

## ACT 106

H.B. NO. 2288

A Bill for an Act Relating to High Technology.

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

SECTION 1. The legislature finds that the time has come to prepare Hawaii to earn its place in the lucrative domestic and international high technology marketplace. The legislature acknowledges the wisdom of investing in ideas that may not bring immediate profits, but will provide long-term benefits for the people of Hawaii in the future. A secure place in tomorrow's high technology marketplace can only be earned through careful planning, personal initiative and daring, and hard work.

The legislature finds that the worldwide market for computer software and related services amounted to \$30,000,000,000 in 1984 and is anticipated to increase to more than \$85,000,000,000 in 1990. This market is characterized by an increasingly short supply of trained personnel to satisfy the growing number and types of computer systems requiring software products.

The State's software development industry is relatively small. Hawaii has approximately fifty-four software development companies. A little more than half of them have five employees or fewer; eighty per cent have fewer than fifteen employees.

The legislature finds that companies in Hawaii have had little success in exporting their packaged software products because of inadequate financing, intense mainland competition, and a lack of marketing expertise. Other obstacles restricting the growth of the State's software development companies include a lack of qualified personnel, the inability of companies to maintain a stable work force, and the lack of market research and appropriate sales channels. Constant changes in software technologies necessitate that smaller companies specialize in a specific segment of the market or industry. This enforced specialization has fragmented Hawaii's software development industry and places it at a tremendous disadvantage in the high technology marketplace.

The legislature finds that if Hawaii's software development industry is to compete successfully in tomorrow's domestic and international high technology marketplace, the State must take a proactive role in supporting the industry today.

In 1989, the legislature directed the high technology development corporation to devise a plan for the development of the software industry in Hawaii. The corporation's findings and recommendations were submitted to the legislature in A Plan to Enhance the Growth of Hawaii's Software Development

**Industry.** Its recommendations included the creation of a software service center to assist the local industry.

The purpose of this Act is to create and sustain a viable software industry in Hawaii through the establishment of the Hawaii software service center.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$1,233,000, or 0.048 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. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103- Preferred use of Hawaii software development businesses.** (a) In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. Where a package bid or response to a request for proposal contains both Hawaii and non-Hawaii software development businesses, then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii software development business shall be increased by ten per cent. The Hawaii software service center, with the cooperation of the director of finance, shall develop and make public a list of state agencies requesting software development services including a description of the software development proposal and a timetable for development. The information provided on the list shall not be binding and proposals may be changed at the discretion of state agencies, provided that any changes shall be promptly communicated to the Hawaii software service center.

(b) This section shall not apply when precluded by federal requirements for competitive bidding.

(c) For the purposes of this section:

“Hawaii software development business” means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State of Hawaii and that proposes to obtain eighty per cent of the labor for software development from persons domiciled in Hawaii.

“Software development” means any work related to feasibility studies, system requirements analysis, system design alternatives analysis, system external specifications, system internal specifications, programming, testing, debugging, or implementation for an electronic data processing system.”

SECTION 4. Chapter 206M, Hawaii Revised Statutes, is amended to read as follows:

1. By designating sections 206M-1 to 206M-20 as part I and inserting a title before section 206M-1 to read:

**“PART I. HIGH TECHNOLOGY DEVELOPMENT CORPORATION”**

2. By adding a new part to be appropriately designated and to read:

**“PART . HAWAII SOFTWARE SERVICE CENTER**

**§206M- Definitions.** As used in this part, unless the context otherwise requires:

“Center” means the Hawaii software service center.

**§206M- Hawaii software service center; established.** There is established within the development corporation a Hawaii software service center. The center shall provide support to foster and sustain Hawaii’s software industry.

**§206M- Duties.** The center shall:

- (1) Provide access to market research services, including on-line and printed publications;
- (2) Develop, publish, and maintain a directory of federal, state, and county software development and service opportunities;
- (3) Develop, publish, and maintain a directory of software providers in the State according to their facilities and capabilities;
- (4) Develop, publish, and maintain a directory of mainland companies that use software subcontractors, including but not be limited to, government prime contractors and private sector providers;
- (5) Publish and maintain a catalog of packaged software products produced in the State;
- (6) Develop, publish, and maintain a list of qualified mainland software product packaging providers;
- (7) Identify and maintain a listing of current domestic and international sales channels and distributors;
- (8) Develop, publish, and maintain a directory of packaged software applications available for import, including but not limited to, distribution licenses, service support, and retail sales;
- (9) Develop, publish, and maintain a list of government software development contracts available to Hawaii software development businesses as provided in section 103- ;
- (10) Act as the coordinator between the public, private, and nonprofit sectors in the State to analyze, articulate, and implement actions, solutions, and programs that are necessary to support the continued growth of the software industry;
- (11) Develop a marketing plan to promote the software industry in domestic and international marketplaces;
- (12) Closely monitor the software industry to identify infrastructure and industry deficiencies;
- (13) In conjunction with appropriate state agencies, develop the plans and procedures to evaluate, copyright, license, trademark, and market software programs funded by and developed for use by the State;
- (14) Organize and implement strategic alliances, partnerships, and consortiums between the private sector, academia, and state agencies to enable the software industry to compete with established domestic and international software providers;
- (15) Produce a plan for establishing a center for excellence in software development in Hawaii; and
- (16) Do all things necessary and proper to carry out the purposes of this part.

**§206M- Copyrights and licenses.** (a) The development corporation shall have the authority to copyright software applications and programs developed for state use with public funds and to license their subsequent sale and distribution; provided that this authority shall be subject to the terms and conditions of a contract to license between the development corporation and the affected state departments or agencies that developed the software applications or programs. Any copyright arising from center activities shall belong to the State and any revenues generated by licenses and subsequent sale and distribution of copyrighted software shall be deposited into the general fund unless otherwise stipulated in a licensing agreement.

(b) The development corporation shall have the power to contract to license with state departments or agencies and the University of Hawaii to license software to Hawaii-based software development companies on behalf of the State for the purpose of software enhancement, resale, and providing value-added services. The development corporation shall ensure through a license that the licensee shall use the software asset solely for the purposes enumerated in the licensing agreement.

(c) Nothing in this section shall change the existing authority of state agencies to license or copyright software products.

**§206M- Annual report on center activities.** The development corporation shall include a report on the activities of the center in its annual report to the legislature.”

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. There is appropriated out of the general revenues of the State of Hawaii the sum of \$233,000, or so much thereof as may be necessary for fiscal year 1990-1991, for the start-up and operation of the Hawaii software service center.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1990-1991, which shall be deposited into the discoveries and inventions revolving fund to support the software development programs of the University of Hawaii; provided that the funds shall be distributed on the basis of a software development and marketing plan prepared by the office of technology transfer and economic development. The plan shall include a process to solicit competitive proposals. The office of technology transfer and economic development shall appoint a group of private industry representatives knowledgeable in the field of software development who shall evaluate the proposals and make recommendations for approval.

A detailed description of the software development and marketing plan including any fund allocation plan and actual program expenditures shall be included in the annual report of the discoveries and inventions revolving fund.

SECTION 8. The sums appropriated shall be expended by the department of business and economic development for the purposes of this Act.

SECTION 9. New statutory material is underscored.<sup>1</sup>

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**SECTION 10.** This Act shall take effect upon its approval; provided that sections 6 and 7 shall take effect on July 1, 1990.

(Approved June 8, 1990.)

**Note**

1. Edited pursuant to HRS §23G-16.5.