

A Bill for an Act Relating to Procurement.

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

PART I

SECTION 1. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause.”

SECTION 2. Section 103D-702, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-702 Authority to debar or suspend.** (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer, after consultation with the using agency and the attorney general or corporation counsel, may debar a person for cause from consideration for award of all public contracts and from performance on any public contract. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for a governmental body’s protection and not for the purpose of punishment. An agency shall impose debarment or suspension to protect a governmental body’s interests and only for cause and in accordance with this section. The debarment period shall not exceed three years. The same officer, after consultation with the using agency and the attorney general or corporation counsel, may suspend a person from consideration for award of all public contracts and from performance on any public contract if there is probable cause for debarment. The suspension period shall not exceed three months. The authority to debar or suspend shall be exercised in accordance with the procedures prescribed by rules adopted by the policy board[-] and shall be applied only to causes, convictions, and violations under subsection (b) after the effective date of the rules adopted by the policy board.

(b) The causes for debarment or suspension include the following:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) Conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character [which] that is regarded by the chief procurement officer to be so serious as to justify debarment action:

- (A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) Any other cause the chief procurement officer determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy board; and
 - (6) Violation of the ethical standards set forth in chapter 84 and its implementing rules, or the charters and ordinances of the several counties and their implementing rules.

(c) The existence of a cause for debarment does not necessarily require that a contractor be debarred. The seriousness of a contractor's acts or omissions and any remedial measure or mitigating factors shall be considered in making any debarment decision. Before arriving at any debarment decision, the chief procurement officer shall consider factors such as the following:

- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity constituting cause for debarment or had adopted those procedures prior to any government investigation of the activity cited as the cause for debarment;
- (2) Whether the contractor brought the activity cited as the cause for debarment to the attention of the appropriate government agency in a timely manner;
- (3) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and made the result of the investigation available to the chief procurement officer;
- (4) Whether the contractor cooperated fully with government agencies during the investigation and any court or administrative action;
- (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for improper activity, including any investigative or administrative costs incurred by the governmental body, and has made or has agreed to make full restitution;
- (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity constituting the cause for debarment;
- (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the governmental body or the chief procurement officer;
- (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; and
- (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent its recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as those set forth in this subsection shall not necessarily be determinative of a contractor's present responsibility. If a cause for debarment exists, the contractor has

the burden of demonstrating to the satisfaction of the chief procurement officer the contractor's present responsibility and that debarment is not necessary.

[(e)] (d) The chief procurement officer shall issue a written decision to debar or suspend. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the debarred or suspended person involved of the person's rights to review as provided in this part.

[(d)] (e) A copy of the decision under subsection [(e)] (d) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

[(e)] (f) The chief procurement officer shall transmit a copy of the decision to debar or suspend a contractor to the state procurement office, which shall distribute a list to all governmental bodies containing the names of persons or firms debarred or suspended from consideration for award of all public contracts and from performance on any public contract.

[(f)] (g) Upon written notification under subsection [(e);] (f), the chief procurement officer shall make a written determination whether to allow the debarred or suspended person or firm to continue performance on any contract awarded prior to the effective date of the debarment or suspension.

[(g)] (h) A decision under subsection [(e)] (d) shall be final and conclusive, unless the debarred or suspended person commences an administrative proceeding under section 103D-709.’’

PART II

SECTION 3. In 2003, section 103D-310, Hawaii Revised Statutes, entitled ‘‘responsibility of offerors,’’ was amended to require state contractors to be incorporated or organized under the laws of the State or registered to do business in the state as a separate branch or division, and to comply with all of the laws governing entities doing business in Hawaii.

While the amendments were made to put all who seek public contracts for goods, services, and construction on equal footing, they have had the unanticipated effect of preventing the State from retaining out-of-state lawyers with expertise the State needs to protect its interests. Law firms and attorneys from outside the state who are not presently registered or interested in registering to do business in Hawaii will not set up and staff a branch office in Hawaii to satisfy the requirements of the State's unemployment insurance, workers compensation, temporary disability, and prepaid health laws. Thus, recently, when legal expertise necessary to protect the interests of the State was not available in the department of the attorney general or from the local private bar, the attorney general was able to contract with an out-of-state attorney with the needed expertise for those legal services only after the chief procurement officer granted the attorney general's request to exempt the contract from the procurement code altogether.

