,000 C
17.	F70	SAND ISLAND STATE RECREATION AREA, OAHU					
		DESIGN FOR PARK IMPROVEMENTS AND RECONSTRUCTION OF EXISTING FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					
		TOTAL FUNDING	LNR				75 75 C
18.	F73	MAKENA-LAPEROUSE STATE PARK, MAUI					
		DESIGN AND CONSTRUCTION FOR THE INCREMENTAL ACQUISITION OF LAND AS PER CONCEPTUAL PLAN AND INCREMENTAL DEVELOPMENT AS DETERMINED BY DEVELOPMENT PLAN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					
		CONSTRUCTION					
		TOTAL FUNDING	LNR				100 500 500 C
19.	F74	HAENA BEACH STATE PARK, KAUAI					
		PLANS FOR INCREMENTAL DEVELOPMENT INCLUDING PLANNING, RESEARCH, DESIGN AND CONSTRUCTION OF FACILITIES AND INTERPRETIVE PROGRAMS. POSSIBLE LAND ACQUISITION FOR PARK EXPANSION.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		PLANS		100		
		TOTAL FUNDING	LNR	100 C		C
20.	F75	HAPUNA BEACH STATE PARK, HAWAII				
		DESIGN AND CONSTRUCTION FOR LAND ACQUISITION OF WAILEA BAY AREA, AS PER MASTER PLAN. INCREMENTAL DEVELOPMENT AND RECONSTRUCTION OF UTILITY INFRASTRUCTURE, AND OTHER RELATED IMPROVEMENTS FOR RECREATIONAL DEVELOPMENT.				
		DESIGN		50		
		CONSTRUCTION		600		500
		TOTAL FUNDING	LNR	650 C		500 C
21.	F78	POLIHALE STATE PARK, KAUAI				
		CONSTRUCTION FOR PLANNING AND RESEARCH TO DETERMINE FUTURE MANAGEMENT AND DEVELOPMENT OF PARK. RENOVATION OF EXISTING FACILITIES AND INCREMENTAL DEVELOPMENT OF ADDITIONAL FACILITIES AS DETERMINED BY DEVELOPMENT PLANS. ROAD RECONSTRUCTION IN FY 1991-92 TO CORRECT A SAFETY PROBLEM.				
		CONSTRUCTION		350		
		TOTAL FUNDING	LNR	350 C		C
22.	F88	KAIAKA POINT, OAHU				
		CONSTRUCTION FOR DEVELOPMENT OF BEACH PARK AT KAIAKA AS PER MASTER PLAN. INCLUDES OFF SITE WATER SYSTEM DEVELOPMENT.				
		CONSTRUCTION		385		
		TOTAL FUNDING	LNR	385 C		C
23.	H09	LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE				
		PLANS, DESIGN, AND CONSTRUCTION FOR MINOR ADDITIONS, RENOVATIONS AND REPLACEMENTS TO PARK GROUNDS AND FACILITIES INCLUDING FACILITIES TO AID THE HANDICAPPED.				
		PLANS		75		75
		DESIGN		200		200
		CONSTRUCTION		1,000		1,000
		TOTAL FUNDING	LNR	1,275 C		1,275 C
24.	H18	KEOLONAHIHI (KAMOA) POINT, HAWAII				
		PLANS FOR RESEARCH, STABILIZATION AND RESTORATION OF PARK FEATURES FOLLOWED BY INTERPRETIVE PROGRAM AND FACILITY DEVELOPMENT. POSSIBLE ACQUISITION OF ADJOINING SMALL PARCELS OF LAND.				

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## **CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS			100		
		TOTAL FUNDING	LNR		100 C		C
25.	H68	MAKAPUU POINT, OAHU					
		LAND ACQUISITION FOR A SHORELINE PARK FROM HANAUMA BAY TO MAKAPUU POINT, MAKAI OF KALANIANAOLE HIGHWAY. INCREMENTAL DEVELOPMENT OF 40+ EXISTING ACRES AT MAKAPUU POINT.					
		LAND			30		
		TOTAL FUNDING	LNR		30 C		C
26.	H80	HANALEI RECREATIONAL PIER, HANALEI, KAUAI					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF HANALEI RECREATIONAL PIER.					
		DESIGN			10		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	LNR		1,010 C		C
27.	H87	MAHAIULA/KUA BAY AREA, HAWAII					
		PLANS FOR CONCEPTUAL PLANS OF POTENTIAL STATE PARKS TO DETERMINE FEASIBILITY, SIZE AND DEVELOPMENT NEEDS. LAND APPRAISAL FOR ACQUISITION OF PRIVATE LAND.					
		PLANS			250		
		TOTAL FUNDING	LNR		250 C		C
28.	H91	WAIOLA STATE PARK, OAHU					
		PLANS 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			100		
		TOTAL FUNDING	LNR		100 C		C
<b>TRN801 - OCEAN-BASED RECREATION</b>							
29.	01K	NAWILIWILI BOAT HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF WATERLINE, ADDITIONAL BERTHING FACILITIES, LOADING DOCK, CHARTER BOAT FACILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN			170		
		CONSTRUCTION			1,220		
		TOTAL FUNDING	TRN		1,390 D		D

## CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS  
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF ELECTRICAL OUTLETS, CORRECT SUBSIDENCE, PAVE PARKING AREAS, LOADING DOCKS, DINGHY DOCKS, EXPAND ADMINISTRATION BUILDING AND OTHER IMPROVEMENTS.					
		DESIGN		200			
		CONSTRUCTION		675		600	
		TOTAL FUNDING	TRN	875D		600D	
31.	01S	IMPROVEMENTS TO BOATING FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO EXISTING BOAT HARBORS AND BOAT REFUGE AREAS.					
		DESIGN		30		30	
		CONSTRUCTION		140		140	
		TOTAL FUNDING	TRN	170D		170D	
32.	02O	ALA WAI BOAT HARBOR IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR LANDSCAPING, EXPAND COMFORT STATION, IMPROVEMENTS TO TELEPHONE AND ELECTRICAL SYSTEMS, AND OTHER IMPROVEMENTS.					
		DESIGN		110		35	
		CONSTRUCTION		940		200	
		TOTAL FUNDING	TRN	1,050D		235D	
33.	02S	SEWAGE SYSTEM IMPROVEMENTS TO BOATING FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT OF SEWAGE SYSTEMS FOR BOATING FACILITIES AND OTHER IMPROVEMENTS.					
		DESIGN		90		100	
		CONSTRUCTION		1,000		300	
		TOTAL FUNDING	TRN	1,090D		400D	
34.	03M	IMPROVEMENTS TO LAHAINA BOAT HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF NEW LOADING DOCK, DINGHY DOCK, IMPROVED HARBOR ACCESS, WATERLINE/FIRE HYDRANTS AND OTHER IMPROVEMENTS.					
		DESIGN		125			
		CONSTRUCTION		800			
		TOTAL FUNDING	TRN	925D		D	
35.	03S	BOAT LAUNCHING FACILITY PROGRAM, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF BOAT LAUNCHING FACILITIES					

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
THROUGHOUT THE STATE AT EXISTING AND NEW SITES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		DESIGN				75
		CONSTRUCTION		1,235		
		TOTAL FUNDING	TRN	1,235 C		75 C
36.	040	HALEIWA BOAT HARBOR, OAHU				
DESIGN FOR PROVISION OF ELECTRICAL POWER TO PIER 200 AND OTHER IMPROVEMENTS.						
		DESIGN		50		
		TOTAL FUNDING	TRN	50 D		D
37.	050	WAIANAE BOAT HARBOR, OAHU				
DESIGN FOR MARGINAL WHARF, PAVED PARKING, BERTHING FACILITIES AND OTHER IMPROVEMENTS.						
		DESIGN		90		
		TOTAL FUNDING	TRN	90 D		D
38.	05S	PLANNING FOR BOATING FACILITIES, STATEWIDE				
PLANS FOR CONTINUING STUDIES, RESEARCH AND ADVANCED PLANNING OF BOAT HARBORS ON ALL ISLANDS.						
		PLANS		105		
		TOTAL FUNDING	TRN	105 D		D
39.	19H	HONOKOHAU BOAT HARBOR IMPROVEMENTS, HAWAII				
CONSTRUCTION FOR THE PAVEMENT OF ACCESS ROADS AND PARKING, ELECTRICAL OUTLETS, PERIMETER WALKWAY, CONSTRUCT BERTHS, DEVELOP MARITIME INDUSTRIAL SUBDIVISION, CONSTRUCT ADMINISTRATION BUILDING AND OTHER IMPROVEMENTS.						
		CONSTRUCTION		1,100		
		TOTAL FUNDING	TRN	1,100 D		D
40.	300	KEEHI LAGOON IMPROVEMENTS, OAHU				
PLANS FOR ENVIRONMENTAL IMPACT STATEMENT FOR THE DEVELOPMENT OF KEEHI LAGOON AND OTHER IMPROVEMENTS.						
		PLANS		200		
		TOTAL FUNDING	TRN	200 C		C
41.	13M	IMPROVEMENTS TO MAALAEA BOAT HARBOR, MAUI				
DESIGN AND CONSTRUCTION FOR PAVING, ELECTRICAL IMPROVEMENTS, CONSTRUCT HARBOR AGENT'S OFFICE, LOADING DOCK						

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
IMPROVEMENTS AND OTHER IMPROVEMENTS.							
		DESIGN				20	
		CONSTRUCTION				220	
		TOTAL FUNDING	TRN			240D	D
42.	22M	KAHULUI HARBOR BOAT RAMP FACILITY, MAUI					
DESIGN AND CONSTRUCTION TO COMPLETE IMPROVEMENTS FOR THE KAHULUI HARBOR BOAT RAMP FACILITY.							
		DESIGN				5	
		CONSTRUCTION				172	
		TOTAL FUNDING	TRN			177C	C
42A.	KAWAIHAE	SMALL BOAT HARBOR, HAWAII					
DESIGN AND CONSTRUCTION FOR THE NAVIGATIONAL IMPROVEMENTS TO THE NEW KAWAIHAE SMALL BOAT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		DESIGN				50	
		CONSTRUCTION				850	
		TOTAL FUNDING	TRN			900C	C
42B.	MALA	WHARF IMPROVEMENTS, MAUI					
DESIGN AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENT OF MALA WHARF, TO INCLUDE RESTROOMS AND WASH DOWN AREA FOR BOATS.							
		DESIGN				1	
		CONSTRUCTION				149	
		TOTAL FUNDING	TRN			150C	C
AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM							
43.	S200	ALOHA STAD, CORRECT CORRODED CONDITIONS AND OTHER DEFICIENCIES, PHASE I, OAHU					
CONSTRUCTION FOR THE RENOVATION OF CORRODED CONDITIONS AND OTHER DEFICIENCIES INCLUDING ACCESSIBILITY FOR PERSONS WITH DISABILITIES, SAFETY, REMOVAL OF ASBESTOS MATERIALS, AND OTHER MINOR IMPROVEMENTS FOR OPERATIONAL AND SECURITY REQUIREMENTS.							
		CONSTRUCTION				18,000	
		TOTAL FUNDING	AGS			18,000 C	C
44.	S201	ALOHA STAD, CORRECT CORRODED CONDITIONS AND OTHER DEFICIENCIES, PHASE II, OAHU					
DESIGN AND CONSTRUCTION FOR THE RENOVATION OF CORRODED CONDITIONS AND OTHER DEFICIENCIES INCLUDING							

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		ACCESSIBILITY FOR PERSONS WITH DISABILITIES, SAFETY, REMOVAL OF ASBESTOS MATERIALS, AND OTHER MINOR IMPROVEMENTS FOR OPERATIONAL AND SECURITY REQUIREMENTS.				
		DESIGN			1,000	
		CONSTRUCTION				18,000
		TOTAL FUNDING	AGS		B	2,900 B
			AGS		1,000 C	15,100 C
45.	S205	ALOHA STADIUM, LOCKER ROOM IMPROVEMENTS, PHASE II, OAHU				
		DESIGN FOR THE RENOVATION OF LOCKERS INCLUDING SHOWERS, RESTROOMS, FLOORING, ELECTRICAL AND MECHANICAL SYSTEMS, AND OTHER ANCILLARY ROOMS.				
		DESIGN			100	
		TOTAL FUNDING	AGS		100 C	
46.	S207	ALOHA STADIUM, REPLACEMENT OF CHILLER PLANT, OAHU				
		DESIGN FOR THE REPLACEMENT OF CHILLER PLANT FOR THE ADMINISTRATIVE OFFICES, LOCKERS, SCOREBOARD CONTROL AND SOUND AMPLIFIER ROOMS INCLUDING THE REMOVAL OF ASBESTOS MATERIALS.				
		DESIGN			60	
		TOTAL FUNDING	AGS		60 C	
47.	S211	ALOHA STADIUM, SCOREBOARD RENOVATIONS, OAHU				
		EQUIPMENT FOR THE ACQUISITION OF THE SCOREBOARD AND RELATED COMPUTERIZED OPERATING SYSTEM INCLUDING IMPROVEMENTS AND RENOVATIONS.				
		EQUIPMENT			2,000	
		TOTAL FUNDING	AGS		2,000 C	

**I. PUBLIC SAFETY****PSD402 - HALAWA CORRECTIONAL FACILITY**

1. 919304 HALAWA MEDIUM SECURITY FACILITY SUPPORT IMPROVEMENTS, OAHU

CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS THROUGHOUT THE FACILITY AND/OR SATELLITE ADJUNCTS.

CONSTRUCTION	2,950
EQUIPMENT	495
TOTAL FUNDING	3,445 C

C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93

**PSD403 - KULANI CORRECTIONAL FACILITY**

2. 919301 KULANI CORRECTIONAL FACILITY  
IMPROVEMENTS AND RENOVATIONS, HAWAII

DESIGN AND CONSTRUCTION FOR  
IMPROVEMENTS AND RENOVATIONS THROUGHOUT  
THE FACILITY AND/OR ANY SATELLITE  
ADJUNCTS.

DESIGN	100	
CONSTRUCTION		1,387
TOTAL FUNDING	AGS	A

100 C 1,387 A C

**PSD404 - WAIWAIA CORRECTIONAL FACILITY**

3. 919302 WAIWAIA CORRECTIONAL FACILITY  
IMPROVEMENTS AND RENOVATIONS, OAHU

LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION FOR IMPROVEMENTS AND  
RENOVATIONS THROUGHOUT THE FACILITY  
AND/OR ANY SATELLITE ADJUNCTS.

LAND	100	
DESIGN	250	
CONSTRUCTION	2,100	
TOTAL FUNDING	AGS	2,450 C

C

**PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER**

4. 919306 HAWAII COMMUNITY CORRECTIONAL CENTER  
EXPANSION/RENOVATIONS, HAWAII

PLANS, LAND ACQUISITION, AND DESIGN  
FOR NEW STRUCTURES AND SITE IMPROVEMENTS  
AND/OR RENOVATE EXISTING THROUGHOUT THE  
FACILITY AND/OR ANY SATELLITE ADJUNCTS.  
INCLUDES NEW CORRECTIONAL FACILITIES IN  
WEST HAWAII.

PLANS	150	
LAND	150	
DESIGN	350	250
TOTAL FUNDING	AGS	650 C 250 C

- 4A. P9302 HAWAII COMMUNITY CORRECTIONAL CENTER,  
HAWAII

CONSTRUCTION AND EQUIPMENT FOR  
RENOVATIONS TO EXISTING FACILITIES,  
IMPROVEMENTS, ADDITIONAL HOUSING,  
INFRASTRUCTURE, RELATED SPACES, AND/OR  
SATELLITE ADJUNCTS.

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS			3,449 1 3,450 A
4B.		HILO INTAKE SERVICE CENTER, HAWAII			A	
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS FOR THE INTAKE SERVICE CENTER.				
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS			1 51 52 A

**PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER**

5. 919307 MAUI COMMUNITY CORRECTIONAL CENTER  
EXPANSION/RENOVATIONS, MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR NEW STRUCTURES AND IMPROVEMENTS AND  
RENOVATE EXISTING THROUGHOUT THE  
FACILITY AND/OR ANY SATELLITE ADJUNCTS.

DESIGN	300		
CONSTRUCTION		2,500	
EQUIPMENT	1,250		
TOTAL FUNDING	AGS	A	2,500 A
	AGS	1,550 C	C

- 5A. P9303 MAUI COMMUNITY CORRECTIONAL CENTER, MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR THE PROVISION OF HOUSING AND RELATED  
SUPPORT SPACES.

DESIGN	100		
CONSTRUCTION		1,649	
EQUIPMENT	1		
TOTAL FUNDING	AGS	A	1,750 A

**PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER**

6. 919308 OAHU COMMUNITY CORRECTIONAL CENTER  
ANNEX REPLACEMENT FACILITIES, OAHU

PLANS, LAND ACQUISITION, AND DESIGN  
FOR NEW FACILITIES AT THE FACILITY  
AND/OR ANY SATELLITE ADJUNCTS.

PLANS	50		
LAND		50	
DESIGN	375		
TOTAL FUNDING	AGS	475 C	C

- 6A. P9304 OAHU COMMUNITY CORRECTIONAL CENTER, OAHU

CONSTRUCTION AND EQUIPMENT FOR  
RENOVATIONS TO EXISTING FACILITIES,

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		IMPROVEMENTS, ADDITIONAL HOUSING, AND RELATED SUPPORT SPACES.					
		CONSTRUCTION				4,124	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		A		4,125 A

## PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER

7. 919303 KAUAI COMMUNITY CORRECTIONAL CENTER IMPROVEMENTS AND RENOVATIONS, KAUAI

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS THROUGHOUT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS.

PLANS	65	
LAND	1	
DESIGN	250	
CONSTRUCTION	2,750	
TOTAL FUNDING	3,066 C	C

- 7A. P9305 KAUAI COMMUNITY CORRECTIONAL CENTER, KAUAI

DESIGN FOR ADDITIONAL HOUSING AND RELATED SUPPORT SPACES.

DESIGN	500	
TOTAL FUNDING	500 A	A

## PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER

- 7B. P9301 WOMEN'S COMMUNITY CORRECTIONAL CENTER, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES, IMPROVEMENTS, AND RELATED SUPPORT SPACES.

DESIGN	800	
CONSTRUCTION	1	
EQUIPMENT	199	
TOTAL FUNDING	1,000 A	A

## PSD900 - GENERAL ADMINISTRATION

8. 919305 DIVISION OF CORRECTIONS NEW CONSERVATION CAMP FACILITIES, HAWAII

PLANS FOR NEW CONSERVATION CAMP FACILITIES IN HAWAII.

PLANS	150	
TOTAL FUNDING	150 C	C

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
9.	919309	PSD GENERAL ADMINISTRATION, HEALTH AND SAFETY RENOVATIONS, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND/OR RENOVATIONS AT ANY CORRECTIONAL FACILITY STATEWIDE TO FACILITATE CONFORMANCE WITH ALL HEALTH AND SAFETY REQUIREMENTS.				
		PLANS		250		
		LAND			1	
		DESIGN		550		
		CONSTRUCTION		2,250		
		EQUIPMENT		100		
		TOTAL FUNDING	AGS	3,151	C	
11.	919311	PSD GENERAL ADMINISTRATION, NEW TRAINING FACILITIES, STATEWIDE				
		PLANS AND LAND ACQUISITION FOR NEW TRAINING FACILITIES, STATEWIDE.				
		PLANS		150		
		LAND		50		
		TOTAL FUNDING	AGS	200	C	
11A.	P9306	NEW CORRECTIONAL FACILITY, STATEWIDE				
		PLANS FOR A NEW CORRECTIONAL FACILITY.				
		PLANS			500	
		TOTAL FUNDING	AGS		A	500A
11B.		NEW DETENTION FACILITY, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW 200 BED DETENTION FACILITY.				
		PLANS		150		
		DESIGN			1	
		CONSTRUCTION		14,549		
		EQUIPMENT		600		
		TOTAL FUNDING	AGS	5,300	A	10,000N
			AGS		N	
<b>DEF110 - AMELIORATION OF PHYSICAL DISASTERS</b>						
12.	A37	ARMY NATIONAL GUARD ARMORY, MAUI				
		PLANS FOR PLANNING AND CONSTRUCTION OF A MAJOR ARMORY COMPLEX TO CONSOLIDATE EXISTING FACILITY, INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS		100		
		TOTAL FUNDING	AGS	100	C	
			AGS			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
13.	C13	ADDITION & UPGRADE OF DISASTER WARNING & COMMUNICATIONS DEVICES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR INCREMENTAL ADDITIONAL AND UPGRADING OF CIVIL DEFENSE DISASTER WARNING SIRENS, OTHER WARNING DEVICES AND COMMUNICATIONS EQUIPMENT, STATEWIDE, TO EXPAND THE COVERAGE OF WARNING SYSTEM TO KEEP PACE WITH NEW DEVELOPMENTS, GROWTH OF COMMUNITIES & POPULATION SHIFTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMB.					
		PLANS			1		1
		LAND			1		1
		DESIGN			38		38
		CONSTRUCTION			400		400
		EQUIPMENT			160		160
		TOTAL FUNDING	AGS		500 C		500 C
			AGS		100 N		100 N
14.	A-45	IMPROVEMENTS TO THE DEPARTMENTAL ADMINISTRATION BUILDING/ARMORY, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT THE DEPARTMENTAL ADMINISTRATION BUILDING & 100-MAN ARMORY FOR PROVIDING FACILITIES FOR INCREASED STAFF OF THE ADJUTANT GENERAL'S OFFICE & THE HAWAII ARMY NATIONAL GUARD TO INCLUDE ADMIN SPACE, LANDSCAPING, RETROFIT OF 306 AIR CONDITIONING SYSTEM & OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		
		CONSTRUCTION			600		
		TOTAL FUNDING	AGS		630 C		C
15.	A-46	REPLACE WATERLINE KEALAKEKUA, HAWAII					
		DESIGN FOR THE PRIMARY WATERLINE, OTHER IMPROVEMENTS AND SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			25		
		TOTAL FUNDING	AGS		25 C		C
16.	A-47	REPLACE WATERLINE, OLAA, HAWAII					
		DESIGN FOR THE PRIMARY WATERLINE, OTHER IMPROVEMENTS AND SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		
		TOTAL FUNDING	AGS		30 C		C

**ACT 300****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
17.	A-48	POV PARKING LOT, KEALEKEKUA, HAWAII					
		DESIGN FOR A POV PARKING LOT INCLUDING ACCESS ROAD, SECURITY FENCING AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			50		
		TOTAL FUNDING	AGS		30C		
			AGS		20N		C N
18.	A-49	POV PARKING LOT, OLAA, HAWAII					
		DESIGN FOR A POV PARKING LOT INCLUDING ACCESS ROAD, SECURITY FENCING AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		
		TOTAL FUNDING	AGS		20C		
			AGS		10N		C N
19.	A-51	ELECTRICAL IMPROVEMENTS TO NAT GUARD ARMORIES TO CORRECT OSHA, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL IMPROVEMENTS AT NATIONAL GUARD ARMORIES TO UPGRADE ELECTRICAL SYSTEMS TO CONFORM TO CURRENT STANDARDS AND CRITERIA AND TO MEET OTHER REQUIREMENTS FOR INCREASED POWER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			35		
		CONSTRUCTION			210		
		TOTAL FUNDING	AGS		245C		C
<b>J. INDIVIDUAL RIGHTS</b>							
<b>AGR812 - MEASUREMENT STANDARDS</b>							
1.	A-042	NEW MEASUREMENT STANDARDS AND PLANT QUARANTINE FACILITIES, OAHU					
		DESIGN FOR A NEW MEASUREMENT STANDARDS FACILITY AND A NEW PLANT QUARANTINE FACILITY ON OAHU TO INCLUDE BUT NOT BE LIMITED TO THE EXISTING MEASUREMENT STANDARDS AND PLANT QUARANTINE FACILITIES.					
		DESIGN			40		
		TOTAL FUNDING	AGR		40C		C
<b>K. GOVERNMENT-WIDE SUPPORT</b>							

## CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS  
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
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## GOV100 - OFFICE OF THE GOVERNOR

## 1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

DESIGN FOR 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		3,000	1
TOTAL FUNDING	GOV	A	1A
	GOV	3,000 C	C

## GOV103 - STATEWIDE PLAN AND COORDINATION

## 2. G03B KEEHI LAGOON CANOE CENTER/KALIHI KAI PARK, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR A CANOE RACE COMPLEX AND 25 ACRE PARK AT KEEHI LAGOON INCLUDING RAMPS, CANOE STORAGE SHEDS, PEDESTRIAN BRIDGES, COMFORT STATIONS, PASSIVE AND ACTIVE RECREATIONAL FACILITIES, LANDSCAPING AND UTILITIES. FUNDS MAY BE SUPPLEMENTED BY SPECIAL AND FEDERAL FUNDS.

PLANS		1
DESIGN		617
CONSTRUCTION		3,165
TOTAL FUNDING	BED	3,165 C

## 3. G03E WATERFRONT IMPROVEMENT PROJECT, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR VARIOUS AREA-WIDE WATERFRONT PROJECTS IN FURTHERANCE OF THE HONOLULU WATERFRONT MASTER PLAN.

PLANS		245	100
DESIGN		535	
CONSTRUCTION		4,000	
TOTAL FUNDING	BED	4,780 C	100 C

## 3A. G04 WATERFRONT RESTORATION, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE WATERFRONT RESTORATION IN ACCORDANCE WITH THE HONOLULU WATERFRONT MASTER PLAN.

PLANS		1
DESIGN		1
CONSTRUCTION		1,998
TOTAL FUNDING	BED	2,000 C

## 3B. MARINE EDUCATION AND TRAINING CENTER, OAHU

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR PHASE I OF THE MARINE EDUCATION AND TRAINING CENTER PROJECT INCLUDING BOAT MAINTENANCE FACILITY, METC ACCESS ROAD, AND COMPLETION OF OTHER SITE WORK.					
		PLANS					1
		DESIGN					199
		CONSTRUCTION					1,800
		TOTAL FUNDING	BED				2,000 C

**BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

**4. H73 KAKAAKO WATERFRONT PARK, OAHU**

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF A WATERFRONT PARK, RECREATIONAL FACILITIES ON THE FORT ARMSTRONG-KEWALO PENINSULA, AND THE RELOCATION OF EXISTING USES AND FACILITIES IN THE KAKAAKO WATERFRONT.

PLANS	1	1
LAND	1	1
DESIGN	3,200	
CONSTRUCTION	1	2,960
TOTAL FUNDING	BED	3,203 C

**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 STATUTES, FOR KAKAAKO COMMUNITY DEVELOPMENT DISTRICT TO INCLUDE THE PLANS AND DESIGN OF A DESALINATION PLANT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.

PLANS	2,000	2,095
LAND	1	1
DESIGN	4,860	1
CONSTRUCTION	1	1
TOTAL FUNDING	BED	6,862 C

**6. HF9204 KAKAAKO AFFORDABLE INCOME HOUSING (A MIXED USE HOUSING PROJECT), OAHU**

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AFFORDABLE INCOME HOUSING (MIXED-USE HOUSING); PREPARE ARCHITECTURAL DESIGN AND FUND A PORTION OF CONSTRUCTION FOR THE DEVELOPMENT OF MULTI-FAMILY HOUSING.

PLANS	1
LAND	3,300
DESIGN	4,500

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		CONSTRUCTION TOTAL FUNDING	BED		7,800 C	4,198 4,200 C

## BUF131 - ELECTRONIC DATA PROCESSING SERVICES

7. EDPD1 INFO & COMM SERVICES DIVISION OFFICE &  
COMPUTER FACILITY BUILDING, OAHU

DESIGN FOR A STATE OFFICE AND COMPUTER  
FACILITY FOR THE INFORMATION AND  
COMMUNICATIONS SERVICES PROGRAM. THIS  
FACILITY WILL PROVIDE ADDITIONAL OFFICE  
SPACE AND A SECOND COMPUTER SITE WHICH  
WILL SERVE AS A BACKUP TO THE CURRENT  
FACILITY.

DESIGN		300
TOTAL FUNDING	AGS	300 C

C

## BUF161 - COMMUNICATION

8. BUF01 COMMUNICATION DUCTLINES, CABLES AND  
CABLE DISTRIBUTION FACILITIES, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE  
ACCOMMODATION OF COMMUNICATION  
DUCTLINES, CABLES AND CABLE DISTRIBUTION  
FACILITIES TO OFFICE BUILDINGS WITHIN  
THE STATE CAPITOL COMPLEX AND ADJOINING  
AREAS AND NEIGHBOR ISLANDS.

DESIGN		100
CONSTRUCTION		900
TOTAL FUNDING	AGS	1,000 C

C

9. BUF02 TELECOMMUNICATIONS SITE, OAHU

DESIGN FOR THE ACQUISITION OF A  
TELECOMMUNICATIONS SITE AND CONSTRUCT  
TELECOMMUNICATIONS FACILITIES TO  
SUPPLEMENT THE EXISTING  
TELECOMMUNICATIONS SITE AT ROUND TOP.

DESIGN		100
TOTAL FUNDING	AGS	100 C

C

10. 101004 MICROWAVE TOWER AND GENERATOR ENCLOSURE,  
MOLOKAI

DESIGN FOR THE PROVISION OF A  
MICROWAVE TOWER AND GENERATOR ENCLOSURE  
AT THE KAUNAKAKAI CIVIC CENTER. THE  
TOWER WILL BE USED TO SUPPORT THE  
MICROWAVE ANTENNA TO PROVIDE KAUNAKAKAI  
WITH A LINK TO THE STATEWIDE MICROWAVE  
BACKBONE.

DESIGN		19
TOTAL FUNDING	AGS	19 C

C

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
11.	101005	EMERGENCY POWER FOR TELECOMMUNICATIONS SYSTEMS AT STATE OFFICE BLDGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF ENGINE GENERATORS FOR EMERGENCY POWER AT THE MAJOR STATE OFFICE BUILDINGS, STATEWIDE.					
		DESIGN				30	
		CONSTRUCTION				120	
		TOTAL FUNDING	AGS			150	C
12.	101006	LANAI TELECOMMUNICATIONS SITE, LANAI					
		LAND ACQUISITION FOR THE LANAI TELECOMMUNICATIONS SITE.					
		LAND				100	
		TOTAL FUNDING	AGS			100	C
LNR101 - PUBLIC LANDS MANAGEMENT							
13.	E78	RESOURCE LAND ACQUISITIONS, STATEWIDE					
		LAND ACQUISITION INCLUDING ACQUISITION OF EASEMENTS, OF LANDS HAVING VALUE AS A RESOURCE TO THE STATE, INCLUDING LANDS HAVING NATURAL, ENVIRONMENTAL, RECREATIONAL, SCENIC, OPEN SPACE, CULTURAL OR HISTORICAL VALUE.					
		LAND				10,000	
		TOTAL FUNDING	LNR			10,000	C
14.	E77	MAUNAWILI VALLEY ON-SITE IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR ON-SITE IMPROVEMENTS, ACCESS ROAD STREAM CROSSINGS, AND THE INSTALLATION OF UTILITIES IN MAUNAWILI VALLEY.					
		DESIGN				1	
		CONSTRUCTION				249	
		TOTAL FUNDING	LNR			250	C
AGS221 - CONSTRUCTION							
15.	A53	MOLOKAI MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY, MOLOKAI					
		PLANS AND DESIGN FOR A MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY FOR MOLOKAI STATE AND COUNTY AGENCIES TO REPLACE EXISTING SITE NEEDED FOR CIVIC CENTER, PHASE II.					
		PLANS				20	
		DESIGN				250	
		TOTAL FUNDING	AGS			270	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
16.	A90	LILIHA CIVIC CENTER, PHASES I AND II, OAHU					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF OFFICE BUILDINGS AND PARKING STRUCTURE COMPLEX FOR STATE AGENCIES. WORK TO BE DONE IN PHASES.					
		DESIGN		425			
		CONSTRUCTION			1		
		TOTAL FUNDING	AGS	425 C		1 C	
17.	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		250		275	
		TOTAL FUNDING	AGS	250 C		275 C	
18.	B28	STATE OFFICE BUILDINGS REMODELING, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN LEASE OR STATE OWNED SPACE STATEWIDE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. WORK INCLUDES REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT OFFICE LAYOUTS, OSHA REGULATIONS, PLUMBING, ELEVATORS, ETC.					
		DESIGN		100			
		CONSTRUCTION		750			
		EQUIPMENT			15		
		TOTAL FUNDING	AGS	865 C		C	
19.	C43	KAHULUI CIVIC CENTER, PHASE I AND II, MAUI					
		DESIGN FOR THE PROVISION OF A STATE CIVIC CENTER IN KAHULUI, MAUI, IN PHASES.					
		DESIGN		98			
		TOTAL FUNDING	AGS	98 C		C	
20.	C72	NEW ARCHIVES BUILDING, OAHU					
		DESIGN FOR A NEW ARCHIVES BUILDING.					
		DESIGN		35			
		TOTAL FUNDING	AGS	35 C		C	

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O
21.	C80	KAMEHAMEHA V POST OFFICE RENOVATIONS, OAHU					
		EQUIPMENT FOR OFFICE/PERFORMING ARTS COMPLEX FOR STATE FOUNDATION ON CULTURE AND THE ARTS. EQUIPMENT TOTAL FUNDING	AGS		25	25 C	C
22.	A101	STATE OFFICE TOWER FURNITURE AND EQUIPMENT/WORKS OF ART, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE ACQUISITION AND INSTALLATION OF FURNITURE AND EQUIPMENT (INCLUDING WORKS OF ART) FOR OFFICES BEING RELOCATED BECAUSE OF ASBESTOS MITIGATION WORK AT THE STATE CAPITOL BUILDING. CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	364 1,352 1,716 C			
23.	A103	CAPITOL MEMORIAL MALL/PARKING/ANNEX, OAHU					
		PLANS AND DESIGN FOR THE PROVISION OF A WAR MEMORIAL MALL, MULTI-LEVEL PARKING GARAGE AND CAPITOL ANNEX BUILDING ON THE KINAU HALE SITE AT BERETANIA AND PUNCHBOWL STREETS, OAHU. PLANS DESIGN TOTAL FUNDING	AGS	90 500 590 C			C
24.	A104	WAHIWA CIVIC CENTER, OAHU					
		DESIGN FOR THE PROVISION OF OFFICE BUILDINGS AND PARKING COMPLEX FOR STATE AGENCIES IN WAHIWA. WORK TO BE DONE IN PHASES. DESIGN TOTAL FUNDING	AGS	275 275 C			C
25.	A48	LIHUE MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY, KAUAI					
		CONSTRUCTION FOR A MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY FOR KAUAI STATE AND COUNTY AGENCIES, INCLUDING SEWER, WATER LINE, AND OTHER INFRASTRUCTURE IMPROVEMENTS. CONSTRUCTION TOTAL FUNDING	AGS	1,690 1,690 C			C
26.	A111	DOWNTOWN OFFICE BUILDING FOR ASBESTOS REMOVAL IN THE STATE CAPITOL DIST, OAHU					
		LAND ACQUISITION FOR A DOWNTOWN OFFICE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		BUILDING RELATED TO ASBESTOS REMOVAL IN THE STATE CAPITOL DISTRICT.				
		LAND		10,500		
		TOTAL FUNDING	AGS	10,500	C	
27.	A39B	KAUNAKAKAI CIVIC CENTER, PHASE I AND II, MOLOKAI				
		EQUIPMENT FOR THE KAUNAKAKAI CIVIC CENTER, PHASE I.				
		EQUIPMENT		10		
		TOTAL FUNDING	AGS	10	C	
28.	C10409	STATE CAPITOL DIST ASBESTOS MITIGATION, AIR COND AND OTHER IMPROVEMENTS, OAHU				
		DESIGN AND CONSTRUCTION FOR THE MITIGATION OF ASBESTOS CONTAINING MATERIAL IN THE STATE CAPITOL. RENOVATE THE BUILDING AIR CONDITIONING AND OTHER SYSTEMS, CAPITOL POOL AND REFURBISH THE OFFICE AND PUBLIC AREAS.				
		DESIGN		1,250		
		CONSTRUCTION		16,000		
		TOTAL FUNDING	AGS	17,250	C	
29.	P00007	MAUI DISTRICT OFFICE, RELOCATION TO KAHULUI AIRPORT AREA, PHASE I, MAUI				
		CONSTRUCTION FOR THE RELOCATION OF DAGS MAUI DISTRICT OFFICE AND PROVIDE STORAGE AND SERVICE FACILITIES FOR ALL STATE AGENCIES.				
		CONSTRUCTION		1,609		
		TOTAL FUNDING	AGS	1,609	C	
30.		CULTURAL CENTER, PEARL CITY, OAHU				
		CONSTRUCTION FOR A PEARL CITY CULTURAL CENTER TO INCLUDE AN AUDITORIUM, SEATING, EQUIPMENT, SITE WORK, AND PARKING.				
		CONSTRUCTION		3,000		
		TOTAL FUNDING	AGS	3,000	C	
31.		STATE HISTORY MUSEUM, OAHU				
		PLANS AND DESIGN FOR A STATE HISTORY MUSEUM.				
		PLANS		1		
		DESIGN		199		
		TOTAL FUNDING	AGS	200	C	
31A.	B103	CAPITOL UNDERGROUND PARKING, OAHU				
		DESIGN FOR AN UNDERGROUND PARKING STRUCTURE ON THE KINAU HALE SITE AT BERETANIA AND PUNCHBOWL STREETS, OAHU.				

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
		DESIGN				4,000
		TOTAL FUNDING	AGS		W	4,000W
31B.	C04B	WAIPAHU CIVIC CENTER, STATE OFFICE BUILDING, OAHU				
		CONSTRUCTION FOR A CIVIC CENTER FOR LEEWARD OAHU. WORK TO BE DONE IN TWO PHASES.				
		CONSTRUCTION				64
		TOTAL FUNDING	AGS		W	64W
<b>SUB201 - CITY AND COUNTY OF HONOLULU</b>						
32.		HONOLULU POLICE DEPARTMENT, OAHU				
		DESIGN AND CONSTRUCTION FOR THE UPGRADING OF THE TELECOMMUNICATIONS SYSTEM OF THE HONOLULU POLICE DEPARTMENT.				
		DESIGN			1	1
		CONSTRUCTION			2,321	6,999
		TOTAL FUNDING	CCH		A	7,000A
			CCH		2,322C	C
33.		FIRE PROTECTION FACILITIES, OAHU				
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF PIPELINES, FIRE HYDRANTS, AND THE NECESSARY APPURTENANCES ALONG VARIOUS SCHOOL FACILITIES AND STREETS WITHIN THE CITY AND COUNTY OF HONOLULU.				
		DESIGN			1	1
		CONSTRUCTION			2,999	
		TOTAL FUNDING	CCH		3,000C	C
34.		KAHALUU SEWAGE SYSTEM, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF A SEWAGE SYSTEM IN KAHALUU.				
		PLANS			1	1
		DESIGN			1	
		CONSTRUCTION			4,676	
		TOTAL FUNDING	CCH		4,678C	C
34A.		LIFEGUARD TRAINING FACILITY, OAHU				
		PLANS AND DESIGN FOR A NEW LIFEGUARD TRAINING FACILITY.				
		PLANS			1	1
		DESIGN			299	
		TOTAL FUNDING	CCH		A	300A

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
<b>SUB301 - COUNTY OF HAWAII</b>							
35.		PUBLIC SAFETY BUILDING, PHASE III, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE PUBLIC SAFETY BUILDING, PHASE III, TO INCLUDE AN EVIDENCE WAREHOUSE.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			1,497		
		TOTAL FUNDING	COH		1,500 C		C
36.		FIRE DEPARTMENT ADMINISTRATION BUILDING, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A FIRE DEPARTMENT ADMINISTRATION BUILDING.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			998		
		TOTAL FUNDING	COH		1,000 C		C
37.		KULAIMANO RECREATIONAL COMPLEX, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A RECREATIONAL COMPLEX IN PEPEKEO, HAWAII. FUNDS SHALL BE MATCHED ON A DOLLAR FOR DOLLAR BASIS BY THE COUNTY OF HAWAII.					
		PLANS			50		
		DESIGN			50		1
		CONSTRUCTION			900		
		TOTAL FUNDING	COH		A		309
			COH		1,000 C		310A C
38.		WEST HAWAII REGIONAL LANDFILL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF THE KEALAKEHE LANDFILL INCLUDING THE MITIGATION OF EXISTING HEALTH, SAFETY, AND ENVIRONMENTAL HAZARDS AND THE DEVELOPMENT OF A REPLACEMENT FACILITY. FUNDS ARE TO BE MATCHED ON A DOLLAR-FOR- DOLLAR BASIS BY THE COUNTY OF HAWAII.					
		PLANS			50		
		DESIGN			250		
		CONSTRUCTION			1,200		
		TOTAL FUNDING	COH		1,500 C		C
39.		HILO WASTEWATER TREATMENT SYSTEM, HAWAII					
		CONSTRUCTION FOR THE HILO WASTEWATER					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TREATMENT SYSTEM (AINAKO INTERCEPTOR SEWER, PART A).					
		CONSTRUCTION			3,000		
		TOTAL FUNDING	COH		3,000 C		C
39A.		FOREIGN TRADE ZONE WAREHOUSE, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A FOREIGN TRADE ZONE WAREHOUSE.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				798	
		TOTAL FUNDING	COH			800 A	
39B.		HILO WASTEWATER TREATMENT SYSTEM, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE HILO WASTEWATER TREATMENT SYSTEM (KALANIANAOLE COLLECTOR SEWERS).					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				1,198	
		TOTAL FUNDING	COH			1,200 A	
39C.		PUAKO BEACH LOTS, HAWAII					
		PLANS AND DESIGN FOR A SEWAGE SYSTEM AT THE PUAKO BEACH LOTS ON THE KOHALA COAST, HAWAII.					
		PLANS				1	
		DESIGN				119	
		TOTAL FUNDING	COH			120 A	
39D.		OLD KONA AIRPORT PARK CANOE SHEDS AND CLUBHOUSES, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS FOR THE OLD KONA AIRPORT PARK CANOE SHEDS AND/OR CLUBHOUSES.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				188	
		EQUIPMENT				1	
		TOTAL FUNDING	COH			191 A	
<b>SUB401 - COUNTY OF MAUI</b>							
40.		WATER SOURCE DEVELOPMENT, MAUI					
		CONSTRUCTION FOR WATER SOURCE DEVELOPMENT IN CENTRAL MAUI.					
		CONSTRUCTION			7,770		
		TOTAL FUNDING	COM		7,770 C		C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
41.	MAUI COMMUNITY ARTS AND CULTURAL CENTER, MAUI	CONSTRUCTION FOR THE MAUI COMMUNITY ARTS AND CULTURAL CENTER. (GRANT-IN-AID)	CONSTRUCTION TOTAL FUNDING	3,000 3,000	C	C
41A.	KAHAKAPOAO RESERVOIR, MAUI	CONSTRUCTION FOR THE KAHAKAPOAO RESERVOIR SYSTEM IN UPCOUNTRY MAUI.	CONSTRUCTION TOTAL FUNDING	5,000 5,000	A	A
41B.	MAUI POLICE DEPARTMENT, MAUI	DESIGN AND CONSTRUCTION FOR THE UPGRADING OF THE TELECOMMUNICATIONS SYSTEM OF THE MAUI POLICE DEPARTMENT.	DESIGN CONSTRUCTION TOTAL FUNDING	200 1,800 2,000		
41C.	LAUNIUPOKO WAYSIDE PARK, MAUI	DESIGN AND CONSTRUCTION FOR THE RENOVATIONS AND IMPROVEMENTS INCLUDING REMOVAL OF SAND FILL FOR A CHILDREN'S WADING POOL.	DESIGN CONSTRUCTION TOTAL FUNDING	1 49 50	A	A
<b>SUB501 - COUNTY OF KAUAI</b>						
42.	KOLOA/POIPU BYPASS ROAD, KAUAI	PLANS, LAND ACQUISITION, AND CONSTRUCTION FOR RIGHT-OF-WAY ACQUISITION AND A BYPASS ROADWAY BETWEEN KOLOA AND POIPU.	PLANS LAND CONSTRUCTION TOTAL FUNDING	1 200 2,573 2,774	COK	C
43.	KAUAI CIVIC CENTER, KAUAI	CONSTRUCTION FOR THE KAUAI CIVIC CENTER.	CONSTRUCTION TOTAL FUNDING	1,000 1,000	COK	C

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	<b>APPROPRIATIONS (IN 000's)</b>			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
44.	LIHUE WATER SYSTEM, KAUAI	PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DRILLING AND DEVELOPMENT OF KALEPA WELL #2.		PLANS	1		
		LAND		LAND	10		
		DESIGN		DESIGN	24		
		CONSTRUCTION		CONSTRUCTION	300		
		TOTAL FUNDING	COK	TOTAL FUNDING	335 C		C
44A.	ELEELA WASTEWATER TREATMENT FACILITY, KAUAI	PLANS, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OF THE EXISTING SEWAGE TREATMENT FACILITY TO ACCOMMODATE THE NEEDS OF THE EXISTING HOUSING DEVELOPMENTS IN THE ELEELA-HANAPEPE AREAS.		PLANS	1		
		DESIGN		DESIGN	1		
		CONSTRUCTION		CONSTRUCTION	1,998		
		TOTAL FUNDING	COK	TOTAL FUNDING	2,000 A	A	
44B.	LIHUE WATER SYSTEM, KALEPA WELL NUMBER THREE, KAUAI	PLANS, DESIGN, AND CONSTRUCTION FOR THE LIHUE WATER SYSTEM, TO INCLUDE THE DRILLING AND DEVELOPMENT OF KALEPA WELL NUMBER THREE.		PLANS	1		
		DESIGN		DESIGN	24		
		CONSTRUCTION		CONSTRUCTION	300		
		TOTAL FUNDING	COK	TOTAL FUNDING	325 A	A	
44C.	PUHI WATER SYSTEM, PUHI WELL NUMBER FIVE, KAUAI	PLANS, DESIGN, AND CONSTRUCTION FOR THE PUHI WATER SYSTEM, TO INCLUDE THE DRILLING AND DEVELOPMENT OF PUHI WELL NUMBER FIVE.		PLANS	1		
		DESIGN		DESIGN	29		
		CONSTRUCTION		CONSTRUCTION	325		
		TOTAL FUNDING	COK	TOTAL FUNDING	355 A	A	

SECTION 7. Part V, Act 296, Session Laws of Hawaii 1991, is amended:

(1) By adding a new section to read as follows:

"SECTION 187.1. Provided that of the general obligation bond fund appropriation for agricultural resource management (AGR 141), the sum of \$200,000 in fiscal year 1992-93 shall be used for plans, design, and construction of the Waimea homestead pipeline addition, Waimea irrigation system; provided further that funds shall be expended only when the department of agriculture and the department of Hawaiian home lands consummate a memorandum of understanding regarding the priority of the resource and ownership of the irrigation system."