The purpose of this part is to authorize the attorney general to waive the requirements of section 103D-310(c), Hawaii Revised Statutes, to protect the legal interests of the State, officials, or its agencies. This part would ensure that in placing all who are interested in contracting with the State and counties on an equal footing, the State is not deprived of the legal expertise it needs.

SECTION 4. Section 103D-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

‘‘(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

- (1) Be incorporated or organized under the laws of the State; or
- (2) Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, 103D-305, and 103D-306; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this state.”

PART III

SECTION 5. Because the Hawaii public procurement code, chapter 103D, Hawaii Revised Statutes, offers various source selection methods, the need for an exemption from the code may no longer exist. In addition, section 103D-102(b)(4)(L), Hawaii Revised Statutes, allows a purchasing agency to request an exemption on a case-by-case basis when it has been determined that procurement by competitive means is either not practicable or not advantageous to the State. Requirements for exemptions should be addressed within the provisions of the procurement code and by the procurement policy board. Accordingly, this part repeals statutory exemptions from chapter 103D.

SECTION 6. Section 36-35, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from [~~chapter 103D and~~] section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices~~], but not subject to chapter 103D. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D~~];
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

For all projects, the comptroller shall develop a strategy for the efficient and cost-effective use of government and private-sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other

means to improve communications and accelerate repairs while preserving the quality of the repairs.’’

SECTION 7. Section 36-36, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The expenditure of funds made under this Act for any project with an estimated total cost of less than \$100,000 shall be exempt from [~~chapter 103D and~~] section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, [~~but not~~] subject to chapter 103D.¹ [~~However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D;~~];
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.’’

SECTION 8. Section 39A-32, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-32 Department powers as to health care facilities.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to [~~enter~~]:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[;]; and [~~to enter~~]
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[;];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[;];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project[;];
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for this project, to [~~pledge~~];

- (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; [~~to pledge~~]
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; [~~and to pledge~~]
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or [~~any~~]
 - (D) Any combination of the foregoing[-];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[-]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 9. Section 39A-72, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-72 Department powers as to manufacturing enterprises.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[-] but are not limited to[-] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to [~~enter~~]:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[-]; and [~~to enter~~]
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[-];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[-];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project[-];
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project, to [~~pledge~~]:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; [~~to pledge~~]
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; [~~and to pledge~~]

- (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or [~~any~~]
- (D) Any combination of the foregoing[-];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[-]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 10. Section 39A-112, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-112 Department powers as to processing enterprises.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[-] but are not limited to[-] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to [~~enter~~]:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[-]; and [~~to enter~~]
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[-];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[-];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project[-];
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project, to [~~pledge~~]:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; [~~to pledge~~]
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; [~~and to pledge~~]
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or [~~any~~]
 - (D) Any combination of the foregoing[-];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[-]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 11. Section 39A-152, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-152 Department powers as to industrial enterprises.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to ~~[enter]~~:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[;] and ~~[to enter]~~
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[;];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[;];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project[;];
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project, to ~~[pledge,]~~:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; ~~[to pledge]~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; ~~[and to pledge]~~
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or ~~[any]~~
 - (D) Any combination of the foregoing[;];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[;]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 12. Section 39A-192, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-192 Department powers as to energy projects.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to ~~[enter]~~:

- (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party~~;~~; and ~~to enter~~
- (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an energy project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an energy project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for an energy project, to ~~pledge~~;
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the energy project for which such bonds are issued; ~~to pledge~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; ~~and to pledge~~
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such energy project; or ~~any~~
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances an energy project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire an energy project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 13. Section 41D-2, Hawaii Revised Statutes, is amended to read as follows:

“§41D-2 Responsibilities of the comptroller. (a) The comptroller, through the risk manager, shall:

- (1) Have discretion to purchase casualty insurance for the State or state agencies, including those employees of the State who, in the comptroller’s discretion, may be at risk and shall be responsible for the acquisition of all casualty insurance;
- (2) Have discretion to purchase property insurance for the State or state agencies and shall acquire all property insurance;
- (3) Direct and manage all risk management and insurance programs of the State, except for employee benefits insurance and workers’ compensation insurance programs or as otherwise provided in chapters 87, 88, 383 to 386A, 392, and 393;

- (4) Consult with state agencies to determine what property, casualty, and other insurance policies are presently in force or are sought by the state agencies and to make determinations about whether to continue subscribing to insurance policies. In the event that the risk manager's determination is not satisfactory to the state agency, the state agency may have the risk manager's decision reviewed by the comptroller. In this case, the comptroller's decision shall be final;
- (5) Consolidate and combine state insurance coverages, and purchase excess insurance when, in the comptroller's discretion, it is appropriate to do so;
- (6) Acquire risk management, investigative, claims adjustment, actuarial, and other services, except attorney's services, as may be required for the sound administration of this chapter;
- (7) Gather from all state agencies and maintain data regarding the State's risks and casualty, property, and fidelity losses;
- (8) In conjunction with the attorney general and as otherwise provided by this chapter, compromise or settle claims cognizable under chapter 662;
- (9) Provide technical services in risk management and insurance to state agencies;
- (10) Be authorized to establish a captive insurance company pursuant to article 19 of chapter 431 to effectuate the purposes of this chapter; and
- (11) Do all other things appropriate to the development of sound risk management practices and policies for the State.

~~[(b) The requirements of chapter 103D shall not apply to the acquisition of insurance by or for state agencies.]~~

[(e)] (b) Any provision in this section to the contrary notwithstanding, the University of Hawaii (as to casualty insurance risks only), the Research Corporation of the University of Hawaii (as to casualty insurance risks only), and the public health facilities of the department of health (with respect to medical malpractice risks only) shall be exempt from the requirements of this chapter."

SECTION 14. Section 87A-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) ~~[Without regard to chapter 103D, the]~~ The board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits.”

SECTION 15. Section 87A-24, Hawaii Revised Statutes, is amended to read as follows:

“[F]§87A-24[H] **Other powers.** In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;
- (4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from [H]chapter 76[H] and shall serve under and at the pleasure of the board;
- (5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;

- (6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
- (7) ~~[Without the necessity of complying with the requirements of chapter 103D, retain]~~ Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
- (8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
- (9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter.”

SECTION 16. Section 103-53, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) This section shall not apply to:

- (1) Any procurement of less than \$25,000 or that is considered a small purchase under section 103D-305 and any state or county department contract of less than \$25,000;
- (2) Emergency purchases for the procurement of goods, services, or construction under section 103D-307, disaster relief under chapter 127, or a civil defense emergency under chapter 128;
- (3) Grants and subsidies disbursed by a state agency pursuant to chapter ~~[42D]~~ 42F or in accordance with standards provided by law as required by article VII, section 4, of the State Constitution, or made by the counties pursuant to their respective charters or ordinances;
- (4) Contracts or agreements between government agencies;
- (5) Contracts or agreements to disburse funds:
 - (A) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, and reimbursements;
 - (B) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;
 - (C) To make refunds or return funds held by the State or county as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
 - (E) For deposit, investment, or safekeeping, including sums to pay expenses related to their deposit investment, or safekeeping;
 - (F) For loans under government-administered loan programs; or
 - (G) To make periodic, recurring payments for utility services; and
- (6) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility;
- ~~(7) Contracts or agreements entered into pursuant to chapter 102; and~~
- ~~(8) Requirements of chapter 103D].”~~

SECTION 17. Section 103D-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;

- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—the chairperson of the board;
- (5) The University of Hawaii—the president of the University of Hawaii;
- [~~(5)~~] (6) The department of education, excluding the Hawaii public library system—the superintendent of education; and
- [~~(6)~~] (7) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.”

2. By amending subsection (c) to read:

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

SECTION 18. Section 163D-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the corporation acquires the assets of a private or other corporation, then, notwithstanding any law to the contrary:

- (1) Neither the corporation nor any subsidiary corporation vested with the assets shall be subject to chapter 91 with respect to the assets;
- (2) Employees retained to operate the assets shall not be subject to chapter 76;
- (3) Assets constituting real property interest shall not be subject to chapter 171;
- (4) No investment, loan, or use of funds by the corporation or a subsidiary corporation vested with the assets shall be subject to chapter [42D~~;~~] 42F~~;~~] or 103~~;~~ or 103D]; and
- (5) Neither the corporation nor a subsidiary corporation vested with the assets shall constitute a public utility or be subject to the jurisdiction of the public utilities commission under chapter 269.”