(2) By adding a new section to read as follows:

"SECTION 187.2. Provided that of the revolving fund appropriation for agricultural resource management (AGR 141), the sum of \$80,000 in fiscal year 1992-93 shall be used for plans and design of the access road relocation, Molokai irrigation system; provided further that the department of agriculture is authorized to seek additional funds from other available sources."

(3) By adding a new section to read as follows:

"SECTION 187.3. Provided that the department of transportation, airports division, shall not assess the passenger facility charges (PFCs) until the 1993 regular session of the legislature reviews the need of the PFCs; provided further that the department shall submit a report on the alternatives of assessing PFCs no later than twenty days prior to the convening of the 1993 legislative session."

(4) By adding a new section to read as follows:

"SECTION 187.4. Provided that of the revenue bond funds appropriation for Oahu highways (TRN 501), the sum of \$36,900,000 in fiscal year 1992-93, shall be used for land acquisition, design, and construction for the Castle junction interchange; provided further that no funds shall be expended unless appropriate federal approvals through the Intermodel Surface Transportation and Efficiency Act have been granted; provided further that this project is part of a pilot program to determine whether federal funds can be accelerated by the issuance of grant anticipation notes."

(5) By adding a new section to read as follows:

"SECTION 187.5. Provided that of the revenue bond funds appropriation for Hawaii highways (TRN 511), the sum of \$24,500,000 in fiscal year 1992-93, shall be used for land acquisition, design, and construction for the Keau-Pahoa road widening, Keau to Pahoa bypass road; provided further that no funds shall be expended unless appropriate federal approvals through the Intermodel Surface Transportation and Efficiency Act have been granted; provided further that this project is part of a pilot program to determine whether federal funds can be accelerated by the issuance of grant anticipation notes."

(6) By adding a new section to read as follows:

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“SECTION 187.6. Provided that of the revenue bond funds appropriation for Maui highways (TRN 531), the sum of \$40,000,000 in fiscal year 1992-93, shall be used for plans, land acquisition, design, and construction for the Honoapiilani highway widening, Lahaina to Maalaea; provided further that no funds shall be expended unless appropriate federal approvals through the Intermodel Surface Transportation and Efficiency Act have been granted; provided further that this project is part of a pilot program to determine whether federal funds can be accelerated by the issuance of grant anticipation notes.”

(7) By adding a new section to read as follows:

“SECTION 187.7. Provided that of the revenue bond funds appropriation for Kauai highways (TRN 561), the sum of \$30,800,000 in fiscal year 1992-93, shall be used for plans, land acquisition, design, and construction for the Kau-mualii highway widening, Puhi to Maluhia road; provided further that no funds shall be expended unless appropriate federal approvals through the Intermodel Surface Transporation and Efficiency Act have been granted; provided further that this project is part of a pilot program to determine whether federal funds can be accelerated by the issuance of grant anticipation notes.”

(8) By adding a new section to read as follows:

“SECTION 187.8. Provided that of the general obligation bond fund appropriation for private housing development and ownership (BUF 225), the sum of \$120,000,000 in fiscal year 1992-93 shall be used to reimburse the general fund for advances made to the homes revolving fund, pursuant to section 201E-207(b), Hawaii Revised Statutes; provided further that the interest on general obligation bonds issued for this purpose may be either tax-exempt or taxable as determined by the director of finance.”

(9) By adding a new section to read as follows:

“SECTION 187.9. Any provision of this Act to the contrary notwithstanding, 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.
- (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) Keaua 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.”

(10) By adding a new section to read as follows:

“SECTION 187.10. Provided that of the general obligation bond fund appropriation for statewide plan and coordination (GOV 103), the department of business, economic development and tourism is authorized to establish five temporary positions to provide necessary staff for the Honolulu waterfront improvement project; provided further that the department of business, economic development and tourism is authorized to expend such sums as may be necessary for these positions from the Honolulu waterfront improvement project authorized in Part II and listed in Part IV of this Act; provided further that the positions shall terminate at the completion of the Honolulu waterfront improvement project.”

(11) By adding a new section to read as follows:

“SECTION 187.11. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 104), funds for the actual relocation of tenants and facilities at piers 1 and 2 at the Fort Armstrong-Kewalo peninsula shall not be granted without legislative authorization and until the construction of replacement facilities at Kapalama have been completed.”

(12) By adding a new section to read as follows:

“SECTION 187.12. Provided that of the general fund appropriation for the city and county of Honolulu (SUB 201), the sum of \$7,000,000 in fiscal year 1992-93 shall be used for design and construction of the Honolulu police department telecommunications system; provided further that the city and county of Honolulu shall coordinate the system with the department of budget and finance; provided further that the engineering of the system shall be reviewed by the State, and that the State shall be given an opportunity to comment and have input on the final design and bid specifications.”

(13) By adding a new section to read as follows:

“SECTION 187.13. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended

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and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, as amended and renumbered by Act 296, Session Laws of Hawaii 1991, section 178, in the amount indicated or balance thereof is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 120-15	\$500,000 A"

(14) By adding a new section to read as follows:

“SECTION 187.14. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, as amended and renumbered by Act 296, Session Laws of Hawaii 1991, section 179, in the amount indicated or balance thereof is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
UOH 101-149	\$ 2,586,000 C"

(15) By adding a new section to read as follows:

“SECTION 187.15. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, as amended and renumbered by Act 296, Session Laws of Hawaii 1991, section 178 and section 179, in the amounts indicated or balances thereof are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
AGR 192-9	\$ 5,400,000 C
BED 120-15	4,500,000 C"

(16) By adding a new section to read as follows:

“SECTION 187.16. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered 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>
AGR 141-23	\$ 1,205,000 A
BED 120-14	1,500,000 C
TRN 114-10	6,120,000 E
TRN 114-11	49,000,000 E
TRN 501-39	349,000 B
TRN 511-61	1,245,000 D
TRN 511-63	2,596,000 D
TRN 531-67	3,624,000 D
TRN 531-68A	750,000 A
TRN 561-76	1,055,000 C
LNR 402-1	645,000 C

GOV	602-42	1,520,000	A
EDN	105-106C	31,620	A
EDN	105-26	5,993,000	B
EDN	105-29	3,040,000	B
EDN	105-47	1,185,000	B
EDN	105-106F	1,000	A
EDN	204-122B	56,500	A
CCA	701-1	724,100	C
TRN	801-28	19,000	A
TRN	801-29	221,000	A
BUF	161-8	5,000	C
LNR	809-41	150,000	A
DOC	403-3	2,112,000	A
DOC	407-2	35,720,000	A
DOC	903-5	326,000	A
DOC	903-5B	93,000	A
LNR	101-13	280,000	C
LNR	101-16B	60,000	A
AGS	221-31	1,102,000	A
SUB	201-33	300,000	A
SUB	301-36	3,860,000	A
SUB	401-42	850,000	A"

(17) By adding a new section to read as follows:

"SECTION 187.17. 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>
LNR 153-2	\$25,000 C
TRN 501-7	30,000 D
TRN 501-9	38,000 D
TRN 501-10	200,000 D
TRN 501-11	80,000 D
EDN 105-6	40,000 C
EDN 105-7	30,000 C
EDN 105-11	40,000 C
EDN 105-12	40,000 C
EDN 105-14	200,000 C
EDN 105-16	100,000 C
EDN 105-23	100,000 C
EDN 105-25	25,000 C
EDN 105-26	8,000 C
EDN 105-27	7,000 C
EDN 105-28	5,000 C
EDN 105-29	20,000 C
EDN 105-32	54,000 C
EDN 105-33	12,000 C
EDN 105-34	30,000 C
EDN 105-35	30,000 C
EDN 105-39	6,000 C

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EDN	105-40	10,000	C
EDN	105-43	85,000	C
EDN	105-44	18,000	C
EDN	105-47	2,000	C
EDN	105-50	55,000	C
EDN	105-51	20,000	C
EDN	105-52	35,000	C
EDN	105-55	5,000	C
EDN	105-56	25,000	C
EDN	105-57	23,000	C
EDN	105-58	12,000	C
EDN	105-60	20,000	C
EDN	105-64	75,000	C
EDN	105-66	2,000	C
EDN	105-68	40,000	C
EDN	105-73	95,000	C
EDN	105-78	60,000	C
EDN	105-85	14,000	C
EDN	105-86	5,000	C
EDN	105-87	15,000	C
EDN	105-88	24,000	C
EDN	105-91	70,000	C
EDN	105-99	17,000	C
EDN	105-104	6,000	C
EDN	105-105	22,000	C
EDN	105-107	5,000	C
EDN	105-114	25,000	C
EDN	105-116	13,000	C
EDN	105-117	95,000	C
EDN	105-119	63,000	C
EDN	105-121	92,000	C
EDN	105-123	63,000	C
EDN	105-125	100,000	C
EDN	105-129	25,000	C
EDN	105-130	44,000	C
EDN	105-132	23,000	C
EDN	105-133	44,000	C
EDN	105-135	82,000	C
EDN	105-136	45,000	C
EDN	105-137	104,000	C
EDN	105-138	135,000	C
EDN	105-141	21,000	C
EDN	105-143	8,000	C
EDN	105-147	50,000	C
EDN	105-148	90,000	C
EDN	105-149	4,000	C
EDN	105-155	94,000	C
EDN	105-159	10,000	C
EDN	105-161	5,000	C
EDN	105-165	300,000	C
EDN	105-166	4,000	C
EDN	105-167	40,000	C
EDN	105-170	61,000	C

EDN	105-171	20,000	C
EDN	105-172	190,000	C
EDN	105-173	60,000	C
EDN	105-177	50,000	C
EDN	105-178	4,000	C
EDN	105-180	6,000	C
EDN	105-183	8,000	C
EDN	105-189	21,000	C
EDN	105-193	63,000	C
EDN	105-194	52,000	C
EDN	105-197	50,000	C
EDN	107-198	45,000	C
EDN	107-200	50,000	C
EDN	107-201	69,000	C
EDN	203-202	10,000	C
EDN	203-204	13,000	C
EDN	204-206	70,000	C
EDN	204-207	24,000	C
EDN	204-208	22,000	C
EDN	204-209	17,000	C
EDN	204-210	30,000	C
EDN	204-216	20,000	C
EDN	204-218	15,000	C
EDN	204-221	5,000	C
EDN	204-224	5,000	C
EDN	204-227	165,000	C
EDN	305-228	44,000	C
EDN	305-229	10,000	C
EDN	305-230	3,000	C
EDN	305-231	3,000	C
EDN	305-232	12,000	C
EDN	305-238	70,000	C
EDN	305-239	15,000	C
EDN	406-242	15,000	C
EDN	407-245	10,000	C
EDN	407-246	10,000	C"

(18) By adding a new section to read as follows:

"SECTION 187.18. Any law to the contrary notwithstanding, the appropriations under Act 300, Session Laws of Hawaii 1990, section 2, in the amounts indicated or balances thereof are hereby lapsed:

<u>Item No.</u>		<u>Amount (MOF)</u>	
BED	120-1	100,000	A
TRN	501-2	36,000	A
TRN	501-6	10,000	A
TRN	501-7	3,000	A
TRN	501-14	2,000	A
TRN	501-17	150,000	A
TRN	501-18	40,000	A
LNR	404-1	2,000	A

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HMS	111-1	9,000	A
HMS	229-15	25,000	A
GOV	602-27	99,000	A
GOV	602-28	75,000	A
EDN	105-2	36,000	A
EDN	105-3	2,000	A
EDN	105-4	20,000	A
EDN	105-5	10,000	A
EDN	105-6	25,000	A
EDN	105-8	117,000	A
EDN	105-9	110,000	A
EDN	105-11	50,000	A
EDN	105-12	10,000	A
EDN	105-13	20,000	A
EDN	105-14	40,000	A
EDN	105-15	5,000	A
EDN	105-16	47,000	A
EDN	105-17	10,000	A
EDN	105-18	4,000	A
EDN	105-19	20,000	A
EDN	105-20	15,000	A
EDN	105-21	46,000	A
EDN	105-22	20,000	A
EDN	105-23	7,000	A
EDN	105-25	135,000	A
EDN	105-26	20,000	A
EDN	105-27	2,000	A
EDN	105-28	50,000	A
EDN	105-29	35,000	A
EDN	105-30	35,000	A
EDN	105-32	24,000	A
EDN	105-33	6,000	A
EDN	105-34	22,000	A
EDN	105-35	50,000	A
EDN	105-36	11,000	A
EDN	105-37	20,000	A
EDN	105-38	5,000	A
EDN	105-39	10,000	A
EDN	105-41	4,000	A
EDN	105-43	20,000	A
EDN	105-44	30,000	A
EDN	105-46	15,000	A
EDN	105-47	15,000	A
EDN	105-48	10,000	A
EDN	105-49	5,000	A
EDN	105-50	10,000	A
EDN	105-52	5,000	A
EDN	105-54	1,000	A
EDN	105-55	188,000	A
EDN	105-56	50,000	A
EDN	105-57	30,000	A
EDN	105-59	50,000	A
EDN	105-60	40,000	A

EDN	105-61	30,000	A
EDN	105-62	68,000	A
EDN	105-64	147,000	A
EDN	105-65	75,000	A
EDN	105-71	8,000	A
EDN	105-72	4,000	A
EDN	105-73	166,000	A
EDN	105-74	35,000	A
EDN	105-75	10,000	A
EDN	105-76	5,000	A
EDN	105-78	20,000	A
EDN	105-79	225,000	A
EDN	105-80	100,000	A
EDN	105-81	3,000	A
EDN	105-82	150,000	A
EDN	105-83	88,000	A
EDN	105-84	3,000	A
EDN	105-85	6,000	A
EDN	105-87	30,000	A
EDN	105-88	20,000	A
EDN	105-89	20,000	A
EDN	105-90	90,000	A
EDN	105-91	90,000	A
EDN	105-93	3,000	A
EDN	105-94	38,000	A
EDN	105-96	65,000	A
EDN	105-97	14,000	A
EDN	105-100	75,000	A
EDN	105-102	9,000	A
EDN	105-103	50,000	A
EDN	105-104	10,000	A
EDN	105-106	61,000	A
EDN	105-107	26,000	A
EDN	105-108	20,000	A
EDN	105-109	18,000	A
EDN	105-110	10,000	A
EDN	105-111	2,000	A
EDN	105-112	91,000	A
EDN	105-117	50,000	A
EDN	105-118	1,000	A
EDN	105-119	1,000	A
EDN	105-120	40,000	A
EDN	105-121	10,000	A
EDN	105-125	50,000	A
EDN	105-126	50,000	A
EDN	105-127	60,000	A
EDN	105-130	25,000	A
EDN	105-131	10,000	A
EDN	105-132	50,000	A
EDN	105-133	5,000	A
EDN	105-135	6,000	A
EDN	105-138	210	A
EDN	105-139	25,000	A

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EDN	105-140	13,000	A
EDN	105-141	6,000	A
EDN	105-142	40,000	A
EDN	105-143	40,000	A
EDN	105-145	4,000	A
EDN	105-146	270,000	A
EDN	105-147	8,000	A
EDN	105-156	2,000	A
EDN	105-157	81,000	A
EDN	105-162	45,000	A
EDN	105-163	5,000	A
EDN	105-164	22,000	A
EDN	105-165	12,000	A
EDN	105-166	1,000	A
EDN	105-170	3,000	A
EDN	105-172	27,000	A
EDN	105-175	30,000	A
EDN	105-176	18,000	A
EDN	105-177	12,000	A
EDN	105-178	29,000	A
EDN	105-179	30,000	A
EDN	105-181	10,000	A
EDN	105-182	20,000	A
EDN	203-185	4,000	A
EDN	203-186	40,000	A
EDN	203-187	715	A
EDN	204-188	75,000	A
EDN	204-190	5,000	A
EDN	204-191	47,000	A
EDN	204-192	50,000	A
EDN	204-196	25,000	A
EDN	204-198	2,000	A
EDN	204-199	94,000	A
EDN	204-200	147,000	A
EDN	305-202	10,000	A
EDN	305-203	20,000	A
EDN	305-204	40,600	A
EDN	305-205	85,000	A
EDN	305-206	49,000	A
EDN	305-207	6,000	A
EDN	407-213	15,000	A
UOH	216-220	2,000	A
LNR	806-8	20,000	A
LNR	806-9	50,000	A
TRN	801-10	100,000	A
TRN	801-13	200,000	A
TRN	801-14	19,000	A
AGS	221-6	100,000	A
AGS	221-8	20,000	A
AGS	221-12	20,000	A
AGS	221-13	20,000	A
AGS	221-14	12,000	A
AGS	221-15	5,000	A

SUB 201-17	50,000	A
SUB 201-18	50,000	A
SUB 201-20	25,000	A
SUB 201-21	10,000	A
SUB 201-22	248,000	A
SUB 201-23	20,000	A
SUB 201-24	268,000	A
SUB 201-26	50,000	A
SUB 201-27	6,000	A
SUB 201-28	250,000	A
SUB 201-29	10,000	A
SUB 201-30	10,000	A
SUB 201-31	10,000	A
SUB 201-32	50,000	A
SUB 301-33	191,000	A
SUB 301-38	100,000	A
SUB 401-41	75,000	A
SUB 401-42	70,000	A
SUB 501-45	30,000	A"

(19) By adding a new section to read as follows:

“SECTION 187.19. 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>
TRN 114-7	\$ 8,314,000 E
LNR 806-13	10,388 C
LNR 806-22	15,000 C
LNR 806-39	79,596 C”

(20) By adding a new section to read as follows:

“SECTION 187.20. 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>
TRN 114-9	\$ 3,865,000 E
TRN 195-16	480,000 E
LNR 801-4	16,152 C
LNR 806-26	13,492 C
LNR 806-42	5,435 C
LNR 806-46	1,015 C”

(21) By adding a new section to read as follows:

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"SECTION 187.21. Any law to the contrary notwithstanding, the appropriations under Act 217, Session Laws of Hawaii 1987, section 2, in the amount indicated or balance thereof is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
LNR 806-12	\$ 5,000 C"

(22) By adding a new section to read as follows:

SECTION 187.22. Act 317, Session Laws of Hawaii 1991, section 2, is amended:

(1) By amending Item EDN 105-57 to read as follows:

"57. HP3317 KAWANANAKOA INTERMEDIATE SCHOOL, OAHU EQUIPMENT FOR LOCKERS FOR STUDENTS.

EQUIPMENT	45		
TOTAL FUNDING	AGS	45C	C"

(2) By amending Item EDN 105-99 to read as follows:

"99. HP0603 WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII

DESIGN AND CONSTRUCTION FOR ONE PORTABLE CLASSROOM AT WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL.

DESIGN	10		
CONSTRUCTION	80		
TOTAL FUNDING	AGS	90C	C"

SECTION 8. Part VI, Act 296, Session Laws of Hawaii 1991, is amended by adding a new section to read as follows:

"SECTION 190A. HIGHWAY REVENUE BONDS. The department of transportation is authorized to issue highway revenue bonds for the highway capital improvement projects authorized in Part II and listed in Part IV of this Act, and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amounts as shall be required to yield the amounts appropriated for such capital improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be necessary to increase reserves for the highway revenue bonds to provide for capitalized interest and to pay the expenses of issuance of such 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 and interest of highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable from and secured by (1) federal moneys received by the state or any department thereof which are available to pay principal of and interest on such bond; and (2) the revenues from highways and related facilities under the ownership of the State or operated and managed by the department and 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, or such parts of either thereof as the department may determine, including other taxes, fees or charges presently 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 of 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 the governor's discretion, is authorized to use the state highway fund to finance those projects authorized in Part II and listed in Part IV of this Act, where the method of financing is designated to be by highway revenue bond funds."

SECTION 9. Part VII, Act 296, Session Laws of Hawaii 1991, is amended as follows:

(1) By amending Section 194 to read as follows:

"SECTION 194. Provided that notwithstanding any ceiling, the governor may transfer positions or funds between existing programs of the state executive branch during fiscal year 1991-92 and fiscal year 1992-93 for the purpose of establishing and maintaining integrated statewide data processing and communications systems; 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."

(2) By amending Section 195 to read as follows:

"SECTION 195. Provided that no income from Sand Island lands and facilities, other than those set aside for harbors or foreign trade zone purposes, shall be expended except pursuant to the provisions of section 5 of article VII of the Hawaii State Constitution and section 171-138 of the Hawaii Revised Statutes."

(3) By amending Section 198 to read as follows:

"SECTION 198. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the governor, or the director of finance, if so delegated by the governor, shall transfer the necessary funds and positions to the proper expending agency; 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 1993 regular session."

(4) By amending Section 205 to read as follows:

"SECTION 205. Where a program is financed by the general fund as well as 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 such excess receipts cannot be expended for purposes currently funded by the general fund appropriation."

## ACT 300

(5) By adding a new section to read as follows:

“SECTION 205A. For fiscal year 1992-93, where a program is authorized under Part II of this Act to expend from a revolving, special, or trust fund, agencies responsible for such funds are authorized to expend so much as may be necessary to carry out the purpose of each such fund; provided that such expenditures in excess of the amount indicated in Part II are approved by the governor; provided further that such expenditure shall not exceed the amounts available in such funds; and provided further that a report of all such approvals shall be reported to the legislature within thirty days.”

(6) By amending Section 208 to read as follows:

“SECTION 208. The governor is hereby authorized to establish ten permanent positions during fiscal year 1991-92, and five permanent positions during fiscal year 1992-93, to be allocated by the governor to any of the program areas included in this Act as the governor shall deem proper; provided further that the governor shall submit a report to the legislature on all positions established as of December 31 and June 30 of each fiscal year.”

(7) By amending Section 209 to read as follows:

“SECTION 209. The governor is hereby authorized to establish ten positions during fiscal year 1991-92, and five positions during fiscal year 1992-93, 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 on all positions established as of December 31 and June 30 of each fiscal year.”

(8) By amending Section 212 to read as follow:

“SECTION 212. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement 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 1991-93 which are unencumbered as of June 30, 1994, shall lapse as of that date; provided further that this lapsing date shall not apply to the appropriations for the projects described in section 165 of this Act where the method of funding is designated to be the general obligation bond fund, and 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.”

(9) By amending Section 218 to read as follows:

“SECTION 218. After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital improvement purposes have been met, unrequired balances shall be transferred to the project adjustment fund appropriated in Part II and described in Part IV of this Act and shall be considered a supplementary appropriation thereto; provided that all

other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 1994, as provided in section 212 of this Act."

(10) By amending Section 221 to read as follows:

"SECTION 221. Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any cost element for a capital improvement 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, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project."

(11) By amending Section 224 to read as follows:

"SECTION 224. The governor is authorized to transfer savings as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of recession, unemployment and unforeseen emergencies; provided that the recessionary effects of recession, unemployment, or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the legislature shall be notified in writing of such transfers of funding no later than fourteen days after the transfer is made."

(12) By adding a new section to read as follows:

"SECTION 224A. In the event that fire suppression costs exceed general fund appropriations made in this Act to the department of land and natural resources for such purpose, the governor is authorized to transfer and utilize savings as may be available from any other state program for the purpose of meeting such additional costs; provided further that the governor shall submit a report to the legislature on all such transfers within thirty days of such action."