SECTION 19. Section 163D-15.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No expenditure, use, or transfer of funds from the Waiahole water system revolving fund by the corporation shall be subject to chapter [42D~~;~~] 42F~~;~~] or 103~~;~~ or 103D].”

SECTION 20. Section 163D-17, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) No investment, loan, grant, or use of corporate funds for the purposes of this chapter shall be subject to chapter 42F [~~or 103D~~].”

SECTION 21. Section 196-22, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~196-22~~] State energy projects. State energy projects may be implemented under this chapter with the approval of the comptroller and the director of~~

finance. Notwithstanding section ~~[196-21 or section 36-41,]~~ 36-41 or 196-21, the comptroller or the senior agency official of the department of accounting and general services, along with the director of finance, may exempt a state energy project from the advertising and competitive bidding requirements of section ~~[196-21 or section 36-41]~~ 36-41 or 196-21 and ~~[chapters]~~ chapter 103 ~~[and 103D]~~, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements entered into so that economic benefits and existing energy incentives may be used and maximized and financing and other costs to agencies may be minimized. The specific terms of energy performance contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the senior agency official.”

SECTION 22. Section 201-85, Hawaii Revised Statutes, is amended to read as follows:

“**§201-85 Exemptions.** The department is authorized to hire employees necessary to staff its out-of-state offices subject to chapter 76 and legislative appropriations. The department may also appoint such other employees exempt from chapter 76 as may be necessary to administer the affairs of its out-of-state offices. The initial appointment shall not exceed three years, during which time the department shall submit to the legislature a request for approval prior to continuation of the position. The department shall set the duties, responsibilities, salaries, holidays, vacations, leaves, hours of work, and working conditions for these employees. Subject to the approval of the director of budget and finance, the department may be exempted from the following state laws only to the extent necessary for the conduct of its business in operating out-of-state offices:

- (1) Sections 36-27 and 36-30, relating to special fund transfers and reimbursements to the general fund;
- ~~[(2) Chapter 103D, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended;~~
- ~~[(3)]~~ (2) Chapter 36, relating to management of state funds;
- ~~[(4)]~~ (3) Chapter 38, relating to deposits of public funds;
- ~~[(5)]~~ (4) Chapter 40, relating to audit and accounting, except that the department shall comply with section 40-81;
- ~~[(6)]~~ (5) Chapter 76, relating to civil service;
- ~~[(7)]~~ (6) Chapter 77, relating to compensation;
- ~~[(8)]~~ (7) Section 78-1, relating to public employment, except when expressly hiring personnel subject to section 78-1; and
- ~~[(9)]~~ (8) Section 171-30, relating to acquisition of real property.

All moneys necessary for the establishment and operation of out-of-state offices shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.”

SECTION 23. Section 201G-13, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-13 Development of property; additional powers.** Notwithstanding any provision to the contrary, whenever the bids submitted for any development or rehabilitation project authorized pursuant to subparts A, B, G, and H of part II exceed the amount of funds available for that project, the corporation, with the approval of the governor, may disregard the bids and enter into an agreement to

carry out the project, or undertake the project or participate in the project under the agreement~~[, without regard to chapter 103D]~~; provided that the total cost of the agreement and the corporation's participation, if any, shall not exceed the amount of funds available for the project; provided further that if the agreement is with a nonbidder, the scope of the project under agreement shall remain the same as that for which bids were originally requested."

SECTION 24. Section 201G-114, Hawaii Revised Statutes, is amended to read as follows:

"~~[§201G-114]~~ **Additional powers; development.** Notwithstanding and without compliance with section 103-7 ~~[and chapter 103D]~~ but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by part I and any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it."

SECTION 25. Section 201G-455, Hawaii Revised Statutes, is amended to read as follows:

"~~[§201G-455]~~ **Program administration.** To the extent that appropriations are made available, the corporation may contract with a provider agency to administer homeless facilities, or any other program for the homeless created by this part. The selection of provider agencies to administer homeless facilities, or any other program for the homeless authorized by this part, shall not be subject to chapters 42F, 102, 103, ~~[103D,]~~ and 103F. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule."

SECTION 26. Section 206E-182, Hawaii Revised Statutes, is amended to read as follows:

"~~[§206E-182]~~ **Powers.** In addition and supplemental to the powers granted to the authority by law, the authority may:

- (1) With the approval of the governor, ~~[and without regard to chapter 103D,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the authority agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield all or a portion of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or

- accept the assignment of any contract therefor entered into by the other person to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and
 - (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. ~~Neither the undertaking by the other person nor the acceptance by the authority of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D.]”~~

SECTION 27. Section 206M-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The corporation shall be exempt from ~~[chapters]~~ chapter 102 ~~[and 103D].”~~

SECTION 28. Section 206M-42, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~§206M-42 Powers. In addition to any other powers granted to the development corporation by law, the development corporation may:

- (1) With the approval of the governor, ~~[and without public bidding,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the development corporation agrees to acquire, construct, improve, install, equip, and develop a special facility solely for the use by another party to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any acquisition, construction, improvement, installation, equipping, and development of any special facility, including, subject to paragraph (6), the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this section shall not exceed \$100,000,000;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this refunding purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds that may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, improve, install, equip or develop any special facility, or accept the assignment of any contract therefor entered into by the other party to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein shall be expended for land acquisition; and
- (7) Agree with the other party to the special facility lease whereby any acquisition, construction, improvement, installation, equipping, or development of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person.¹ ~~Neither the~~

~~undertaking by the other person nor the acceptance by the development corporation of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D].”~~

SECTION 29. Section 227D-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall not be subject to ~~[any requirement of law for competitive bidding, including]~~ the requirements of ~~[chapters]~~ chapter 103 ~~[and 103D]~~ for project agreements, construction contracts, retail concession or tour-related contracts, or other contracts unless a project agreement with respect to a project or research and technology park shall require otherwise.”

SECTION 30. Section 245-23, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§245-23[H]~~ **Department to furnish stamps; designs, specifications, and denominations; procurement.** The department shall furnish stamps for sale to licensees. Stamps shall be of such designs, specifications, and denominations as may be prescribed by the department. ~~[Purchase by the department of stamps from a vendor shall be exempt from the requirements of chapter 103D.]”~~

SECTION 31. Section 255D-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§255D-4[H]~~ **Authority to enter agreement.** The department may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this section. Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91 ~~[and the joint procurement not subject to chapter 103D]~~, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department’s designee, may represent this State before the other states that are signatories to the agreement.”

SECTION 32. Section 261-52, Hawaii Revised Statutes, is amended to read as follows:

“**§261-52 Powers.** In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, ~~[and without public bidding,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the department agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility, including the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authoriza-

- tion of this paragraph shall not exceed \$200,000,000; provided further that these funds shall not be expended on nonpublic air facilities;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
 - (4) Perform and carry out the terms and provisions of any special facility lease;
 - (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;
 - (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and
 - (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. [~~Neither the undertaking by the other person nor the acceptance by the department of a contract theretofore entered into by the other person therefor, shall be subject to chapter 403D.]~~”

SECTION 33. Section 266-52, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) With the approval of the governor, [~~and without public bidding,~~] enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated[-];
- (2) With the approval of the governor:
 - (A) Issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this subparagraph shall not exceed \$100,000,000; and
 - (B) Issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before the maturity or redemption date, issued pursuant to this part; provided that any

- issuance of the refunding bonds shall not reduce the amount authorized by the legislature as provided in paragraph (2)(A)[-];
- (3) Perform and carry out the terms and provisions of any special facility lease[-];
 - (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease[-];
 - (5) Construct any special facility on land owned by the State[-]; and
 - (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. ~~[Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to chapter 103D.]~~”

SECTION 34. Section 302A-415, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§302A-415[H]~~ **Motor vehicles for driving instruction; purchase and sale.** ~~[Chapter 103D to the contrary notwithstanding, the]~~ The department may enter into agreements with any dealer or company for the purchase of motor vehicles for driving instruction in the public schools if the agreements provide that the department pay \$1 for each motor vehicle, take title thereto in the name of the State, and agree to resell it to the seller for \$1 within sixty days following the last day of the school year. In the event of the seller’s failure to repurchase, the department may retain the motor vehicle or dispose of it in accordance with rules adopted under chapter 91.”