(13) By adding a new section to read as follows:

"SECTION 224J. Provided that, for each department, the director of finance shall submit budget details of all appropriation authorized under Act 296, Session Laws of Hawaii 1991, as amended by this Act; provided further that the budget details shall include the following budget journal (BJ) tables;

1. Table BJ, Personal Requirements and Operating Cost Summary;
2. Table BJ-1, Details of Personal Services;
3. Table BT-1, Temporary Positions Salary Cost;
4. Table BJ-1A, Other Personal Services Cost;
5. Table BJ-2, Details of Other Current Expenses;
6. Table BJ-3, Details of Equipment Costs; and
7. Table BJ-4, Details of Motor Vehicle Cost;

provided further that the budget journal tables shall be organized by program ID

## **ACT 301**

and organization code; provided further that the table BJ-1 and table BT-1 shall depict the full salary amount of each position; provided further that the table BJ-1A shall include a negative adjustment to reflect salary increases provided for under each separate collective bargaining act; provided further that the director of finance shall submit all budget details, in whole and in final form, to the president of the senate, speaker of the house of representatives, committee on ways and means, and the committee on finance no later than December 31, 1992."

**SECTION 10.** If any portion of this Act or its application to any person, entity or circumstance is held to be invalid for any reason, then it is hereby declared that the invalidity shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objectives of such appropriation to the extent possible.

**SECTION 11.** In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

**SECTION 12.** Statutory material to be repealed is bracketed. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 296, Session Laws of Hawaii 1991, not repealed or modified by this Act.<sup>1</sup>

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

(Approved June 30, 1992.)

### **Note**

1. Edited accordingly.

## **ACT 301**

**H.B. NO. 2705**

A Bill for an Act Relating to the Judiciary.

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

**SECTION 1.** This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 1992.

**SECTION 2.** Act 299, Session Laws of Hawaii 1991, is amended by adding a new section to read as follows:

"**SECTION 2A.** 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 1991-92 to be exceeded by \$72,402,712 or 2.56 per cent, and for fiscal year 1992-93 to be exceeded by \$75,579,979 or 1.82 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act."

SECTION 3. This Act amends Act 299, Session Laws of Hawaii 1991.

SECTION 4. Part II, Act 299, Session Laws of Hawaii 1991, is amended:

(1) By amending Section 3 to read as follows:

"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, 1991, and ending June 30, 1993. The total expenditures and the number of permanent positions established in each fiscal year shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

#### P R O G R A M   A P P R O P R I A T I O N S

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
<b>The Judicial System</b>						
1.	JUD101	- COURTS OF APPEAL		69.00 *	[	69.00 *
						<u>71.00 *</u>
	OPERATING		JUD	4,206,160 A	[	4,281,628 A]
			<u>JUD</u>			<u>4,142,085 A</u>
2.	JUD111	- CIRCUIT COURTS		489.50 *	[	493.50 *
						<u>501.50 *</u>
	OPERATING		JUD	22,220,943 A	[	22,794,273 A]
			<u>JUD</u>			<u>22,340,768 A</u>
3.	JUD112	- FAMILY COURTS		397.50 *	[	401.50 *
						<u>404.50 *</u>
	OPERATING		JUD	23,787,140 A	[	24,676,441 A]
			<u>JUD</u>			<u>24,119,901 A</u>
4.	JUD121	- DISTRICT COURTS		500.50 *	[	501.50 *
						<u>516.50 *</u>
	OPERATING		JUD	15,848,418 A	[	15,967,715 A]
			<u>JUD</u>			<u>15,726,256 A</u>
				54.00 *		54.00 *
			JUD	1,650,001 B		1,642,457 B
5.	JUD201	- ADMIN. DIRECTOR SERVICES		234.50 *	[	237.50 *
						<u>247.50 *</u>
	OPERATING		JUD	14,865,489 A	[	15,402,985 A]
			<u>JUD</u>			<u>15,244,147 A</u>
	INVESTMENT CAPITAL		JUD	39,747,000 C	[	4,300,000 C]
			<u>JUD</u>			<u>6,920,000 C*</u>

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(2) By adding a new section to read as follows:

“SECTION 11A. Provided that of the general fund appropriation for circuit court (JUD 111), the sum of \$10,000 in fiscal year 1992-93 shall be used for training in mental health issues for judges in the first circuit criminal division.”

(3) By adding a new section to read as follows:

“SECTION 11B. Provided that of the general fund appropriation for administrative director services (JUD 201), the sum of \$29,720 in other current expenses shall be used for Hawaii State Bar registration fees for justices, judges and staff attorneys.”

(4) By amending section 12 to read as follows:

“SECTION 12. Provided that of the general fund appropriation for administrative director services (JUD 201), the sum of \$263,943 in fiscal year 1991-92 and \$267,615 in fiscal year 1992-93 shall be expended to establish the following three positions: one Judicial Education Officer; one Judicial Education Staff Assistant; and one Clerk Typist III; provided further that these positions shall be responsible for establishing a Judicial Education Office[. The]; provided further that the Judicial Education Officer shall be exempt from chapters 76 and 77, shall not be considered a civil service employee, but shall be entitled to any employee benefit plan normally inuring to civil service employees; and provided further that the functions of the Judicial Education Office shall include, but not be limited to, instituting a comprehensive and structured program for judicial orientation, continuing education, and training in the state court system.”

SECTION 5. Part III, Act 299, Session Laws of Hawaii 1991, is amended by amending Section 13 to read as follows:

“SECTION 13. The sum of [\$44,047,000] \$46,667,000 appropriated or authorized in PART II of this Act for capital investment shall be expended for the projects listed below. Several related or similar projects may be combined into a single project, if such a combination is advantageous or convenient, for planning, land acquisition, design, and construction purposes; provided that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. The amount after each cost element and the total funding for each project listed in this Part are in thousands of dollars and are to be expended by the judiciary.

### CAPITAL IMPROVEMENT PROJECTS

#### APPROPRIATIONS (IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
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The Judicial System

JUD201 - ADMIN. DIRECTOR SERVICES

1. HILO JUDICIARY COMPLEX, HAWAII

DESIGN AND CONSTRUCTION FOR A

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		JUDICIARY COMPLEX IN HILO TO ACCOMMODATE THE CIRCUIT, FAMILY, AND DISTRICT COURTS.					
		DESIGN			687		
		CONSTRUCTION			37,000		
		TOTAL FUNDING	JUD		37,687 C		C
2.		FAMILY COURT CENTER, OAHU					
		PLANS AND DESIGN FOR A FAMILY COURT CENTER ON OAHU.					
		PLANS			100		
		DESIGN				3,700	
		TOTAL FUNDING	JUD		100 C	3,700 C	
[ 3.		JUVENILE DETENTION CENTER, OAHU					
		PLANS FOR A NEW JUVENILE DETENTION CENTER ON OAHU.					
		PLANS			125		
		TOTAL FUNDING	JUD		125 C		C]
3.		JUVENILE DETENTION CENTER, OAHU					
		PLANS AND DESIGN FOR A NEW JUVENILE DETENTION CENTER ON OAHU.					
		PLANS			125		
		DESIGN				930	
		TOTAL FUNDING	JUD		125 C	930 C	
[ 4.		KAUAI JUDICIARY COMPLEX, KAUAI					
		LAND ACQUISITION AND DESIGN FOR A NEW KAUAI JUDICIARY COMPLEX.					
		LAND			450		
		DESIGN			470		
		TOTAL FUNDING	JUD		920 C		C]
4.		KAUAI JUDICIARY COMPLEX, KAUAI					
		LAND ACQUISITION AND DESIGN FOR A NEW KAUAI JUDICIARY COMPLEX.					
		LAND			450		
		DESIGN			470		
		TOTAL FUNDING	JUD		920 C	1,580 C	
[ 5.		MOLOKAI DISTRICT COURT, MOLOKAI					
		DESIGN FOR A NEW MOLOKAI DISTRICT COURT.					
		DESIGN			215		
		TOTAL FUNDING	JUD		215 C		C]
5.		MOLOKAI DISTRICT COURT, MOLOKAI					
		DESIGN FOR A NEW MOLOKAI DISTRICT COURT.					
		DESIGN			215		
		TOTAL FUNDING	JUD		215 C	110 C	

**ACT 301****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
6.		REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE					

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR REMODELING AND UPGRADING JUDICIARY  
BUILDINGS, STATEWIDE.

DESIGN	75	75
CONSTRUCTION	500	500
EQUIPMENT	25	25
TOTAL FUNDING	JUD	600 C

- [ 7. NAALEHU DISTRICT COURT/MULTI-PURPOSE  
FACILITY, HAWAII

PLANS FOR A NEW NAALEHU DISTRICT  
COURT/MULTI-PURPOSE FACILITY, HAWAII

PLANS	100	
TOTAL FUNDING	JUD	100 C

7. NAALEHU DISTRICT COURT/MULTI-PURPOSE  
FACILITY, HAWAII

PLANS FOR A NEW NAALEHU DISTRICT  
COURT/MULTI-PURPOSE FACILITY, HAWAII

PLANS	100	
TOTAL FUNDING	JUD	100 C

SECTION 6. Part IV, Act 299, Session Laws of Hawaii 1991, is amended by adding a new section to read as follows:

“SECTION 16A. Any law to the contrary, notwithstanding, the appropriations under Act 315, Session Laws of Hawaii 1989, section 31, as amended and renumbered by Act 301, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof are hereby lapsed:

Item No.	Amount (MOF)
JUD 201-3	\$1,800,000 C
JUD 201-5	1,580,000 C”

SECTION 7. Part V, Act 299, Session Laws of Hawaii 1991, is amended by amending Section 17 to read as follows:

“SECTION 17. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part III of this Act[,]; provided that the sum total of the general obligation bonds so issued shall not exceed [\$44,047,000.] \$46,667,000.”

**SECTION 8.** If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective and intent of such appropriation to the extent possible.

**SECTION 9.** In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the chief justice is authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

**SECTION 10.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 11.** This Act shall take effect upon approval.

(Approved June 30, 1992.)

**ACT 302**

H.B. NO. 3184

A Bill for an Act Relating to the Office of Hawaiian Affairs Budget.<sup>1</sup>

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

**SECTION 1.** Act 301, Session Laws of Hawaii 1991, is amended by adding a new section to read as follows:

“**SECTION 1A.** 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 1991-92 to be exceeded by \$3,491,703, or 0.12 per cent, and for fiscal year 1992-93 to be exceeded by \$3,599,847 or 0.12 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.** Act 301, Session Laws of Hawaii, 1991, is amended by amending Section 3 to read as follows:

“**SECTION 3.** Appropriations. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 1991, and ending June 30, 1993. 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 positions ceilings indicated for each,<sup>2</sup> except as provided elsewhere in this Act.

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## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93
Office of Hawaiian Affairs						
1.	OHA100 - POLICY AND ADMINISTRATION			9.50 *		9.50 *
	OPERATING	OHA	418,321 A		[ 420,421 A ]	
		<u>OHA</u>				<u>427,831 A</u>
		OHA	418,321 B		[ 420,422 B ]	
		<u>OHA</u>				<u>427,832 B</u>
2.	OHA101 - ADMINISTRATIVE SERVICES			8.00 *		8.00 *
	OPERATING	OHA	634,347 A		[ 575,705 A ]	
		<u>OHA</u>				<u>571,865 A</u>
		OHA	634,347 B		[ 575,705 B ]	
		<u>OHA</u>				<u>571,865 B</u>
3.	OHA102 - PUBLIC INFORMATION			2.00 *		2.00 *
	OPERATING	OHA	239,832 A		[ 219,265 A ]	
		<u>OHA</u>				<u>209,765 A</u>
		OHA	239,831 B		[ 219,265 B ]	
		<u>OHA</u>				<u>209,765 B</u>
4.	OHA103 - HUMAN RESOURCES			1.00 *		1.00 *
	OPERATING	OHA	447,973 A		[ 446,645 A ]	
		<u>OHA</u>				<u>523,648 A</u>
		OHA	447,972 B		[ 446,644 B ]	
		<u>OHA</u>				<u>523,647 B</u>
5.	OHA104 - PLANNING AND RESEARCH			2.00 *		2.00 *
	OPERATING	OHA	248,333 A		[ 216,181 A ]	
		<u>OHA</u>				<u>183,655 A</u>
		OHA	248,333 B		[ 216,180 B ]	
		<u>OHA</u>				<u>183,654 B</u>
6.	OHA105 - CULTURE			1.00 *		1.00 *
	OPERATING	OHA	91,752 A		[ 88,252 A ]	
		<u>OHA</u>				<u>68,851 A</u>
		OHA	91,752 B		[ 88,252 B ]	
		<u>OHA</u>				<u>68,851 B</u>
7.	OHA106 - GOVERNMENT AND COMMUNITY AFFAIRS			1.00 *		1.00 *
	OPERATING	OHA	102,441 A		[ 70,082 A ]	
		<u>OHA</u>				<u>145,082 A</u>
		OHA	102,440 B		[ 70,082 B ]	
		<u>OHA</u>				<u>145,082 B</u>

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
<b>8. OHA107 - LAND AND NATURAL RESOURCES</b>							
		OPERATING	OHA <u>OHA</u>	2.00 *		2.00 *	
				562,682 A	[	637,564 A] <u>539,314 A</u>	
			OHA <u>OHA</u>	2.00 *		2.00 *	
				562,682 B	[	637,564 B] <u>539,314 B</u>	
<b>9. OHA108 - ECONOMIC DEVELOPMENT</b>							
		OPERATING	OHA	3.00 *		3.00 *	
				439,145 A		432,708 A	
			OHA	3.00 *		3.00 *	
				439,145 B		432,708 B	
<b>10. OHA109 - EDUCATION</b>							
		OPERATING	OHA <u>OHA</u>	3.00 *		3.00 *	
				276,019 A	[	283,255 A] <u>439,144 A</u>	
			OHA <u>OHA</u>	3.00 *		3.00 *	
				276,019 B	[	283,255 B] <u>439,144 B</u>	
<b>11. OHA110 - HOUSING</b>							
		OPERATING	OHA <u>OHA</u>	1.00 *		1.00 *	
				30,858 A	[	33,144 A] <u>57,984 A</u>	
			OHA <u>OHA</u>	1.00 *		1.00 *	
				30,858 B	[	33,144 B] <u>57,985 B</u>	

SECTION 3. Act 301, Session Laws of Hawaii 1991, is amended as follows:

(1) By adding a new section to read as follows:

"SECTION 7A. Provided that the office of Hawaiian affairs shall submit a report on the accomplishments of the Native Hawaiian Legal Corporation; provided further that this report shall be submitted to the legislature not less than twenty days prior to the convening of the 1993 regular session."

(2) By adding a new section to read as follows:

"SECTION 7B. Provided that the office of Hawaiian affairs shall submit a report itemizing all intrastate and interstate travel, the purpose of travel, and the personnel involved; provided further that this report shall be submitted to the legislature not less than twenty days prior to the convening of the 1993 regular session."

(3) By adding a new section to read as follows:

"SECTION 7C. Provided that of the funds appropriated for human resources (OHA 103), the sum of \$30,000 in general funds and \$30,000 in special funds for

## ACT 302

fiscal year 1992-93 shall be expended to conduct a community pilot project to administer the Waianae diet project to Hawaiian residents of Waimanalo."

(4) By amending Section 9 to read as follows:

"SECTION 9. Provided that of the funds appropriated for planning and research (OHA 104), the sum of \$61,250 in general funds and \$61,250 in special funds for fiscal year 1991-92 and \$61,000 in general funds and \$61,000 in special funds for fiscal year 1992-93 shall be expended to conduct an independent program evaluation on [all new] programs funded by the legislature during the fiscal biennium 1991-93; provided further that the report shall include, but not be limited to, an evaluation of the effectiveness of the office of Hawaiian affairs' programs; provided further that the office of Hawaiian affairs shall submit the report [no] to the legislature not less than twenty days prior to the convening of the 1993 regular session."

(5) By adding a new section to read as follows:

"SECTION 10A. Provided that of the funds appropriated for government and community affairs (OHA 106), the sum of \$75,000 in general funds and \$75,000 in special funds for fiscal year 1992-93 shall be expended for the centennial observance of the overthrow of the Hawaiian monarchy; provided further that appropriated funds shall be matched on a dollar-for-dollar basis with private funds."

(6) By repealing section 12.

(7) By amending section 13 to read as follows:

"SECTION 13. Provided that of the funds appropriated for economic development (OHA 108), the sum of \$125,750 in general funds and \$125,750 in special funds in fiscal year 1991-92 and \$126,250 in general funds and \$126,250 in special funds in fiscal year 1992-93 shall be used to provide technical assistance, training opportunities, and special start-up [financing; provided further that no funds<sup>1</sup> be used to pay for travel expenses.] financing."

(8) By adding a new section to read as follows:

"SECTION 15A. Provided that of the funds appropriated for education (OHA 109), the sum of \$78,072 in general funds and \$78,072 in special funds for fiscal year 1992-93 shall be used to establish an early education center; provided further that the office of Hawaiian affairs shall coordinate efforts with the department of education and Bishop Estate."

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, 1992.)

### Notes

1. So in original.
2. Prior to amendment "year" appeared here.

## ACT 303

H.B. NO. 3107

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. 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.

(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 development 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.”

## **ACT 304**

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

SECTION 3. This Act shall take effect on July 1, 1992, and shall be repealed on December 31, 1994.

(Approved June 30, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 304**

H.B. NO. 2400

A Bill for an Act Relating to Mortgage Insurance.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$5,000,000, or 0.16 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 2. The legislature finds that although private mortgage insurance providers offer the services to meet most of the demands generated for home mortgage insurance underwriting in Hawaii, there is an urgent need to establish a mechanism to address the demands of the market that private insurers have, thus far, failed to recognize. Presently, private insurers do not offer mortgage insurance services for multi-family rental homes.

To ensure the availability of mortgage insurance services for a broader range of mortgages, the legislature finds that a mortgage insurance program should be established and administered at the level of the State.

The purpose of this Act is to establish a mortgage insurance underwriting program within the state housing finance and development corporation to insure mortgage loans made for multi-family rental housing under which a private non-profit corporation or a government corporation is the mortgagor.

SECTION 3. Chapter 201E, part II, Hawaii Revised Statutes, is amended by adding a new subpart to be appropriately designated and to read as follows:

### **“RESIDENTIAL MORTGAGE INSURANCE PROGRAM”**

**§201E- Definitions.** As used in this subpart, unless the context clearly requires otherwise:

“Debt-coverage ratio” means revenues produced by the project including subsidy payments from governmental entities, net of operating expenses, divided by principal and interest payments due on outstanding mortgage indebtedness.

“Default” means mortgage loans on which principal or interest, or both, are due and unpaid for a period of sixty days.

“First mortgage” means those classes of first liens, together with all

appropriate credit instruments, as are commonly given to secure loans on real estate under the laws of the State.

"Loan-to-value ratio" means the unpaid principal balance of the loan, combined with prior liens, divided by the appraised value or purchase price, whichever is less.

"Mortgagee" means the original lender of the mortgage, including all successors and assigns.

"Mortgagor" means the borrower of a first or second mortgage.

"Revolving fund" means the multi-family rental housing mortgage insurance revolving fund established under this subpart.

"Second mortgage" means any class of second liens, together with all appropriate credit instruments, ranking immediately after a first mortgage on the same property, without intervening liens, as are commonly given to secure loans on real estate.

**§201E- Mortgage insurance program; establishment.** There is established within the corporation, a mortgage insurance program. All moneys to administer the residential mortgage insurance program under this subpart shall be allocated out of the revenues of the revolving fund established under this subpart. The corporation shall establish mortgage insurance premium levels that, together with all other fees, charges, and appropriations, payable to the revolving fund, would generate the revenues and receipts to the revolving fund necessary to ensure the maintenance of a fiscally-sound, self-sustaining mortgage insurance program.

**§201E- Insurance of mortgages.** (a) Upon receipt of an application from a prospective mortgagee, the corporation may insure, or make advance commitments to insure, principal amounts of a loan for housing subject to this subpart and upon such terms and conditions as the corporation may prescribe. Mortgages insured by the corporation under this subpart shall be restricted to loans for multi-family rental homes under which a private nonprofit corporation or a government corporation is the original lender. Mortgage loans made or insured by the corporation under this subpart shall be secured by a first or second mortgage. For mortgages to be eligible for insurance under this subpart, the underlying mortgage shall be one that is made to and held by a mortgagee approved by the corporation as responsible and serviced by a responsible mortgage servicer.

(b) The aggregate principal amount of insurance liability for loans which may be insured under this subpart shall not exceed \$50,000,000. The obligation of the corporation under any policy of insurance issued under this subpart shall constitute an instrument of indebtedness under which the State incurs a contingent liability, as guarantor, and shall constitute a general and moral obligation of the State, and the full faith and credit of the State is pledged toward the payment of such obligation.

(c) The corporation shall adopt rules in accordance with chapter 91 to define the guidelines, procedures, conditions, and details of mortgage insurance premium payments under this section; provided that the corporation shall establish actuarially sound premium schedules, loan-to-value ratios, and premium underwriting guidelines to protect the multi-family rental housing mortgage insurance revolving fund from inordinate risk; provided further that under no circumstances shall the rules permit the loan-to-value ratio to exceed seventy-five per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.1 to 1.

(d) The underwriting guidelines established in accordance with subsection

(c) may be applied on a sliding scale such that a high loan-to-value ratio on a given loan will have a conservative debt-coverage ratio; and conversely, a loan with a low debt-coverage ratio will have a lower loan-to-value ratio than the maximum.

(e) In establishing the guidelines for mortgage insurance underwriting required under this subpart, the corporation shall seek to establish levels of permissible loan coverage that are adequate to make the insured mortgages acceptable to secondary market investors.

**§201E- Mortgage insurance; application procedures.** All applications for mortgage insurance under this subpart shall be forwarded, together with an application fee prescribed by the rules, to the corporation. The corporation shall review the application, investigate the type of housing to be financed to ensure conformance with the requirements of this subpart, and approve or deny the application. No application shall be approved unless the board finds that the financing plan for the rental project is sound and consistent with the purposes of this subpart. The corporation, within forty days of the receipt of the application, shall notify the applicant and the proposed lender of its determination. All approvals shall be subject to the payment of the fee prescribed by the corporation.

**§201E- Multi-family rental housing mortgage insurance revolving fund.** (a) There is established, within the corporation, a special fund to be known as the multi-family rental housing mortgage insurance revolving fund. Amounts in the fund shall be used to insure principal amounts of loans secured by mortgages for multi-family rental housing under which a private nonprofit corporation or a government corporation is the mortgagor.

(b) All appropriations or loans made by the legislature for the purposes of this subpart from the general fund, all interest income, investment income, fees, receipts of mortgage insurance premiums, money, and other assets received as a result of loan defaults or delinquencies, proceeds from the sale, lease, or rental of real property, and all other moneys collected under this section by the director of finance or the corporation shall be deposited into the multi-family rental housing mortgage insurance revolving fund.

(c) Disbursements under this subpart shall be made for all payments required by loan defaults, all direct expenses and payments for the protection of the interest of the corporation in connection with delinquent or defaulted insured mortgages or property acquired as a result thereof, and any and all claims arising from the insurance coverage provided. All claims payments under this subpart shall be paid out on vouchers approved by the director of finance and warrants signed by the comptroller.