SECTION 35. Section 304-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The board shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, ~~[but not]~~ subject to chapter 103D.¹ ~~[However, where possible, the board is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the board to any other provision of chapter 103D].~~”

SECTION 36. Section 304-8.94, Hawaii Revised Statutes, is amended as follows:

“~~[H]§304-8.94[H]~~ **Conference center revolving fund.** There is established a revolving fund for the conference center program in the college of continuing education and community service of the University of Hawaii, Manoa campus. All fees, charges, and other moneys collected in conjunction with the conference center program shall be deposited in the revolving fund. The dean of the college of continuing education and community service is authorized to expend funds from the revolving fund for all costs associated with conducting conferences, seminars, and courses by the conference center program, including but not limited to[-] expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audio-visual equipment, and conference supplies and materials~~[-, without regard to chapter 103D and section 103-42].~~”

SECTION 37. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, the corporation shall have and exercise the following duties and powers:

- (1) Developing its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91;
- (2) Evaluating the need for health facilities and services;
- (3) Entering into and performing any contracts, leases, cooperative agreements, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms it may deem appropriate, with either:
 - (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
 - (B) Any person, firm, association, or corporation, whether operated on a for-profit or not-for-profit basis;
 provided that the transaction furthers the public interest;
- (4) Conducting activities and entering into business relationships as the corporation board deems necessary or appropriate, including but not limited to:
 - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation or jointly with others;
 - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
 - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation to abrogate any responsibility or obligation under paragraph (15);
- (5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any of the corporation’s powers;
- (7) Preparing and executing all corporation budgets, policies, and procedures;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91;
- (9) Developing a corporation-wide hospital personnel system that is subject to chapters 76 and 89;
- (10) Developing the corporation’s capital and strategic plans;
- (11) Suing and being sued; provided that the corporation shall enjoy the same sovereign immunity available to the State;
- (12) Making and altering corporation board bylaws for its organization and management without regard to chapter 91;
- (13) Adopting rules, without regard to chapter 91, governing the exercise of its powers and the fulfillment of its purpose under this chapter;

- (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation chief executive officer to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds;
- (15) Issuing revenue bonds subject to the approval of the legislature; provided that all revenue bonds shall be issued pursuant to part III, chapter 39;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation;
- (17) Pledging or assigning all or any part of the receipts and revenues of the corporation for purposes of meeting bond or health systems liabilities;
- (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation;
- (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation; provided that the corporation legally holds or controls the property in its own name; [and] provided further that the corporation shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of all or substantially all of its property;
- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance;
- (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
- (22) Depositing any moneys of the corporation in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation;
- (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof;
- (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation or association through or in the health facilities of the corporation or otherwise;
- (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities, including without limitation, determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility;
- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board;

provided the investment assists the corporation in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board may determine, with or without payment of any interest on the deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation and may issue indemnity bonds or may pledge securities as may be required by the corporation board[-]; and

- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation, and all banks and trust companies are authorized to give security for the deposits;
- (27) Entering into any agreement with the State including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation’s programs, and contracting for the provision of services to or on behalf of the State;
- (28) Having a seal and altering the same at pleasure;
- (29) Waiving, by means that the corporation deems appropriate, the exemption from federal income taxation of interest on the corporation’s bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices[~~–but not subject to chapter 103D. However, where possible, the corporation is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the corporation to any other provision of chapter 103D~~];
- (31) Authorizing and establishing positions;
- (32) Calling upon the attorney general for such legal services as the corporation may require; and
- (33) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.”

SECTION 38. Section 329-58, Hawaii Revised Statutes, is amended to read as follows:

“§329-58 Education and research. (a) The department of public safety shall carry out educational programs designed to prevent and determine misuse and abuse of controlled substances. In connection with these programs it may:

- (1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) Disseminate the result of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;
- (6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

~~[(b) The department of public safety may enter into contracts for educational and research activities without performance bonds and without regard to chapter 403D.~~

~~(e)~~ (b) The department of public safety may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are subjects of research for which the authorization was obtained.