(d) The corporation shall establish a method of determining and maintaining the reserve adequacy of the fund based upon the potential claim liability and the degree of risk estimated for that liability; provided that under no circumstances shall available reserves be less than ten per cent of the outstanding liability.

(e) The reserve adequacy of the fund shall be monitored by the corporation at least once during each quarter of the year and shall be audited by a certified public accounting firm at least once annually.

**§201E- Default by mortgagor and subsequent action.** (a) In the event of default by the mortgagor, the mortgagee shall notify the corporation of the default and the mortgagee's proposed course of action. When it appears feasible, the corporation, upon default by the mortgagor, may authorize payments to be made, for a temporary period, from the revolving fund to the mortgagee for

delinquent payments; provided that all amounts so advanced shall become a lien on the property; and provided further that the actual amounts paid in the settlements of claims shall not exceed the actual amount of loss realized upon the sale of the foreclosed property, or the amount of insurance coverage provided, whichever is less. All resales of property acquired by foreclosure or deeded in lieu of foreclosure shall require the approval of the corporation.

(b) The corporation may also agree to revise the terms of financing when it appears to be prudent. In accordance with subsection (a), the mortgagee shall be entitled to receive the benefits of the insurance authorized under this subpart upon:

- (1) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of the corporation by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure; provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to the corporation without recourse except such claims as may have been released with the consent of the board;
- (2) The expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to the corporation with an assignment, without recourse, to the corporation of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure or deficiency judgment;
- (3) The acceptance by the corporation of title to the property or an assignment of the mortgage, without recourse, to the corporation, in the event the corporation determines it imprudent to proceed under other options authorized under this section.

(c) Upon the exercise of any action under subsection (b), the obligation of the mortgagee to pay premium charges for insurance shall cease, and the corporation shall pay to the mortgagee, within thirty days, the sum of:

- (1) The unpaid principal balance of the insured indebtedness;
- (2) The unpaid interest to the date of conveyance or assignment to the corporation;
- (3) The amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments, and mortgage insurance premiums;
- (4) Any and all claims arising from the insurance coverage provided; and
- (5) All other necessary fees, costs, or expenses of the mortgagee as approved by the corporation; provided that the aggregate amount paid shall not exceed the amount of insurance coverage provided.

(d) Except as provided in subsection (c), chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this subpart 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 receives any benefits under this subpart, against the corporation, the State or its officers and employees, except as expressly provided in this subpart.

(e) Upon request of a mortgagee, the corporation, at any time, and under such terms and conditions as the corporation may prescribe, may:

## ACT 305

- (1) Consent to the release of the mortgagor from liability;
- (2) Consent to the release of the property from the lien of the mortgage;
- (3) Approve a substitute mortgagor; or
- (4) Approve the sale of the property or any part thereof.

(f) No claim for the benefit of the insurance provided in this chapter shall be accepted by the corporation except within one year after any sale or acquisition of title of the mortgaged premises under subsection (b)(1) or (2)."

SECTION 4. 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 reserve requirement of the State Constitution.

SECTION 5. The director of budget and finance is authorized to transfer the sum of \$5,000,000, from the homes revolving fund to capitalize the multi-family rental housing mortgage insurance revolving fund. The sum transferred shall be expended by the housing finance and development corporation for the purposes of this Act.

SECTION 6. The housing finance and development corporation shall submit a report to the legislature of its findings and recommendations regarding the status and performance of the mortgage insurance underwriting program twenty days before the convening of the regular session of 1995.

SECTION 7. This Act shall take effect on July 1, 1992 and shall be repealed on June 30, 1995.

(Approved June 30, 1992.)

## ACT 305

H.B. NO. 3100

A Bill for an Act Relating to Housing Development.

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

SECTION 1. Section 201E-30, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-30 Development of property.** (a) The corporation, in its own behalf or on behalf of any government, may:

- (1) Clear, improve, and rehabilitate property; and
- (2) Plan, develop, construct, and finance housing.

(b) The corporation may develop state lands [but not federal lands, state monuments or historical sites or parks in an agricultural district] subject to the prior approval of the land use commission when developing lands greater than fifteen acres in size, and lands in a conservation district subject to the prior

approval of the board of land and natural resources[.], but the corporation may not develop state monuments or historical sites. When the corporation proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth [such] that purpose. The petition shall be conclusive proof that the intended use is a superior public use to that which the land has been appropriated.

(c) The corporation may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

[c] (d) The corporation shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any public body for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

[d] (e) The corporation may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration project for housing designed to meet the needs of elders, handicapped, displaced or homeless persons, low and moderate income persons, employees, teachers, or other government workers, or university and college students and faculty."

SECTION 2. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) The tax imposed by this chapter shall not apply to any use of property exempted by section 237-26[.] or section 237-29."

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 section 2 shall take effect retroactive to March 1, 1992.

(Approved June 30, 1992.)

## ACT 306

S.B. NO. 2858

A Bill for an Act Relating to Housing.

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

SECTION 1. Chapter 201E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§201E- Homebuyers' club program.** (a) The corporation may establish a homebuyers' club program for participants who are desirous of purchasing a home and who have adequate incomes but who lack sufficient funds for the downpayment and closing costs. The primary focus of this program is to facilitate the purchase of homes by providing participants with strategies to save money, to resolve credit problems, and to educate participants on how to shop for and purchase a home.

(b) In establishing such a program, the corporation shall adopt rules pursuant to chapter 91 relating to establishing a savings program for participants

based upon individual analyses of income and family expenses. The rules may also provide for integration of the homebuyers' club program with other governmental programs including but not limited to individual housing accounts under section 235-5.5, the state mortgage guarantee program under chapter 201E, subpart II.G., the downpayment loan program established under chapter 201E, subpart II.H., and the rent-to-own program established under section 201E-

(c) The corporation may secure the services of another public or private entity to carry out the purposes of this section.

**§201E- Rent-to-own program.** (a) The corporation may establish a rent-to-own program under which housing units that are for sale may be rented to program participants. Under this program, the corporation shall credit a portion of the rent received toward the purchase of the unit.

(b) The sales price shall be established at the beginning of the rental term and shall remain fixed for the first five years after the rental agreement is executed. During this period, the participant shall have the option of purchasing the unit at the designated sales price. If the participant does not elect to purchase the unit within the five-year period, the renter shall forfeit the right to continue living in the unit and the unit shall be made available to another purchaser or renter.

(c) The corporation shall have the right to re-establish the sales price upon expiration of the option period or upon resale of the unit.

(d) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this section."

SECTION 2. Chapter 201E, part II, subpart H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§201E- Downpayment loan program revolving fund.** There is created within the state treasury a revolving fund to be administered by the corporation and to be known as the downpayment loan revolving fund. The revolving fund shall be funded from the proceeds of general obligation bonds or other appropriations from the state legislature, and shall be used to carry out the purposes of this subpart."

SECTION 3. Section 201E-160, Hawaii Revised Statutes, is amended to read as follows:

**"[§201E-160[]] State mortgage guarantee.** (a) The corporation may guarantee:<sup>1</sup>

- (1) Up to the top twenty-five per cent of the principal balance of real property mortgage loans for the purchase of qualified single-family or multifamily housing[; a] units;
- (2) A maximum of one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act; [up]
- (3) Up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multifamily housing developed under self-help or shell housing programs;

plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation's liability, contingent or otherwise, on [such] these guarantees exceed \$10,000,000. For the purposes of

this section, the term "self-help housing program" means development or conservation of housing in which prospective homeowners have contributed labor, materials, or real property; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart[; and [provided further] that the program is carried out under the sponsorship of a nonprofit community organization. For the purposes of this section, the term "shell housing program" means development of housing which is habitable but unfinished and can be completed or expanded; provided that at least one hundred per cent of the participating homeowners are qualified by income for assistance under this chapter[; and [provided further] that the program is carried out under the sponsorship of a public nonprofit or private organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multifamily dwelling owned and occupied by the borrower and the borrower's permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the [State.] state.

(c) Loans [secured] guaranteed under this section shall be [limited to qualified single-family and multifamily housing] in accordance with rules adopted by the corporation.

(d) To be eligible for loans under this section, a qualified borrower shall be:

- (1) A citizen of the United States or a resident alien;
- [2] (2) A sound credit risk with ability to repay the money borrowed;
- (3) (2) Qualified under the rules adopted by the corporation; and
- [4] (3) Willing to comply with the rules as may be adopted by the director of finance.

The corporation [shall] may secure the services of a private lender to process all applications and determine who is a qualified borrower under this chapter.

(e) When the application for an insured loan has been approved by the corporation, the [director of finance] corporation shall issue to the lender a guarantee for that percentage of the loan on which it guarantees payment of principal and interest. The private lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the corporation's guarantee, the private lender shall remit out of [interest] monthly payments collected an insurance fee as [may be] established by the corporation. The funds remitted shall be placed in the state mortgage guarantee fund provided for in subsection (k).

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the private lender may file a claim for the guaranteed portion of the overdue payments with the [director of finance who] corporation which may then authorize vouchers for these payments, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The [director of finance] corporation shall be reimbursed for any amounts so paid plus the applicable interest rate[, where] when payment is collected from the borrower.

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the [director of finance] corporation within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the [director of finance.] corporation. Within thirty days of either notification, the [director of finance] corporation may elect to request an assignment of the loan on payment in full to the

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lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

- (1) Extend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;
- (2) Not sell or otherwise dispose of the [mortgage] mortgaged property except upon the prior written consent of the [director of finance,] corporation and except upon [such] any conditions [as] that may be prescribed in writing by the private lender;
- (3) Undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the property mortgaged, together with cost and expense of any foreclosure of [such] the mortgage;
- (4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the [regulations] rules and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;
- (5) Keep the improvements in good repair; and
- [6] All of the above conditions shall be held and construed to be a provision of any mortgage executed by virtue of this section whether appearing as a provision of the mortgage or not; and
- (7) (6) The private lender may impose [such] any other conditions in its mortgage[,]; provided the form of [such] the mortgage has received the prior approval of the corporation.

All of the above conditions shall be held and construed to be provisions of any mortgage executed by virtue of this section regardless of whether or not they are expressly incorporated in the mortgage document.

(j) Loans guaranteed and made under this subpart shall be repaid in accordance with a payment schedule specified by the private lender with payments applied first to interest and then to principal. Additional payments in any sums[,] and the payment of the entire principal, may be made at any time within the<sup>2</sup> period of the loan. The private lender [may] for satisfactory cause and at its discretion, may extend the time within which the installments of principal may be made for a period not to exceed two years.

(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 [director of finance and the] corporation shall be deposited into this fund. The purpose of the fund is to guarantee payment of loans made under this subpart and to carry on the operations of [the director of finance and] the corporation in administering and granting loans under this subpart. [All disbursements from the state mortgage guarantee fund shall be paid out on vouchers approved by the director of finance and warrants signed by the comptroller.]"

SECTION 4. Section 201E-170, Hawaii Revised Statutes, is amended to read as follows:

"[§201E-170[]] Downpayment loans. (a) The corporation may make direct downpayment loans to [qualified] eligible borrowers. The downpayment

loan to any borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less. The interest rate on the loans may range from zero per cent to eight per cent, depending on the buyer's incomes.

(b) The repayment of every downpayment loan shall be secured by a duly recorded second mortgage executed by the borrower to the State on the residential property purchased with the downpayment loan.

(c) The principal of the downpayment loan, together with accrued interest, shall be due and payable upon the sale, transfer, or refinancing of the home, or shall be repaid by the borrower in such installments as determined by the corporation [over a period not exceeding forty years.]; provided that the corporation may provide a period in which the payment could be waived. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest at any time without penalty.

(d) The corporation may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the State to collect, [in] on behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of [then prevalent] the prevailing loan servicing fees. [For this purpose, the corporation may assign the second mortgage held by it to secure the repayment of the downpayment loan to such mortgage lender.]

(e) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this subpart."

SECTION 5. Section 201E-171, Hawaii Revised Statutes, is amended to read as follows:

**"[§201E-171[]] Qualifications for downpayment loan.** (a) No person shall be qualified for a downpayment loan unless the person:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State [of one year or more];
- (4) [Has a bona fide intent to] Will physically reside in the residential property to be purchased[; for the term of the loan];
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and
- (6) [Has the financial capacity to repay the downpayment loan.] Provides a portion of the downpayment which shall be equal to at least three per cent of the sales price.

(b) No person who owns in fee simple or in leasehold any other residential property within the State[,] shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both [the person and person's spouse] (unless separated and living apart under a decree of a court of competent jurisdiction) own [such] a majority interest in a residential property."

SECTION 6. Section 201E-172, Hawaii Revised Statutes, is amended to read as follows:

**"[[]§201E-172[]] Restrictions on borrower.** Every loan made under this subpart shall be subject to the following conditions:

- (1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property[.];
- (2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender[.];
- (3) The borrower shall pay when due all taxes, liens, judgements, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State[.];
- (4) The borrower shall maintain fire and casualty insurance in [such] amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of [such] that insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvements or property covered by [such] the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State[.]; and

- (5) The borrower shall maintain the improvements in good repair.

All of the above conditions shall be [deemed] held and construed to be a part of any downpayment mortgage executed under this part, regardless of whether or not they are expressly incorporated in the mortgage document."

SECTION 7. Section 201E-173, Hawaii Revised Statutes, is amended to read as follows:

**"[[]§201E-173[]] Default.** If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may[, on behalf of the State,] take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation or mortgage lender on behalf of the [State,] corporation, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the obligations of the borrower under the first mortgage held by the private lender and [such] any other liens having priority over the second mortgage [as] that may then exist. On [such] the acquisition of the borrower's interest, the corporation, at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens, repair, renovate, modernize, or improve the residential property, and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner that the corporation is authorized [to do so] by law."

SECTION 8. Section 201E-217, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-217 Hawaii development revolving fund.** (a) There shall be a revolving fund to be known as the Hawaii development revolving fund which shall be administered by the corporation. All repayments of principal and interest on loans or grants made by the corporation from the fund shall be placed in the Hawaii development revolving fund to be used for the purposes of this section.

(b) The corporation may make loans[,] or grants, either before or after final subdivision approval, to cover planning, [development,] engineering, feasibility studies, and other initial costs, including the cost of options, agreements of sale, and downpayments[,] of commencing projects to provide low or moderate cost housing through government assistance programs.

(c) In managing the fund, the corporation may cooperate with other public and private nonprofit organizations and may enter into loan or grant agreements with them. The necessity for the extent and nature of security required for a loan or grant shall be determined by the corporation. The security may include, but is not limited to, a borrowing resolution of the nonprofit organization.

The foregoing powers are subject, however, to the following restrictions and limitations:

- (1) No single loan or grant shall exceed two per cent of the project cost;
- (2) The loan shall be repaid with simple interest [in the amount of] not to exceed six per cent per year; and
- (3) The moneys loaned shall be used only for the planning, [development,] engineering, feasibility studies, and other initial costs of commencing projects to provide nonprofit low or moderate cost housing.

(d) The corporation may adopt rules in accordance with chapter 91 to carry out the purposes of this section.

(e) For the purposes of this section, “government assistance programs” means housing programs qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.”

**SECTION 9.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

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

(Approved June 30, 1992.)

#### Notes

1. Colon should be underscored.
2. Prior to amendment “time” appeared here.
3. Edited pursuant to HRS §23G-16.5.

**ACT 307**

S.B. NO. 2867

A Bill for an Act Relating to Affordable Housing.

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

**SECTION 1.** Section 201E-110, Hawaii Revised Statutes, is amended by amending the definitions of “eligible borrower” and “eligible loan” to read as follows:

“Eligible borrower” means: [any]

- (1) Any person or family, irrespective of race, creed, national origin, or sex, who:
- [[(1)] (A) Is a citizen of the United States or a declarant alien;
- [[(2)] (B) Is a bona fide resident of the State;
- [[(3)] (C) Is at least of legal age;
- [[(4)] (D) Does not personally, or whose spouse if the person is married, own [any] a majority interest in any residential property in the State; and
- [[(5)] (E) Meets other qualifications as established by rules adopted by the corporation[.]; or
- (2) A qualified sponsor of an affordable housing project who meets the qualification requirements as established by rules adopted by the corporation.
- “Eligible loan” or “loan” means: [a]
- (1) A loan to an eligible borrower for the purchase of a housing unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation[.]; or
- (2) An interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of an affordable housing project, and which meets other requirements as established by rules adopted by the corporation.”

SECTION 2. Section 201E-130, Hawaii Revised Statutes, is amended to read as follows:

“[[§201E-130[]]] Purpose; findings and determinations. The legislature finds and declares that the health and general welfare of the people of the State require that the people of this State have safe and sanitary rental housing accommodations available at affordable rents; that a grave shortage in the number of such accommodations affordable by families and individuals of low and moderate income in the State exists; that it is essential that owners of rental housing accommodations be provided with appropriate additional means to assist in reducing the cost of rental housing accommodations to the people of the State[.].

Additionally, the legislature finds that the high cost of infrastructure development and the obtaining of interim construction financing are two of the greatest impediments to the production of affordable rental housing in this State. It is especially difficult for private nonprofit and profit entities to participate in the development of affordable housing due to the difficulty in amassing the capital necessary to plan and carry a project to completion.

[that it] It is the purpose of this part to:

- (1) [assist] Assist such owners in maintaining the rentals at levels affordable by families and individuals of low and moderate income by providing such owners with rental assistance payments which, with rentals received by tenants of low and moderate income, will provide such owners with limited but acceptable rates of return on their investments in rental housing accommodations; and that assisting such owners by entering into contracts with them which provide for rental assistance payments is a valid public purpose and in the public interest[.]; and
- (2) Provide a funding source for interim construction financing for the development of affordable rental housing by private nonprofit and

profit entities, as well as the corporation; provided that in allotting this financing, the corporation shall give preference to qualified sponsors who are private nonprofit and profit entities.”

SECTION 3. Section 201E-132, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-132 Rental assistance revolving fund.** (a) There is created a rental assistance revolving fund to be administered by the corporation.

(b) The aggregate principal sum in the rental assistance revolving fund which may without limitation include sums made available from any government program or grant, from private grants or contributions, from the proceeds of any bond issue, or by appropriation, shall be invested by the corporation in a manner which will [preserve the principal sum and] maximize the rate of return on investment of the fund; provided that any investment shall be consistent with section 201E-54 but need not comply with section 36-21.

(c) [Earnings on the investment of the rental assistance revolving fund and amounts recovered by the corporation pursuant to section 201E-134(f) may be applied by the corporation to payments under the rental assistance contracts or to subsidize tenants' rents in projects developed under subpart II.A.] The corporation may use, as needed, the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to make payments under the rental assistance contracts or to subsidize tenants' rents in projects developed under part II; provided that the corporation shall use up to \$25,000,000 plus any bond proceeds to provide interim construction financing to:

- (1) Qualified sponsors who are private nonprofit or profit entities; or
- (2) The corporation,

for the development of affordable rental housing; provided further that the corporation, in allotting interim construction financing moneys pursuant to this part, shall give preference to rental housing projects developed by qualified sponsors who are private nonprofit or profit entities.”

SECTION 4. Section 201E-133, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-133 Rental assistance contracts.** (a) The corporation may enter into a rental assistance contract and a regulatory agreement with the owner of an eligible project, when the owner of an eligible project is other than the corporation.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner, which agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in such agreement and otherwise established by the corporation.

[(c) The corporation shall not enter into any rental assistance contract which would require the corporation to make payments at any time in excess of the amount available at such time or times in the rental assistance revolving fund pursuant to section 201E-132 for the funding of such payments.] Each rental assistance contract [shall provide] heretofore entered into by the corporation which provided that rental assistance payments shall be made solely from the earnings on the investment of the rental assistance revolving fund[.] shall hereafter, without modification of such contracts, be payable from the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund.

[(d)] (c) A rental assistance contract and any subsidy of tenants' rents in projects developed under this part II shall be for a term [of not less than ten years and shall not be for a term in excess of the period for which the corporation has invested the principal of the rental assistance revolving fund at a known rate of return.] not in excess of thirty-five years and shall be approved by the board of directors of the corporation. Upon such approval by the corporation, the director of finance shall be authorized to guarantee the obligation of the corporation for the term of the rental assistance contract or the subsidy of tenants' rents in an amount equal to the aggregate obligation of the corporation to make assistance payments; provided that the aggregate of all such outstanding guarantees shall not exceed \$100,000,000. Pursuant to such guarantee, the corporation shall make annual rental payments to the owner in accordance with the approved rental assistance contract or to the tenants in accordance with the approved subsidy.

[(e)] (d) Each rental assistance contract shall set forth a maximum annual rental assistance payment amount. The corporation shall establish procedures for determining the maximum annual rental assistance payment amount and may consider, but not be limited to, the following:

- (1) The cost of constructing the eligible project;
- (2) The estimated annual operating cost of the eligible project;
- (3) The estimated maximum rentals which may be charged for units in the eligible project;
- (4) The amount of funds available for the funding of rental assistance contracts;
- (5) The number of eligible projects requiring assistance under this part; and
- (6) A restricted rate of return on equity to the owner, which rate shall be established by the corporation by rule."

SECTION 5. Section 201E-134, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Annually, following the approval of the rental schedule submitted pursuant to the preceding section, the corporation shall determine the amount of rental assistance payments payable to the owner for the forthcoming year, which amount shall under no circumstances exceed the maximum annual rental assistance payment amount determined in accordance with section 201E-133. The amount determined pursuant to this subsection shall take into account the estimated amount to be derived by the owner from rentals to be charged for the forthcoming year and the limited rate of return on equity permitted in accordance with section [201E-133(e)(6).] 201E-133(d)(6)."

SECTION 6. 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<sup>1</sup> outstanding general obligation bonds not otherwise be<sup>1</sup> 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 in section 7 satisfies the reasonable reserve requirement of the State Constitution.

SECTION 7. The housing finance and development corporation shall

reserve an amount equal to ten per cent of the aggregate amount of outstanding guarantees made by the director of finance pursuant to section 201E-133(c), Hawaii Revised Statutes.

**SECTION 8.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 9.** This Act shall take effect upon its approval, and shall apply to rental assistance contracts executed prior to the effective date of this Act.

(Approved June 30, 1992.)

**Note**

1. So in original.

**ACT 308**

S.B. NO. 2868

A Bill for an Act Relating to the Financing of Affordable Rental Housing.

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

**SECTION 1.** The purpose of this Act is to establish a rental housing trust fund. The legislature finds that there is an acute shortage of safe, decent, and affordable rental housing in the State of Hawaii. Consequently, many persons are forced to occupy overcrowded, unsafe, or unsanitary dwelling accommodations, or become homeless. The legislature also finds that a majority of Hawaii's housing problems stem from an inadequate supply of affordable housing, which has led in turn to low vacancy rates and high rents. Because of the high cost of housing development and the extent of rental expense burden among Hawaii's very low and low income households, funding must be made available to subsidize the development of affordable rental housing for these segments of the population.

The legislature has also determined that it is in the public interest to establish the rental housing trust fund as a continuous renewable resource to assist very low and low income families and individuals, including the homeless and special need groups, in obtaining rental housing.

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

**“CHAPTER  
RENTAL HOUSING TRUST FUND”**

**§ -1 Definitions.** The following terms, wherever used or referred to in this chapter, shall have the following meanings unless a different meaning clearly appears from the context:

“Commission” means the rental housing trust fund commission.