~~[(d)]~~ (c) The department of public safety may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.”

SECTION 39. Section 354D-4, Hawaii Revised Statutes, is amended to read as follows:

“§354D-4 Powers and duties of the director. Under the supervision of the director or the director’s designee, the administrator of the correctional industries program shall:

- (1) Develop programs generating revenue that best sustains their operation and allows for capital investment, and reimburses the general fund, when possible, for the expense of correctional services;
- (2) Develop programs providing the maximum level of work and training opportunities for qualified, able-bodied inmates;
- (3) Develop programs assuming responsibility for training qualified, able-bodied inmates in general work and specific training skills that increase their employment prospects after release;
- (4) Develop programs in which inmates can learn skills used in the construction and other industries, while providing low-cost construction, renovation, and repairs of facilities, grounds, furniture, vehicles, and equipment for private, nonprofit social services, health, or education agencies and programs;

- (5) Acquire or purchase equipment, materials, supplies, office space, insurance, and services necessary to establish and maintain programs pursuant to this chapter;
- (6) ~~[Utilize]~~ Use labor services of qualified, able-bodied inmates in the manufacture or production of goods and services that are needed for the construction, operation, or maintenance of any office, department, institution, or agency supported in whole or in part by the State, the counties, or the federal government;
- (7) Sell all goods and services to the State, the counties, or the federal government;
- ~~[(8) Enter into any contract or agreement and execute all instruments consistent with this chapter and exempt from chapter 103D;~~
- ~~(9)]~~ (8) Purchase, lease, trade, exchange, acquire, and maintain personal property; and
- ~~[(10)]~~ (9) Accept grants or loans from the State, the counties, or the federal government.”

SECTION 40. Section 354D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The administrator may purchase or cause to be purchased and maintained all necessary materials, supplies, space, services, and equipment required for the operation of the program. ~~[Notwithstanding any other provision to the contrary, purchases by the administrator for the manufacture of any goods or services shall be exempt from the public bidding requirements of chapter 103D.]~~”

SECTION 41. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The department may contract for employment, education, and training services from public and private agencies and nonprofit corporations. Contracts, pursuant to subsection (b), shall be exempt from ~~[chapters 103D and]~~ chapter 103F so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapters 103D and 103F.”

SECTION 42. Section 412:12-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Hawaii state bank or an out-of-state state bank operating a branch in this State pursuant to this article to engage the services of the agency’s examiners at a reasonable rate of compensation, or to provide the services of the commissioner’s examiners to the agency at a reasonable rate of compensation. ~~[Any contract executed under this section shall be exempt from the requirements of chapter 103D.]~~”

SECTION 43. Section 412:13-224, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In order to carry out the purposes under this article, the commissioner may:

- (1) Enter into cooperative, coordinating, or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;
- (2) With respect to periodic examination or other supervision of a foreign bank that maintains a Hawaii state branch, Hawaii state agency, or Hawaii representative office, accept reports of examinations performed

by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

- (3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank; provided that the commissioner, at any time, may take any action independently if the commissioner determines that the action is necessary or appropriate to carry out the commissioner's responsibilities under this article and to ensure compliance with the laws of this State;
- (4) Enter into contracts ~~[, exempt from the requirements of chapter 103D,]~~ with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office, to engage the services of the agency's examiners at a reasonable rate of compensation; and
- (5) Assess supervisory, examination, and other fees and charges that shall be payable by foreign banks maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office in connection with the commissioner's performance of the commissioner's duties under this article and in accordance with this chapter and rules adopted by the commissioner."

SECTION 44. Section 431:22-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a special fund to be designated as the loss mitigation grant fund. Moneys transferred to the loss mitigation grant fund may be expended by the commissioner to carry out the commissioner's duties and obligations under this article. Disbursements from the loss mitigation grant fund shall not be subject to chapter 42F[,] or 91~~[, or 103D]~~."

SECTION 45. Section 87A-20, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 46. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 47. This Act shall take effect on January 1, 2005.

(Approved July 13, 2004.)

Note

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