“Corporation” means the housing finance and development corporation.

“Department” means the department of budget and finance.

“Develop” or “development” means the planning, financing, acquisition of real and personal property; demolition of existing structures; clearance of real property; construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements; or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of

buildings or other structures; or any combination of the foregoing, of any housing project. It also includes any undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

“Federal government” includes the United States and any agency, instrumentality, corporate or otherwise, of the United States.

“Government” includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, or either of them.

“Housing” or “housing project” includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project.

“Nonprofit organization” means a corporation, association, or other duly chartered entity which is registered with the State, and which has received charitable status under the Internal Revenue Code of 1986, as amended.

“Trust fund” or “fund” means the rental housing trust fund established in this chapter.

**§ -2 Rental housing trust fund established.** (a) There is established a rental housing trust fund to be placed within the department for administrative purposes but to be under the authority of the rental housing trust fund commission established by this chapter. The department and the corporation shall be responsible for specific duties as specified in this chapter.

(b) An amount, not to exceed one per cent of the rental housing trust fund, may be used for administrative expenses incurred by the commission in administering the fund; however, trust fund moneys may not be used to finance day-to-day administrative expenses of projects allotted trust fund moneys.

(c) The following may be deposited into the fund: appropriations made by the legislature, private contributions, repayment of loans, interest, other returns, and moneys from other sources.

**§ -3 Purpose of the fund.** (a) The trust fund shall be used to provide loans or grants for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units. Permitted uses of the fund may include but are not limited to planning, design, land acquisition, costs of options, agreements of sale, downpayments, equity financing, or other housing development services or activities as provided in rules adopted by the rental housing trust fund commission pursuant to chapter 91. The rules may provide for a means of recapturing loans or grants made from the rental housing trust fund if a rental housing project financed under the trust fund is refinanced or sold at a later date. The rules may also provide that moneys from the rental housing trust fund shall be leveraged with other financial resources to the extent possible.

(b) Moneys in the fund shall be used for the purpose of providing in whole or in part loans or grants for housing projects wherein:

- (1) At least fifty per cent of the available units are for persons and families with incomes at or below sixty per cent of the median family income; and

- (2) The remaining units are for persons and families with incomes at or below one hundred per cent of the median family income;

provided that the commission may establish rules to ensure full occupancy of fund projects.

- (c) For the purposes of this part,<sup>1</sup> the applicable median family income

shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time.

**§ -4 Rental housing trust fund commission.** (a) There is established within the department the rental housing trust fund commission consisting of seven members, five of whom shall be appointed pursuant to section 26-34. The members of the commission shall serve four year staggered terms, provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; two members to be appointed for two years; and one member to be appointed for one year. As part of this appointment process, an appropriate organization from each of the categories of organizations enumerated below shall submit a list of three public member nominees to the governor. The governor shall select and appoint one public member from each list.

The public members shall be representative of the following categories of organizations:

- (1) Real estate brokers/rental property managers;
- (2) Tenants/renters advocacy organizations;
- (3) Nonprofit housing developers/low income service providers;
- (4) Mortgage lenders;
- (5) Architects/planners.

A county government official appointed on a rotating basis among counties and the director of the department or the director's designated representative shall be ex officio voting members of the commission.

(b) The chairperson shall be a public member elected by the members of the commission and shall serve not more than two one-year terms as chair.

(c) The vice-chair shall be a public member elected by the members of the commission.

(d) Four members shall constitute a quorum. Four affirmative votes shall be necessary for all actions by the commission.

(e) The members shall receive no compensation for services, but shall be entitled to necessary expenses, including traveling expenses, incurred in the performance of their duties.

**§ -5 Powers and duties of the commission.** In addition to any other powers and duties granted by this part,<sup>1</sup> the commission shall:

- (1) Adopt rules, pursuant to chapter 91, to protect the interests of the fund and to best carry out the purposes of this chapter;
- (2) Define the guidelines, procedures, conditions, and details of loans under this section; provided that the commission shall establish loan-to-value ratios to protect the rental housing trust fund from inordinate risk and that under no circumstances shall the rules permit the loan-to-value ratio to exceed ninety-five per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.05 to 1;
- (3) Evaluate the trust fund program every two years and report its evaluation with suggested changes to the legislature not fewer than twenty days before the convening of the regular session of the first year of each fiscal biennium, starting with the 1995-1997 fiscal biennium;
- (4) Obtain the services of technical and support staff from other government agencies, including the housing finance and development

corporation and the Hawaii housing authority to carry out the purposes of this chapter; and

- (5) Do all things necessary to carry out the functions, powers, and duties set forth in this chapter.

**§ -6 Eligible applicants for funds.** Eligible applicants for funds shall include nonprofit and for profit developers, including government agencies, who are qualified in accordance with rules adopted by the commission pursuant to chapter 91.

**§ -7 Eligible projects.** (a) The commission shall adopt rules pursuant to chapter 91 to establish procedures and criteria for identifying and selecting eligible projects for funding under this section.

(b) Activities eligible for assistance from the fund shall include but not be limited to:

- (1) New construction, rehabilitation, or preservation of low-income rental housing units that meet the criteria for eligibility described in subsection (c);
- (2) The leveraging of moneys with the use of fund assets;
- (3) Pre-development activity grants or loans to nonprofit organizations; and
- (4) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing;

provided that preference shall be given to projects producing units in at least one of the following categories:

- (1) Multi-family units;
- (2) Attached single-family units;
- (3) Apartments;
- (4) Townhouses;
- (5) Housing units above commercial or industrial space;
- (6) Single room occupancy units;
- (7) Accessory apartment units;
- (8) Employee housing; and
- (9) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The commission shall establish an application process for fund allocation that gives preference to projects meeting the criteria set forth below that are listed in descending order of priority:

- (1) Serve the original target group;
- (2) Provide maximum number of units for the least amount of subsidy;
- (3) Are committed to serving the target population over a longer period of time;
- (4) Increase the integration of income levels of the immediate community area;
- (5) Meet the geographic needs of the target population, such as proximity to employment centers and services; and
- (6) Have favorable past performance with fund moneys.

The commission may include other criteria in the above process as it deems necessary to carry out the purposes of this chapter.

If the commission, after applying the process described in this subsection, finds a nonprofit project equally ranked with a for-profit or government project, the commission shall give preference to the nonprofit project in allotting fund moneys.

**§ -8 Role of the corporation.** The corporation shall provide technical and support services, and physical space to the commission at the commission's request, but shall have no legal authority to expend trust fund moneys.

**§ -9 Role of the department.** The department shall expend trust fund moneys at the request of the commission, but shall have no legal authority to expend trust fund moneys without prior approval from the commission."

SECTION 3. Section 26-8, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

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

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

The rental housing trust fund established under chapter \_\_\_\_\_, is placed within the department of budget and finance for administrative purposes only."

SECTION 4. For the purpose of expediting the implementation of this Act, the governor shall appoint an interim commission composed of members described in section -4 of the new chapter enacted under section 2, for the purpose of rule-making. The interim commission shall be dissolved upon adoption of

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the rules, whereupon the commission established under section -4 shall be appointed.

**SECTION 5.** The director of finance is authorized to transfer \$15,000,000 from the rental assistance revolving fund, created pursuant to section 201E-132, to the rental housing trust fund for the purposes of this Act.

**SECTION 6.** If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

**SECTION 7.** 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 8.** Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

**SECTION 9.** The provisions of this Act shall take effect on July 1, 1992.

(Approved June 30, 1992.)

### **Notes**

1. So in original.
2. No bracketed material.

## **ACT 309**

H.B. NO. 1346

A Bill for an Act Relating to Affordable Housing.

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

**SECTION 1.** Section 201E-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation, on behalf of the State or with eligible developers and contractors, shall develop real property and construct dwelling units thereon; provided that, [where feasible,] not less than ten per cent of the total number of units in single family projects consisting of 50 units or more sponsored by the corporation shall be first offered to owner-builders or to nonprofit organizations assisting owner-builders in the construction of units thereon.

Qualifications for developers and contractors shall be provided by rules to be adopted by the corporation in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.”

**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, 1992.)

## ACT 310

H.B. NO. 2504

A Bill for an Act Relating to Mutual Housing.

*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 MUTUAL HOUSING”**

**§ - Mutual housing associations; establishment authorized.** (a)

For the purposes of this part,<sup>1</sup> “mutual housing association” means a federally, tax-exempt nonprofit corporation, incorporated under chapter 415B and certified by the federally created Neighborhood Reinvestment Corporation the function of which is to purchase, develop, build, or rehabilitate land and residential dwellings to provide low- and moderate-income level housing in which residents:

- (1) Whose membership in the association combined with an occupancy agreement constitutes a personal property ownership interest;
- (2) Participate in the ongoing operation and management of the housing; and
- (3) Retain the right to continue residing in the housing project, provided that the resident complies with the terms of the resident’s occupancy agreement.

(b) The mutual housing association shall have a duly elected board of directors with appropriate governing powers set forth in its bylaws and articles of incorporation.

**§ - Articles of incorporation and bylaws; adoption required.** The articles of incorporation of any mutual housing association established under this part<sup>1</sup> shall include but not be limited to the following bylaws:

- (1) The members of the association include residents or potential residents of housing owned by the mutual housing association and include non-residents who represent public and private sector interests which support the purposes of the mutual housing association;
- (2) The association encourages neighborhood stability through community and resident involvement in the development, ownership, and operation of high quality, long-term housing for low- and moderate-income families, in which residents have the right to continue residing in such housing as long as they comply with the terms of their individual occupancy agreement, but possess no equity interest;
- (3) The association may accept assistance from public as well as private sources, including donations, gifts, grants, endowments, and loans;
- (4) The board of directors shall be elected by members of the association;
- (5) The board shall adopt rules to carry out its duties, including rules governing resident roles and responsibilities, the setting of monthly

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- fees, and procedures for property management;
- (6) The mutual housing association may hire staff;
- (7) Resident members are required to pay a membership fee as a condition of eligibility for occupancy of a housing unit, provided that the membership fee is refundable to the resident member when the member vacates the unit;
- (8) The mutual housing association may establish a monthly housing charge to residents to cover operating costs, and may earn a reasonable return on the equity capital contributed to the development or acquisition of the housing project through membership fees or grants, including state grants;
- (9) Resident members whose incomes rise above the low- and moderate-income limits may continue their occupancy in the housing, provided that such occupancy does not conflict with financing requirements;
- (10) The association may plan, purchase, renovate, construct, and arrange financing for new low- or moderate-income housing developments; and
- (11) Disputes concerning or involving one or more members and the mutual housing association, its board of directors, managing agent, or one or more other members relating to the interpretation, application, or enforcement of this chapter or the association's charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to mediation or arbitration."

SECTION 2. This Act shall take effect upon its approval, and shall expire on December 31, 1997.

(Approved June 30, 1992.)

### Note

1. So in original.

## ACT 311

S.B. NO. 2964

A Bill for an Act Relating to a Resource and Technical Assistance Project on Autism.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$200,000, or 0.006425 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 meets the need provided for by this Act.

SECTION 2. **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 inaccurate diagnosis, frequently results in inappropriate and insufficient support services at home 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.

The state planning council on developmental disabilities has 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) Autism is a poorly defined and misunderstood diagnostic label for a serious and pervasive life-long developmental disability caused by a brain dysfunction, first evident in infancy or early childhood;
- (2) There is promising ongoing research on autism and hope for effective drug treatment and behavioral interventions, although no cure for autism is on the horizon;
- (3) 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;
- (4) Other states, such as North Carolina and Indiana, have developed highly successful program models for persons with autism that have dramatically reduced negative outcomes, such as institutionalization rates, and have successfully and effectively integrated persons with autism into classes, training, and vocational training, as well as independent living situations;
- (5) Hawaii presently does not have adequate expertise in the field of autism, and lacks a comprehensive coordinated system of services for this population; and
- (6) Due to the lack of consistently available and appropriate services, Hawaii has spent over \$500,000 a year for the past two years 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 purpose of this Act is to express strong legislative support and provide initial funding for efforts to establish support and assistance to families, professionals and persons with autism via the creation of a resource and technical assistance project. The project shall have the primary responsibility to provide:

- (1) Diagnostic expertise and a team of trained professionals to work collaboratively 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/autistic-like characteristics to further develop and improve services; and

## ACT 312

- (6) Facilitate research, networking, information exchanges, and agreements among agencies and parents dealing with autism.
- (7) Information to the state legislature on the progress and achievements of the project.

SECTION 3. There is created an advisory committee, within the University of Hawaii's university affiliate program, to assure appropriate coordination of activities and provide support and direction to the project.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1992-1993, to provide initial funding for efforts to establish support and assistance to families, professionals, and persons with autism via the creation of a resource and technical assistance project.

SECTION 5. The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 1992.

(Approved June 30, 1992.)

## ACT 312

H.B. NO. 2843

A Bill for an Act Relating to Hearing and Vision Deficiencies.

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

SECTION 1. Section 321-101, Hawaii Revised Statutes, is amended to read as follows:

**"§321-101 [Vision and hearing screening program.] Systematic hearing and vision program.** (a) [The department of health shall conduct, as it deems advisable, a screening program to detect vision and hearing deficiencies in school children and recommend to their parents or guardians the need for further evaluation of children who are found to have vision or hearing deficiencies, or both.] There is established a systematic hearing and vision program for children to be conducted by the department of health. The purpose of the program shall be to:

- (1) Detect and identify hearing and vision deficiencies in school children; and
  - (2) Recommend to their parents or guardians the need for appropriate evaluation of children who have hearing or vision deficiencies, or both, and follow-up and track completed evaluations, including diagnostic and treatment information.
- (b) Within available resources, the program shall include:
- (1) Consultation with students, parents, and health and education personnel about treatment and rehabilitation of hearing and vision deficiencies; and
  - (2) Education of students, health and education personnel, and the general public about preserving and caring for hearing and vision and about preventing hearing and vision deficiencies.

[(b)] (c) The departments of health and education, in cooperation with each other, may conduct classes and lectures in [sight and] hearing and vision conservation and prevention of [blindness and] hearing loss and blindness for teachers [and], public health nurses, and others engaged in [like] similar work. The departments [may] shall also cooperate with public and private organizations and societies [in an effort] to educate the public in the importance of [sight and] hearing<sup>1</sup> and vision conservation."

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, 1992.)

Note

1. Should not be underscored.

**ACT 313**

H.B. NO. 3982

A Bill for an Act Relating to Diamond Head.

*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 \$100,000, or 0.0032 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. Diamond Head Crater is recognized as a natural landmark by the federal government and a state monument by the State of Hawaii. The Diamond Head State Monument Plan of 1979 outlined a state policy of establishing a semi-wilderness park in Diamond Head Crater.

The purpose of this Act is to implement the Diamond Head State Monument Plan of 1979 by including additional lands within the Diamond Head State Monument area, requiring conformance to the plan, and funding improvements to the Diamond Head trail system in the Diamond Head State Monument area.

SECTION 3. Section 6E-32, Hawaii Revised Statutes, is amended to read as follows:

**"§6E-32 Diamond Head State Monument.** (a) There shall be a Diamond Head State Monument as [an] a historical site on Oahu to be administered by the department of land and natural resources, and to consist of [such] those lands [as] that the department considers essential to the unimpaired preservation of the visual and historic aspects of Diamond Head and [such] those state lands [as] more fully described in this section [as] that may be best used for recreational purposes and to increase public access and enjoyment of the monument.

## **ACT 313**

(b) All state lands within and adjacent to the monument shall be returned to the department for inclusion within the monument, including, but not limited to, lands identified by Tax Map Key Numbers 3-1-42:6, 8, 10, 14, 15, 16, 17, 21, 23, 24, [and] 25, [except for land upon which is situated a structure in active use for the purposes originally disposed of.] 37, and 38 and 3-1-35:22 and 23. The Na Laau Hawaii arboretum and parcels A, B, C, and D as described in Executive Order No. 2000 dated April 9, 1962, establishing the Diamond Head State Monument, shall be included within the boundaries of the Diamond Head State Monument."

**SECTION 4.** The Diamond Head State Monument Plan, adopted by the board of land and natural resources in November of 1979, shall serve as the official document setting forth the future direction of the Diamond Head State Monument.

The board of land and natural resources may amend the monument plan from time to time with the review and recommendations of the Diamond Head citizen advisory committee, organized in October of 1977.

**SECTION 5.** Notwithstanding any other law, including county ordinances, to the contrary, no expansion of buildings and other structures and no construction activity shall take place within the boundaries of the Diamond Head State Monument; provided that the board of land and natural resources may permit improvement projects that are consistent with the Diamond Head State Monument Plan of 1979 to take place.

**SECTION 6.** So much of the transfer effected pursuant to Act 138, Laws of the Territory of Hawaii 1913, from the State to the city and county of Honolulu, as relates to the transfer of the Honolulu water and sewer works at the abandoned reservoir parcels identified by Tax Map Key Number 3-1-35:22 and 23, shall be withdrawn from the operation of Act 138. The right, title, and interest of the city and county of Honolulu relating to the abandoned reservoir site identified by Tax Map Key Number 3-1-35:22 and 23, appurtenant to the water and sewer works, shall revert to and be vested in the State.

**SECTION 7.** 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 1992-1993, for improvements to the Diamond Head trail system in the Diamond Head State Monument area; provided that the improvements shall conform to the Diamond Head State Monument Plan of 1979.

**SECTION 8.** The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

**SECTION 9.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 10.** This Act shall take effect on July 1, 1992.

(Approved June 30, 1992.)

## ACT 314

H.B. NO. 3032

A Bill for an Act Relating to Motor Vehicle Warranties.

*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  
MOTOR VEHICLE EXPRESS WARRANTY ENFORCEMENT  
(LEMON LAW)"**

**§ -1 Legislative intent.** The legislature recognizes that a motor vehicle is a major consumer purchase and that a defective motor vehicle creates a hardship for the consumer. The legislature further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the legislature that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time. It is further the intent of the legislature to provide statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which is not brought into conformity with the applicable express warranties, as provided in this chapter. Finally, it is the intent of the legislature to ensure that consumers are made aware of their rights under this chapter and are not refused the information, documents, or service necessary to exercise their rights.

Nothing in this chapter shall in any way limit or expand the rights or remedies which are otherwise available to a consumer under any other law.

**§ -2 Definitions.** When used in this section<sup>1</sup> unless the context otherwise requires:

“Business day” means any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business.

“Collateral charges” means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include, but are not limited to, manufacturer-installed or agent-installed items, general excise tax, license and registration fees, title charges, and similar government charges.

“Consumer” means the purchaser, other than for purposes of resale, or the lessee of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of the express warranty applicable to the motor vehicle, and any other person entitled to enforce the obligations of the express warranty.

“Express warranty” means any written warranty issued by the manufacturer, or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the motor vehicle shall conform to the affirmation, promise, or description or that the material or workmanship is free of defects or will meet a specified level of performance.

“Incidental charges” means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining

alternative transportation which are directly caused by the nonconformity or nonconformities which are the subject of the claim, but shall not include loss of use, loss of income, or personal injury claims.

“Lemon law rights period” means the term of the manufacturer’s express warranty, the period ending two years after the date of the original delivery of a motor vehicle to a consumer, or the first 24,000 miles of operation, whichever occurs first.

“Lessee” means any consumer who leases a motor vehicle for one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle, or any consumer who leases a motor vehicle pursuant to a lease-purchase agreement.

“Motor vehicle” means a self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways which is used primarily for personal, family, or household purposes. For purposes of this definition, a “motor vehicle” also includes a “demonstrator”, which means a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type, but does not include mopeds, motorcycles, or motor scooters, as those terms are defined in chapter 286, or vehicles over 10,000 pounds, gross vehicle weight rating. For purposes of this definition, a “motor vehicle” also includes (1) an individually registered vehicle used for an individual’s business purposes and for personal, family, or household purposes; and (2) a vehicle owned or leased by a sole proprietorship, corporation or partnership which has purchased or leased no more than one vehicle per year, used for household, individual, or personal use in addition to business use.

“Nonconformity” means a defect, malfunction, or condition that fails to conform to the motor vehicle’s applicable express warranty and that substantially impairs the use, market value, or safety of a motor vehicle, but does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer, its agent, distributor, or authorized dealer.

“Purchase price” means the cash price appearing in the sales agreement or contract and paid for the motor vehicle, including any net allowance for a trade-in vehicle. Where the consumer is a second or subsequent purchaser and the arbitration award is for a refund of the motor vehicle, “purchase price” means the purchase price of the second or subsequent purchase not to exceed the purchase price paid by the original purchaser.

“Reasonable offset” for use means the number of miles attributable to a consumer up to the date of the third repair attempt of the same nonconformity which is the subject of the claim, the date of the first repair attempt of a nonconformity that is likely to cause death or serious bodily injury, or the date of the thirtieth (30th) cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The reasonable offset for use shall be equal to one percent of the purchase price for every thousand miles of use.

“Replacement motor vehicle” means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original acquisition, including any service contract, undercoating, rustproofing, and factory or dealer installed options. A reasonable offset shall be made for the use of the motor vehicle and an additional offset may be made for loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from the nonconformity.

"Substantially impairs" means to render the motor vehicle unfit, unreliable, or unsafe for warranted or normal use, or to significantly diminish the value of the motor vehicle.

**§ -3 Motor vehicle: express warranties, return.** (a) If a motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity in writing to the manufacturer, its agent, distributor, or its authorized dealer during the term of the lemon law rights period, then the manufacturer, or, at its option, its agent, distributor, or its authorized dealer, shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term.

(b) If the manufacturer, its agents, distributors, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use, market value, or safety of the motor vehicle after a reasonable number of documented attempts, then the manufacturer shall provide the consumer with a replacement motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following: the full purchase price including, but not limited to, charges for undercoating, dealer preparation, transportation and installed options, and all collateral and incidental charges, excluding finance and interest charges, and less a reasonable offset for the consumer's use of the motor vehicle.

If either a replacement motor vehicle or a refund is awarded, an "offset" may be made for damage to the vehicle not attributable to normal wear and tear, if unrelated to the nonconformity. Refunds made pursuant to this subsection shall be deemed to be refunds of the sales price and treated as such for purposes of section 237-3. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership. If applicable, refunds shall be made to the lessor and lessee pursuant to rules adopted by the department of commerce and consumer affairs.

(c) It shall be an affirmative defense to any claim under this section that a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if, during the lemon law rights period, any of the following occurs:

- (1) The same nonconformity has been subject to examination or repair at least three times by the manufacturer, its agents, distributors, or authorized dealers, but such nonconformity continues to exist; or
- (2) The nonconformity has been subject to examination or repair at least once by the manufacturer, its agents, distributors, or authorized dealers, but continues to be a nonconformity which is likely to cause death or serious bodily injury if the vehicle is driven; or
- (3) The motor vehicle is out of service by reason of repair by the manufacturer, its agents, distributors, or authorized dealers for one or more nonconformities for a cumulative total of thirty or more business days during the lemon law rights period.

The term of the lemon law rights period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

The presumptions provided in this subsection shall not apply unless the manufacturer has received a written report of the nonconformity from the consumer and has had a reasonable opportunity to repair the nonconformity alleged.

Upon a second notice of the nonconformity, or, if the motor vehicle has been out of service by reason of repair in excess of twenty business days, the dealer shall notify the manufacturer of the nonconformity.

(e) During the lemon law rights period, the manufacturer or its agent, distributor, or authorized dealer shall provide to the consumer, each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made and all work performed on the vehicle, including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor supplied, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer. The consumer shall sign and receive a copy of the statement or repair order.

(f) Upon request from the consumer, the manufacturer, or at its option its agent, distributor, or authorized dealer, shall provide a copy of any report or computer reading regarding inspection, diagnosis, or test-drive of the consumer's motor vehicle, and shall provide a copy of any technical service bulletin related to the nonconformity issued by the manufacturer regarding the year and model of the consumer's motor vehicle as it pertains to any material, feature, component, or the performance thereof.

Upon receipt of a consumer's written report of a nonconformity to the manufacturer, the manufacturer or, at its option, its agent, distributor, or authorized dealer, shall inform the consumer of any technical service bulletin or report relating to the nonconformity, and shall advise the consumer of the consumer's right to obtain a copy of such report or technical service bulletin.

(g) The manufacturer, its agent, distributor, or authorized dealer, shall provide the consumer at the time of purchase of the motor vehicle a written notice setting forth the terms of a state certified arbitration program and a statement of the rights of the consumer under this section in plain language, the form of which has been previously reviewed and approved by the department of commerce and consumer affairs for substantial compliance with title 16, Code of Federal Regulations, part 703, as may be modified by the requirements of this chapter. The written notice must specify the requirement that written notification to the manufacturer of the motor vehicle nonconformity is required before the consumer is eligible for a refund or replacement of the motor vehicle. The notice must also include the name and address to which the consumer must send such written notification. The provision of this statement is the direct responsibility of the dealer, as that term is defined in chapter 437.

(h) The consumer shall be required to notify the manufacturer of the nonconformity only if the consumer has received a written notice setting forth the terms of the state certified arbitration program and a statement of the rights of the consumer as set out in subsection (g).

(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) Provision of a replacement motor vehicle; or
- (3) 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.

(j) Any action brought under this section must be initiated within one year following expiration of the lemon law rights period.

(k) No vehicle transferred to a dealer or manufacturer by a buyer or a lessee under subsection (b) may be sold or leased by any person unless:

- (1) The nature of the defect experienced by the original buyer or lessee is clearly and conspicuously disclosed on a separate document that must be signed by the manufacturer and the purchaser and must be in ten point, capitalized type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE A DEFECT(S) COVERED BY THE MANUFACTURER'S EXPRESS WARRANTY WAS NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY HAWAII LAW.;"
- (2) The defect is corrected; and
- (3) The manufacturer warrants to the new buyer or lessee, in writing, that if the defect reappears within one year or 12,000 miles after the date of resale, whichever occurs first, it will be corrected at no expense to the consumer.

(l) A violation of subsection (k) shall constitute prima facie evidence of an unfair or deceptive act or practice under chapter 480.

**§ -4 Arbitration mechanism.** (a) The department of commerce and consumer affairs shall establish and monitor a state certified arbitration program which is in substantial compliance with title 16, Code of Federal Regulations, part 703, as may be modified by this section, and shall adopt appropriate rules governing its operation.

(b) The director of commerce and consumer affairs may contract with an independent arbitration organization for annual term appointments to screen, hear, and resolve consumer complaints which have been initiated pursuant to section -3. The following criteria shall be considered in evaluating the suitability of independent arbitration mechanisms: capability, objectivity, experience, nonaffiliation with manufacturers of or dealers in new motor vehicles, reliability, financial stability, and fee structure.

(c) If a consumer agrees to participate in and be bound by the operation and decision of the state certified arbitration program, then all parties shall also participate in, and be bound by, the operation and decision of the state certified arbitration program. The prevailing party of an arbitration decision made pursuant to this section may be allowed reasonable attorney's fees.

(d) The submission of any dispute to arbitration in which the consumer elects nonbinding arbitration shall not limit the right of any party to a subsequent trial de novo upon written demand made upon the opposing party to the arbitration within thirty calendar days after service of the arbitration award, and the award shall not be admissible as evidence at that trial. If the party demanding a trial de novo does not improve its position as a result of the trial by at least twenty-five percent, then the court shall order that all of the reasonable costs of trial, consultation, and attorney's fees be paid for by the party making the demand.

## **ACT 315**

If neither party to a nonbinding arbitration demands a trial de novo within thirty days after service of the arbitration award, the arbitrator's decision shall become binding on both parties upon the expiration of the thirty-day period.

(e) Funding of the state certified arbitration program shall be provided through an initial filing fee of \$200 to be paid by the manufacturer and \$50 to be paid by the consumer upon initiating a case for arbitration under this section. Every final decision in favor of the consumer issued by the independent arbitration mechanism shall include within its relief the return of the \$50 filing fee to the consumer.

(f) The failure of a manufacturer to timely comply with a binding decision of a state certified arbitration program shall be *prima facie* evidence of an unfair or deceptive act or practice under chapter 480 unless the manufacturer can prove that it attempted in "good faith" to comply, or that the failure was beyond the manufacturer's control, the result of a written agreement with the consumer, or based on an appeal filed under chapter 658."

**SECTION 2.** Section 490:2-313.1, Hawaii Revised Statutes, is repealed.

**SECTION 3.** Section 490:2-313.2, Hawaii Revised Statutes, is repealed.

**SECTION 4.** Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

**SECTION 5.** This Act shall take effect on October 1, 1992.

(Approved June 30, 1992.)

### **Notes**

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## **ACT 315**

**H.B. NO. 521**

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 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 and bonds constituting instruments of indebtedness under which the State 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 said Article VII, section 13."

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1991-1992 and estimated for each fiscal year from 1992-1993 to 1994-1995, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1988-89	\$2,344,160,356	
1989-90	2,418,273,831	
1990-91	2,654,706,036	
1991-92	2,667,575,000	\$457,390,314
1992-93	2,688,707,000	477,334,217
1993-94	2,782,865,000	494,010,929
1994-95	(Not Applicable)	501,914,065

For fiscal years 1991-92, 1992-93, 1993-94, and 1994-95 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 1988-89, 1989-90, and 1990-1991 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, 1991, dated November 27, 1991. The net general fund revenues for fiscal years 1991-92 to 1993-94 are estimates, based on general fund revenue estimates made as of March 15, 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. (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 April 1,

1992 is as follows for fiscal year 1992-93 to fiscal year 1998-99:

Fiscal Year	Principal and Interest
1992-93	\$266,659,334
1993-94	286,721,828
1994-95	291,143,198
1995-96	263,242,646
1996-97	235,579,983
1997-98	220,023,208
1998-99	200,460,460

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 1999-2000 to fiscal year 2011-12 when the final installment of \$11,642,651 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 has incurred a contingent liability as a guarantor is \$52,000,000, all 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.

- (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 February 29, 1992, adjusted for (1) the issuance of \$200,000,000 general obligation bonds Series BU and Series BW, (2) appropriations to be funded by general obligation bonds and reimbursable general obligation bonds as provided in Act 299, Session Laws of Hawaii 1991 (the Judiciary Appropriations Act of 1991) and Act 296, Session Laws of Hawaii 1991 (the General Appropriations Act of 1991) to be expended in the fiscal year 1992-93, (3) changes in means of financing from general obligation bond fund to general fund or special fund amounting to \$22,792,000 as provided in House Bill No. 2454, H.D. 1, S.D. 1, C.D. 1 (the Supplemental Appropriations Act of 1992)<sup>1</sup> and (4) lapses of prior appropriations to be funded by general obligation bonds or reimbursable general obligation bonds amounting to \$64,529,178 as provided in House Bill No. 2454, H.D. 1, S.D. 1, C.D. 1 (the Supplemental Appropriations Act of 1992),<sup>1</sup> House Bill No. 2705, H.D. 2, S.D. 1, C.D. 1 (the Judiciary Supplemental Appropriations Act of 1992)<sup>2</sup> and House Bill No. 3658, S.D. 2, C.D. 1 (Relating to Veterans War Memorials)<sup>3</sup> the total amount of authorized but unissued general obligation bonds is \$537,933,390. The total amount of general obligation bonds authorized by this Act is \$271,736,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$809,669,390. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State has incurred a contingent liability as a guarantor is \$52,000,000. The total amount of guaranties authorized by House

Bill No. 2400, H.D. 2, S.D. 2, C.D. 1 (Relating to Mortgage Insurance)<sup>4</sup> and Senate Bill No. 2867, H.D. 2, C.D. 1 (Relating to Affordable Housing)<sup>5</sup> are \$50,000,000 and \$100,000,000, respectively, and are herein validated. The total amount of guaranties previously authorized and the guaranties validated by this Act is \$157,000,000.

- (5) Proposed general obligation bond issuance. As reported herein for fiscal years 1992-93, 1993-94, and 1994-95, the State proposes to issue two series consisting of \$100,000,000 (tax-exempt general obligation bonds) and \$120,000,000 (non-reimbursable taxable general obligation bonds) during the first half of fiscal year 1992-93, two series consisting of \$100,000,000 (tax-exempt general obligation bonds) and \$90,000,000 (non-reimbursable general obligation bonds) during the second half of fiscal year 1992-93 and \$100,000,000 (tax-exempt general obligation bonds) semiannually in each of fiscal years 1993-94 and 1994-95. 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 1993-94 is \$610,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 1994-95. The total amount of \$610,000,000 which is proposed to be issued through fiscal year 1993-94 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 \$809,669,390, as reported in paragraph (4), except for \$199,669,390. It is assumed that the appropriations to which an additional \$199,669,390 in bond issuance needs to be applied will have been encumbered as of June 30, 1994. The \$200,000,000 which is proposed to be issued in fiscal year 1994-95 will be sufficient to meet the requirements of the June 30, 1994, encumbrances in the amount of \$199,669,390. The amount of assumed encumbrances as of June 30, 1994 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 1994, and the amount of June 30, 1994 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 1994-95, 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 10.1 percent for the ten years from fiscal year 1992-93 to fiscal year 2001-2002. 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.
- (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 1992-93, 1993-94 and 1994-95 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by Article VII, section 13 of the State Constitution
1992-93	\$2,354,178,213
1993-94	2,374,892,507
1994-95	2,382,731,666

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 be come 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 \$36,057,944.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 8.5 percent with respect to tax-exempt general obligation bonds and 9.0 percent on the taxable non-reimbursable general obligation bonds, 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
1st issue, 1st half FY 1992-93 \$95,000,000	\$477,334,217	\$335,276,142 (FY 1994-95)
2nd issue, 1st half FY 1992-93 \$120,000,000	477,334,217	346,076,142 (FY 1994-95)
1st issue, 2nd half FY 1992-93 \$95,000,000	477,334,217	354,151,142 (FY 1994-95)
2nd issue, 2nd half FY 1992-93 \$90,000,000	477,334,217	361,801,142 (FY 1994-95)
1st half FY 1993-94 \$95,000,000	494,010,929	369,876,142 (FY 1994-95)
2nd half FY 1993-94 \$95,000,000	494,010,929	377,951,142 (FY 1994-95)
1st half FY 1994-95 \$95,000,000	501,914,065	379,835,956 (FY 1995-96)

## ACT 315

2nd half FY 1994-95	501,914,065	387,910,956 (FY 1995-96)
\$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 basis for the declaration of findings set forth in this Act are reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

**SECTION 3.** Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 2454, H.D. 1, S.D. 1, C.D. 1 (the Supplemental Appropriations Act of 1992),<sup>1</sup> House Bill No. 2705, H.D. 2, S.D. 1, C.D. 1 (the Judiciary Supplemental Appropriations Act of 1992),<sup>2</sup> House Bill No. 2570, H.D. 2, S.D. 1 (Relating to Schools)<sup>6</sup> and House Bill No. 3658, S.D. 2, C.D. 1 (Relating to Veterans War Memorials)<sup>3</sup> passed by this regular session of 1992, 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 \$271,736,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

**SECTION 4.** The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

**SECTION 5.** In printing this Act, the revisor of statutes shall substitute in sections 1 and 3 the corresponding act numbers for bills identified therein.

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

(Approved July 1, 1992.)

### Notes

1. Act 300.
2. Act 301.
3. Act 323.
4. Act 304.
5. Act 307.
6. Act 209.

## ACT 316

S.B. NO. 2855

A Bill for an Act Relating to Hawaiian Home Lands.

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

**SECTION 1. Findings.** The legislature finds that the United States Congress in 1921, by setting aside certain public lands to be considered as Hawaiian home lands to be utilized in the rehabilitation of native Hawaiians, did thereby undertake a trust obligation benefitting the aboriginal people. Ahuna v. Department of Hawaiian Home Lands, 64 Haw. 327, 640 P.2d 1161 (1982). The primary asset of the trust are these lands.

The legislature also finds that although the Hawaiian Homes Commission Act, 1920, specifies that the powers and duties of both territorial and state governors, as well as the public land commissioners or public land boards, do not extend to Hawaiian home lands, 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 land misuses occurred before statehood, various agencies continued to use trust lands after statehood.

The legislature further finds that restoring those lands belonging to the trust and compensating the trust for the State's past use of those lands is in accord with the State's responsibility under the Hawaii Admission Act, serves to strengthen the trust, and 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.

**SECTION 2.** The purpose of this Act is to:

- (1) Appropriate such funds and to provide such additional means as may be necessary to remedy the State's past wrongful, improper, or unauthorized withdrawals, transfers, takings, or uses of Hawaiian home lands which occurred from August 21, 1959 to the present; and
- (2) Authorize the State to pursue claims against the federal government.

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$27,895,500, or .896 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$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. 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 5. (a) The following Hawaiian home lands may be selected by, and used by agreement, by the State, pursuant to the Hawaiian Homes Commission Act, 1920, as amended:

<u>Location and Use</u>	<u>No. of Acres</u>	<u>Tax Map Key No.</u>
<b>Hawaii:</b>		
Humuula game reserve	11,124	3-8-1:8
Puukapu reservoir	23	6-4-2:125
Humuula forest reserve	3,822	3-8-1:13, 13 and 4 por
<b>Maui:</b>		
Kahikinui forest reserve	8,747	2-2-7:5 por., 1-9-7:7, 11, 3 por
<b>Molokai:</b>		
Kalamaula ranger station	7	5-2-8:77 and 83
Molokai high school	10*	5-2-15:2
Palaau state park	234	5-2-13:6
<b>Oahu:</b>		
Nanaikapono school	14	8-9-1:4 por
Nanakuli forest reserve	180	8-9-8:1
Waimanalo forest reserve	1,413	4-1-11:1, 4-1-14:8 and 4-1-14:6

\*portion of Hawaiian home lands

(b) The department of Hawaiian home lands may purchase parcels of public land until December 31, 1993. 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.

(c) The following public lands may be selected by, and conveyed to, the department of Hawaiian home lands, pursuant to the Hawaiian Homes Commission Act, 1920, as amended, or pursuant to this Act:

<u>Location and Use</u>	<u>No. of Acres</u>	<u>Remarks</u>
<b>Oahu:</b>		
Ewa	200	Part of land acquired by the State next to Kapolei Villages

Camp Andrews	30	Within Nanakuli Homestead, TMK No. 8-9-02:1, TMK No. 2-9-02:1
<b>Hawaii:</b>		
Kailua-Kona	150	Part of land acquired by State next to Kealakehe, TMK No. 7-4-08:12 por
Mauka		

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$925,500, or so much thereof as may be necessary for fiscal year 1992-1993, for the purpose of paying moneys owed to the department of Hawaiian home lands as the department's thirty per cent entitlement for the use of public lands at Honokawai, Maui, formerly under lease for the sugarcane cultivation on November 7, 1978, pursuant to Section 1 of Article XII of the Constitution of the State of Hawaii. The sum appropriated shall be expended by the department of budget and finance.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$640,000, or so much thereof as may be necessary for fiscal year 1992-1993, 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 1993. The sum shall be expended by the office of the governor.

SECTION 8. 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 1992-1993, to pursue Hawaiian home lands trust claims against the federal government. The sum shall be expended by the department of the attorney general.

SECTION 9. 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 1992-1993, to conduct an audit of the sugarcane lease entitlement to Hawaiian home lands. The sum shall be expended by the department of Hawaiian home lands.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$13,880,000, or so much thereof as may be necessary for fiscal year 1992-1993, to provide investment capital for the development of Hawaiian home lands for residential, agricultural, and other purposes permitted by the Hawaiian Homes Commission Act, 1920, as amended; provided that the project shall include the construction of on-site and off-site improvements at:

- (1) Nanakuli, Waianae, Kauhale Nani, Lualualei, Paheehee ridge, Oahu;
- (2) Puupulehu, Waimea, Panaewa, Puukapu, Hawaii;
- (3) Anahola, Kauai; and
- (4) Hoolehua, Molokai;

and provided further that funds not needed in a cost element may be used in another cost element.

The sum appropriated shall be expended by the department of Hawaiian home lands.

## ACT 317

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to the end the provisions of this Act are severable.

SECTION 12. This Act shall take effect upon its approval; except that sections 3, 5, 6, 7, 8, and 9 shall take effect on July 1, 1992.

(Approved July 1, 1992.)

## ACT 317

S.B. NO. 2638

A Bill for an Act Relating to the Department of Hawaiian Home 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- Sugarcane lands conveyed for the development of housing projects.** (a) This section applies to the amount to which the department of

Hawaiian home lands is entitled pursuant to Article XII, Section 1 of the State Constitution from land previously cultivated as sugarcane land under any provision of law which is conveyed by the department to the housing finance and development corporation for the development of housing projects as defined under section 201E-2. The amount to which the department of Hawaiian home lands is entitled shall be determined by multiplying the fair market value of the land by thirty per cent. For the purpose of this section, “fair market value” means the amount of money which a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land. For the purpose of this section, “highest and best use” means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department and the department of Hawaiian home lands, respectively. If the land is of sugarcane lands and the public land trust, as defined in section 10-2, the department of Hawaiian home lands and the office of Hawaiian affairs shall contract the services of one appraiser. The parties shall contract the services of the two appraisers within thirty days after the department gives written notice to the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is of sugarcane lands and the public land trust, of the proposed conveyance of the land to the housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition the presiding judge of the circuit court of the State in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable to agree on a fair market value, then within thirty

days thereafter, the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is of sugarcane lands and the public land trust, shall contract for the services of a mutually selected third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value. If the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is of sugarcane lands and the public land trust, are unable to agree on the selection of the third appraiser, any party may petition the presiding judge of the circuit court of the State in the county where the land is located to appoint the third appraiser.

(c) The amount due to the department of Hawaiian home lands shall be due and payable by the State on the date of conveyance of the land to the housing finance and development corporation. Payment to the department of Hawaiian home lands may be in the form of public lands or moneys. If payment is to be made in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the department of Hawaiian home lands, and shall be of value comparable to the amount due to the department of Hawaiian home lands. Any monetary payment shall be an obligation of the housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the department of Hawaiian home lands.

(d) Thirty per cent of the revenue received by the housing finance and development corporation from commercial, industrial, or other non-residential land shall be paid annually to the department of Hawaiian home lands, provided that:

- (1) The department of Hawaiian home lands shall not receive payment under this subsection until the housing finance and development corporation recovers all moneys previously paid to the department of Hawaiian home lands for that portion of land used for commercial, industrial, or other non-residential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other non-residential purposes, annual payments due to the department of Hawaiian home lands under this subsection shall be made pursuant to the following order of priority:
  - (A) The housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the debt) of its total debt service on the borrowed moneys;
  - (B) The housing finance and development corporation satisfies as a second priority its operating expense obligations (directly incurred from the development and operating of land used for commercial, industrial, or other non-residential purposes) in an amount not exceeding one per cent of revenues;
  - (C) After the first and second priorities are satisfied, the housing finance and development corporation shall make annual payments due to the department of Hawaiian home lands under this subsection from any remaining revenues; and
- (3) In the event of a sale of land used for commercial, industrial, or other non-residential purposes, the department of Hawaiian home lands shall receive thirty per cent of the revenue received by the housing finance and development corporation."

## **ACT 318**

**SECTION 2.** This Act shall apply only to the housing finance and development corporation's developments known as Kealakehe and Lahaina.

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

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

(Approved July 1, 1992.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 318**

S.B. NO. 2485

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.** Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§10- Public land trust conveyed for the development of housing projects.** (a) This section applies to the revenue derived from any land of the public land trust which is conveyed by the department of land and natural resources to the housing finance and development corporation for the development of housing projects as defined under section 201E-2. The amount due to the office shall be determined by multiplying the fair market value of the land by twenty per cent. For the purpose of this section, “fair market value” means the amount of money which a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land. For the purpose of this section, “highest and best use” means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department of land and natural resources and the office, respectively. If the land is of the public land trust and sugarcane lands, as defined by Article XII, Section 1 of the State Constitution, the office and the department of Hawaiian home lands shall contract the services of one appraiser. The parties shall contract the services of the appraisers within thirty working days after the department of land and natural resources gives written notice to the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, of the proposed conveyance of the land to the housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition the presiding judge of the circuit court of the State in

the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable to agree on a fair market value, then within thirty days thereafter, the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, shall contract for the services of a mutually selected third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value. If the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, are unable to agree on the selection of the third appraiser, any party may petition the presiding judge of the circuit court of the State in the county where the land is located to appoint the third appraiser.

(c) The amount due to the office shall be due and payable by the State on the date of conveyance of the land to the housing finance and development corporation. Payment to the office may be in the form of public lands or moneys. If payment is to be in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the office, and shall be of value comparable to the amount due to the office. Any monetary payment shall be an obligation of the housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the office.

(d) Twenty per cent of the revenue received by the housing finance and development corporation from commercial, industrial, or other non-residential use of the land shall be paid annually to the office, provided that:

- (1) The office shall not receive payment under this subsection until the housing finance and development corporation recovers all moneys previously paid to the office for that portion of land used for commercial, industrial, or other non-residential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other non-residential purposes, annual payments due to the office under this subsection shall be made pursuant to the following order of priority:
  - (A) The housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the debt) of its total debt service on the borrowed moneys;
  - (B) The housing finance and development corporation satisfies as a second priority its operating expense obligations (directly incurred from the development and operating of land used for commercial, industrial, or other non-residential purposes) in an amount not exceeding one per cent of the revenues for the project;
  - (C) After the first and second priorities are satisfied, the housing finance and development corporation shall make annual payments due to the office under this subsection from any remaining revenues; and
- (3) In the event of a sale of land used for commercial, industrial, or other non-residential purposes, the office shall receive twenty per cent of the revenue received by the housing finance and development corporation."

**SECTION 2.** Section 10-2, Hawaii Revised Statutes, is amended by amending the definition of "revenue" to read as follows:

"Revenue" means all proceeds, fees, charges, rents, or other income, or any portion thereof, derived from any sale, lease, license, permit, or other similar proprietary disposition, permitted use, or activity, that is situated upon and results from the actual use of lands comprising the public land trust, and including any penalties or levies exacted as a result of a violation of the terms of any proprietary disposition, but excluding any income, proceeds, fees, charges, or other moneys derived through the exercise of sovereign functions and powers including:

- (1) Taxes;
- (2) Regulatory or licensing fees;
- (3) Fines, penalties, or levies;
- (4) Registration fees;
- (5) Moneys received by any public educational institution, including the University of Hawaii, and the community college system, from its educational programs and ancillary services, such as tuition, registration fees, meals, books, grants, or scholarships;
- (6) Interagency and intra-agency administrative fees or assessments;
- (7) Moneys derived from or provided in support of penal institutions and programs;
- (8) Grants, carry-overs, and pass-throughs;
- (9) Federal moneys, including federal-aid, grants, subsidies, and contracts;
- (10) Moneys collected from the sale or dissemination of government publications; [and]
- (11) Department of defense proceeds on state-improved lands[.]; and
- (12) Moneys derived from the development of housing projects as defined under section 201E-2 after the conveyance of the public land trust to the housing finance and development corporation except as provided under section 10-"

**SECTION 3.** There shall be established an advisory commission on the compensation for the members of the board of trustees for the office of Hawaiian affairs. The commission shall be composed of seven members appointed by the governor pursuant to section 26-34, Hawaii Revised Statutes. The members shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while in the discharge of their duties and responsibilities. The commission shall terminate upon the convening of the regular legislative session of 1993, unless extended by the legislature. The commission shall study and make recommendations on the matter of compensation for the members of the board of trustees for the office of Hawaiian affairs, including, but not limited to whether compensation for the members should be in the form of an annual salary and who should determine the amount of the salary or other form of compensation. The commission shall submit a report of its findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 1993.

**SECTION 4.** Sections 1 and 2 of this Act shall apply only to the housing finance and development corporation's developments known as Kealakehe and Lahaina.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved July 1, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 319**

H.B. NO. 1048

A Bill for an Act Relating to Public Officers and Employees.

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

SECTION 1. Section 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 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 piece-work 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; [three] 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.

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."

## ACT 320

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 6, 1992.)

## ACT 320

H.B. NO. 2323

A Bill for an Act Relating to Reapportionment.

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

SECTION 1. Chapter 25, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§25- Commission; continuance after challenge of plan.** In the event of a successful court challenge of a reapportionment plan, the reapportionment commission shall continue in operation and may assist the court in formulating a new reapportionment plan.”

SECTION 2. Section 25-1, Hawaii Revised Statutes, is amended to read as follows:

**“§25-1 Reapportionment commission.** A reapportionment commission shall be constituted [after the third Wednesday of January but] before [March 1] May 1 of each reapportionment year, and[, commencing with the 1981 reapportionment year,] the members shall be appointed and certified to hold office until a general election is held under a reapportionment plan of the commission or of a court of competent jurisdiction, or a new commission is constituted under Article IV, section 2 of the State Constitution, whichever event shall occur first.”

SECTION 3. Section 25-2, Hawaii Revised Statutes, is amended to read as follows:

**“§25-2 Duties.** (a) Legislative reapportionment. The commission shall reapportion the members of each house of the legislature [among the basic island units and among the districts therein, redistricting where necessary,] on the basis, method, and criteria prescribed [in] by the Constitution of the United States and Article IV of the Hawaii Constitution. Pursuant thereto, the commission shall conduct public hearings and consult with the apportionment advisory council of each basic island unit. Not more than [eighty] one hundred days from the date on which all members are certified, the commission shall cause to be published in a newspaper of general circulation in each basic island unit, a legislative reapportionment plan prepared and proposed by the commission. At least one public hearing on the proposed reapportionment plan shall be held in each basic island unit after initial publication of the plan. At least twenty days' notice shall be given of such public hearing. The notice shall include a statement of the substance of the proposed reapportionment plan, and of the date, time and place where interested persons may be heard thereon. The notice shall be published at least once in a newspaper of general circulation in the basic island unit where the hearing will be held. All interested persons shall be afforded an opportunity to

submit data, views, or arguments, orally or in writing, for consideration by the commission. After the last of [such] the public hearings, but in no event later than one hundred fifty days from the date on which all members of the commission are certified, the commission shall determine whether or not the plan is in need of correction or modification, make the correction or modification, if any, and file with the chief election officer, a final legislative reapportionment plan. Within [ten] fourteen days after filing of the final reapportionment plan, the chief election officer shall cause to be published in a newspaper of general circulation in the State, the final legislative reapportionment plan which [shall], upon publication, shall become effective as of the date of filing and govern the election of members of the next five succeeding legislatures.

(b) Congressional reapportionment. At such times as may be required by the Constitution and as may be required by law of the United States, the commission shall redraw congressional district lines for the districts from which the members of the United States House of Representatives allocated to this State shall be elected. The commission shall first determine the total number of members to which the State is entitled and shall then apportion [such] those members among single member districts [in such manner] so that the average number of [registered voters] persons in the total population counted in the last preceding United States census per member in each district shall be as nearly equal as practicable. In effecting [such] the reapportionment and districting, the commission shall be guided by the following criteria:

- (1) No district shall be drawn so as to unduly favor a person or political [faction.] party;
- (2) Except in the case of districts encompassing more than one island, districts shall be contiguous[.];
- (3) Insofar as practicable, districts shall be compact[.];
- (4) Where possible, district lines shall follow permanent and easily recognized features such as streets, streams, and clear geographical features, and when practicable, shall coincide with census tract boundaries[.];
- (5) Where practicable, state legislative districts shall be wholly included within congressional districts[.]; and
- (6) Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided.

Not more than [eighty] one hundred days from the date on which all members are certified, the commission shall cause to be published in a newspaper of general circulation in the State, a congressional reapportionment plan prepared and proposed by the commission. The commission shall conduct public hearings on the proposed plan in the manner prescribed under subsection (a). At least one public hearing shall be held in each basic island unit after initial publication of the plan. After the last of [such] the public hearings, but in no event later than one hundred fifty days from the date on which all members of the commission are certified, the commission shall determine whether or not the plan is in need of correction or modification, make the correction or modification, if any, and file with the chief election officer, a final congressional reapportionment plan. Within [ten] fourteen days after filing of the final reapportionment plan, the chief election officer shall cause to be published in a newspaper of general circulation in the State, the final congressional reapportionment plan which [shall], upon publication, shall become effective as of the date of filing and govern the election of members of the United States House of Representatives allocated to this State for the next five succeeding congresses."

## ACT 321

SECTION 4. Section 25-8, Hawaii Revised Statutes, is amended to read as follows:

**“§25-8 Records, reports.** The commission [and each council] shall keep a written record of its meetings and hearings and shall submit a written report to the [Legislature next convening.] legislature twenty days prior to the regular session next convening.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved July 6, 1992.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 321

H.B. NO. 3179

A Bill for an Act Relating to Voting Systems.

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

SECTION 1. Act 302, Session Laws of Hawaii (SLH) 1991, is repealed. The unexpended balance of the appropriation made by Act 302, SLH 1991, shall lapse into the general fund.

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

(Approved July 6, 1992.)

## ACT 322

H.B. NO. 3726

A Bill for an Act Relating to Standards of Conduct.

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

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§84- Filing of false charges.** (a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in section 710-1060.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and any

other expenses incurred in relation to the person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the State.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

**§84- Reporting of gifts.** (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:

- (1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
- (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
- (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

(b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

- (c) The gifts disclosure statement shall contain the following information:
  - (1) A description of the gift;
  - (2) A good faith estimate of the value of the gift;
  - (3) The date the gift was received; and
  - (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

(d) Excluded from the reporting requirements of this section are the following:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiance, fiancee, any relative within four degrees of consanguinity or the spouse, fiance, or fiancee of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
- (4) Political campaign contributions that comply with state law;
- (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- (6) Gifts that, within 30 days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
- (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

(f) This section shall not affect the applicability of section 84-11."

SECTION 2. Section 84-31, Hawaii Revised Statutes, is amended by

amending subsection (a) to read as follows:

- "(a) The ethics commission shall have the following powers and duties:
- (1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and the gifts disclosure statements required by section 84- and the statements and reports required by sections 97-2 and 97-3 and shall establish orderly procedures for implementing the requirements of those provisions.
  - (2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. It shall also render advisory opinions to persons subject to chapter 97. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, or person subject to chapter 97 who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion.
  - (3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings.
  - (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry.
  - (5) It may, from time to time make, amend, and repeal such rules, not inconsistent with this chapter as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law.
  - (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within three years of an alleged violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter.

- (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment.
- (8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.
- (9) It shall perform the duties and fulfill the functions assigned to it by chapter 97, relating to registration of lobbyists."

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

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

(Approved July 6, 1992.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 323**

H.B. NO. 3658

A Bill for an Act Relating to Veterans War Memorials.

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

**SECTION 1.** The memorial to the veterans of the Korean and Vietnam conflicts shall be constructed on the Ewa lawn of the state capitol among the trees near the Richards Street border, bounded on one side by the covered stairway (with appropriate setback), Richards Street (with appropriate setback), and Beretania Street (with appropriate setback). The height of the memorial shall not exceed 20 feet, keeping in proportion with other statuary located in the immediate area. The design of the memorial shall utilize the natural assets of the site, with secluded areas of wall and trees for purposes of remembrance and meditation.

**SECTION 2.** The veterans memorial commission established pursuant to section 6E-44, Hawaii Revised Statutes, shall have ninety days after the effective date of this Act to finalize a design for the memorial that meets the criteria set forth in section 1, and to submit the design to the veterans memorial review board established in section 3. In formulating its design for the memorial, the commission shall consider the suitability of the proposals of the seven finalists of the original design competition to the criteria set forth in section 1, and shall consult with all interested veterans' and community groups. If the commission fails to submit a design to the review board within ninety days after the effective date of this Act, or ceases its work prior to that deadline, then the department of accounting and general services shall submit a final design as provided in section 3.

**SECTION 3.** There is established within the department of accounting and general services for administrative purposes only, a temporary veterans memorial review board comprised of five members. Three of the members shall be appointed by the governor, one member shall be appointed by the speaker of the house, and one member shall be appointed by the president of the senate. Members appointed to the board shall at least include veterans of the Korean and Vietnam conflicts, members with expertise in the field of architecture, and a representative

## **ACT 323**

from neighborhood board number 13.

The review board shall elect a chairperson from among its members, who shall serve without pay. Sections 26-34, 26-35, and 26-41, Hawaii Revised Statutes, shall not apply to the board.

The review board's function shall be to monitor and review the work of the commission in developing the design and to approve or disapprove the final design of the memorial submitted by the commission or the department of accounting and general services in accordance with section 2. The review board's decision shall be rendered within seven days of a timely submission by the commission. Approval shall be predicated upon a finding that the design and its selection conform to the criteria set forth in sections 1 and 2.

If the board disapproves the submitted design, or the commission ceases its work or fails to meet the deadline established in section 2, then the department of accounting and general services shall submit a final design within thirty days after the date of disapproval or the date it assumes responsibility from the commission.

The board shall cease to exist following its approval of a final design for the memorial.

**SECTION 4.** The department of land and natural resources shall solicit the participation of all veterans' organizations, including veterans of the Korean and Vietnam conflicts, in the planning and design of the war memorial hall within the Aiea (Rainbow) bay state recreation area, as proposed in the Aiea bay state recreation area conceptual master plan. This participation shall supplement input provided by community groups and members relating to park development. Use of the memorial hall by the community and veterans is intended to foster a better understanding of the sacrifices of veterans and their fallen comrades, and the design of the hall shall appropriately reflect this intent.

**SECTION 5.** Any law to the contrary notwithstanding, the appropriation under Act 316, Session Laws of Hawaii 1989, Section 222 as amended and renumbered by Act 299, Session Laws of Hawaii 1990, Section 6 in the amount indicated or balance thereof is hereby lapsed:

Item No. DEF112-1A in the amount of \$840,000C

**SECTION 6.** The director of finance is authorized to issue general obligation bonds in the sum of \$840,000, or so much thereof as may be necessary, and the same sum, or so much thereof as may be necessary, is appropriated for fiscal year 1992-1993, to carry out the purposes of this Act. The sum appropriated shall be expended by the department of accounting and general service for plans, land acquisition, design, construction and equipment for a Korean and Vietnam conflicts memorial on Oahu.

**SECTION 7.** Any law or any provision of this Act to the contrary notwithstanding, the appropriation made for the capital investment project authorized in this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all appropriations made to be expended in fiscal year 1992-93 which are unencumbered as of June 30, 1994, shall lapse as of the date.

**SECTION 8.** This Act shall take effect upon its approval; provided that section 6 shall take effect on July 1, 1992.

(Became law on July 7, 1992, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## **PROPOSED CONSTITUTIONAL AMENDMENTS**

See also Act 294, this volume, at page 754 for proposed constitutional amendment to Article X, §2 and §3.

### **H.B. NO. 2322**

A Bill for an Act Proposing an Amendment to Article IV, Section 2, of the Hawaii Constitution, to Change the Date for Constituting the Reapportionment Commission.

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

**SECTION 1.** The purpose of this Act is to propose an amendment to Article IV, section 2, of the Constitution of the State of Hawaii to constitute the Reapportionment Commission on a day other than the March 1 of each reapportionment year.

**SECTION 2.** Article IV, section 2, of the Constitution of the State of Hawaii is amended to read as follows:

#### **"REAPPORTIONMENT COMMISSION"**

**Section 2.** A reapportionment commission shall be constituted on or before [March 1] May 1 of each reapportionment year and whenever reapportionment is required by court order. The commission shall consist of nine members. The president of the senate and the speaker of the house of representatives shall each select two members. Members of each house belonging to the party or parties different from that of the president or the speaker shall designate one of their number for each house and the two so designated shall each select two members of the commission. The eight members so selected [shall], promptly after selection, shall be certified by the selecting authorities to the chief election officer and [shall] within thirty days thereafter, shall select, by a vote of six members, and promptly certify to the chief election officer the ninth member who shall serve as chairperson of the commission.

Each of the four officials designated above as selecting authorities for the eight members of the commission [shall], at the time of the commission selections, shall also select one person from each basic island unit to serve on an apportionment advisory council for that island unit. The councils shall remain in existence during the life of the commission and each shall serve in an advisory capacity to the commission for matters affecting its island unit.

A vacancy in the commission or a council shall be filled by the initial selecting authority within fifteen days after the vacancy occurs. Commission and council positions and vacancies not filled within the times specified shall be filled promptly thereafter by the supreme court.

The commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

Not more than one hundred fifty days from the date on which its members are certified, the commission shall file with the chief election officer a reapportionment plan for the state legislature and a reapportionment plan for the United States congressional districts which shall become law after publication as provided by law. Members of the commission shall hold office until each reapportionment plan becomes effective or until such time as may be provided by law.

## **PROPOSED CONSTITUTIONAL AMENDMENTS**

No member of the reapportionment commission or an apportionment advisory council shall be eligible to become a candidate for election to either house of the legislature or to the United States House of Representatives in either of the first two elections under any such reapportionment plan.

Commission and apportionment advisory council members shall be compensated and reimbursed for their necessary expenses as provided by law.

The chief election officer shall be secretary of the commission without vote and, under the direction of the commission, shall furnish all necessary technical services. The legislature shall appropriate funds to enable the commission to carry out its duties."

**SECTION 3.** The question to be printed on the ballot shall be as follows:

"Shall the reapportionment commission be constituted on or before May 1 instead of March 1 of each reapportionment year?"

**SECTION 4.** Constitutional material to be repealed is bracketed. New constitutional material is underscored.

**SECTION 5.** This amendment shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

### **H.B. NO. 2327**

A Bill for an Act Proposing an Amendment to Article IV, Sections 4 and 6, of the Constitution of the State of Hawaii to Specify that the Reapportionment Commission Shall Use the Total Number of Permanent Residents Counted in the Last Preceding United States Census Instead of the Number of Registered Voters for Purposes of Determining Reapportionment Districts.

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

**SECTION 1.** The purpose of this Act is to propose an amendment to Article IV, sections 4 and 6, of the Constitution of the State of Hawaii to specify that the reapportionment commission shall use the total number of permanent residents instead of the number of registered voters for purposes of determining reapportionment districts.

**SECTION 2.** Article IV, section 4, of the Constitution of the State of Hawaii is amended to read as follows:

### **"APPORTIONMENT AMONG BASIC ISLAND UNITS**

**Section 4.** The commission shall allocate the total number of members of each house of the state legislature being reapportioned among the four basic island units, namely: (1) the island of Hawaii, (2) the islands of Maui, Lanai, Molokai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, [on the basis of the number of voters registered in the last preceding general election] using the total number of permanent residents in each of the basic island units and computed by the method known as the method of equal proportions; except that no basic island unit shall receive less than one member in each house."

## PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 3. Article IV, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

### **"APPORTIONMENT WITHIN BASIC ISLAND UNITS**

**Section 6.** Upon the determination of the total number of members of each house of the state legislature to which each basic island unit is entitled, the commission shall apportion the members among the districts therein and shall redraw district lines where necessary in such manner that for each house the average number of [registered voters] permanent residents per member in each district is as nearly equal to the average for the basic island unit as practicable.

In effecting such redistricting, the commission shall be guided by the following criteria:

1. No district shall extend beyond the boundaries of any basic island unit.
2. No district shall be so drawn as to unduly favor a person or political faction.
3. Except in the case of districts encompassing more than one island, districts shall be contiguous.
4. Insofar as practicable, districts shall be compact.
5. Where possible, district lines shall follow permanent and easily recognized features, such as streets, streams and clear geographical features, and, when practicable, shall coincide with census tract boundaries.
6. Where practicable, representative districts shall be wholly included within senatorial districts.
7. Not more than four members shall be elected from any district.
8. Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided."

SECTION 4. The question to be printed on the ballot shall be as follows:

"Shall the reapportionment commission use the total number of permanent residents instead of the number of registered voters as the reapportionment base?"

SECTION 5. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 6. This amendment shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

### **S.B. NO. 1440**

A Bill for an Act Proposing an Amendment to the Constitution of the State of Hawaii to Change the Requirement for the Oath of Office.

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

SECTION 1. The purpose of this Act is to propose an amendment to Article XVI, section 4, of the Constitution of the State of Hawaii to reserve the oath of office for eligible public officers.

SECTION 2. Article XVI, section 4, of the Constitution of the State of Hawaii is amended to read as follows:

## **PROPOSED CONSTITUTIONAL AMENDMENTS**

### **"OATH OF OFFICE"**

**Section 4.** All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as ..... to the best of my ability." [The legislature may provide further oaths or affirmations.] As used in this section, "eligible public officers" means the governor, the lieutenant governor, the members of both houses of the legislature, the members of the board of education, the members of the national guard, State or county employees who possess police powers, district court judges, and all those whose appointment requires the consent of the senate."

**SECTION 3.** The question to be printed on the ballot shall be as follows:

"Shall the oath of office be reserved for the governor, the lieutenant governor, members of both houses of the legislature, members of the board of education, the members of the national guard, State or county employees who possess police powers, district court judges, and all office holders whose appointment requires the consent of the senate?"

**SECTION 4.** Constitutional material to be repealed is bracketed. New constitutional material is underscored.

**SECTION 5.** This amendment shall take effect upon compliance with Article XVII, Section 3, of the Constitution of the State of Hawaii.

### **S.B. NO. 2234**

A Bill for an Act Proposing Amendments to Article IV, Sections 7 and 8 of the Hawaii Constitution, to Provide for the Expiration of the Terms of Office of All Senators at the General Election at Which a New Apportionment Plan Becomes Effective and for the Recomputation of Staggered Terms at That Election.

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

**SECTION 1.** The purpose of this Act is to propose amendments to Article IV, sections 7 and 8 of the Constitution of the State of Hawaii to repeal the provision for holdover senators; to terminate the terms of office of all senators at the general election at which a new apportionment plan becomes effective and to require all senators to run for office at that election; and to provide for the recomputation of staggered terms at that election.

**SECTION 2.** Article IV, sections 7 and 8, of the Constitution of the State of Hawaii are amended to read as follows:

#### **"[PLACEMENT OF HOLDOVER] ELECTION OF SENATORS AFTER REAPPORTIONMENT"**

**Section 7.** [If] Regardless of whether or not a senator is serving a term which [will extend] would have extended past the general election at which an

## PROPOSED CONSTITUTIONAL AMENDMENTS

apportionment plan becomes effective, the [reapportionment commission shall designate in the plan the senatorial district the senator shall represent for the remaining period of the senator's term. In making such designation, the senator need not live in the senatorial district which the senator is designated as representing during the remainder of the term which extends past the general election for which the reapportionment plan becomes effective; provided the reapportionment commission shall consider the following criteria:

1. The senatorial district from which the senator was elected.
2. The senatorial district in which the senator will reside under the reapportionment plan.
3. The requirement of continuing the] term of office of all senators shall end at that general election. The staggered terms of senators in each district shall be recomputed as established by [Section 2 of Article XVIII.] the next section in this article, and the number of senators in a senatorial district under the reapportionment plan of the commission.

### [RETENTION OF] STAGGERED TERMS FOR THE SENATE

**Section 8.** [The senate shall be composed of senators who serve staggered terms of office as follows: senatorial districts with one member, the term of office shall end as provided by the constitution; senatorial districts with two members, each member shall serve a term ending on the date of a different general election; senatorial districts with three members, (A) two members shall serve a term ending on the date of the same general election and (B) one member shall serve a term ending on the date of a general election different than the other two members; senatorial districts with four members, (A) two members shall serve a term ending on the date of the same general election and (B) two members shall serve a term ending on the date of a general election different than the other two members.

If, on the date of the first or second general election after a reapportionment, the number of senators in a senatorial district whose terms would end on a date of a general election will be more than that set forth in the above paragraph, then for the election of members of the senate whose terms begin on the date of such general election, the members of the senate shall be divided into two classes. The members of the first class shall hold office for a term of four years beginning on the day of the general election at which elected or on the day of the general election immediately following the primary election at which elected and ending on the day of the second general election held thereafter. The first class shall consist of that number of persons necessary to fulfill item (B) in the above paragraph for senatorial districts with three or four members or one person in senatorial districts with two members. If persons are elected at a primary election or general election in a senatorial district, the first class for that district shall consist of that number of persons with the highest number of votes in the primary election or general election, as the case may be, necessary to fill the first class membership of that district. The remaining persons shall constitute the second class and shall hold office for a term of two years beginning on the day of the general election at which elected or on the day of the general election immediately following the primary election at which elected and ending on the day of the next general election held thereafter.]

Any re-elected senator whose prior term was shortened to two years by the occurrence of the reapportionment year shall, after reapportionment, be assigned to serve a four-year term. Any new senator and re-elected senator whose prior term was not shortened by the occurrence of the reapportionment year shall,

## **PROPOSED CONSTITUTIONAL AMENDMENTS**

after reapportionment, be assigned to serve a two-year term.

If the number of senators assigned to serve a two-year term under the previous paragraph exceeds twelve, the number of such senators shall be reduced to twelve by random selection as provided by law.”

**SECTION 3.** The question to be printed on the ballot shall be as follows:

“Shall the holdover senator provision be repealed so that the terms of all senators will end at the general election at which a new apportionment plan becomes effective and the assignment of staggered terms is recomputed as of that general election?”

**SECTION 4.** Constitutional material to be repealed is bracketed. New constitutional material is underscored.

**SECTION 5.** This amendment shall take effect upon compliance with Article XVII, Section 3, of the Constitution of the State of Hawaii.

**COMMITTEE REPORTS  
ON MEASURES ENACTED**

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**TABLES SHOWING EFFECT  
OF ACTS**

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**GENERAL INDEX**

# COMMITTEE REPORTS ON MEASURES ENACTED

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**Sixteenth State Legislature  
1992 Regular Session**

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## D. SECTION OF STATE CONSTITUTION AFFECTED

Section No.	Proposed Effect	Bill or Act No.
Art IV, §2	Am	HB 2322
Art IV, §§4, 6	Am	HB 2327
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