

ACT 12

S.B. NO. 1218

A Bill for an Act Relating to Statutory Revision: Amending Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purposes of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

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

SECTION 1. Sections 88-15, 171-22, 171-36(a)(2), 171-73(7), 171-93(4), 205-4.5(b), 206E-101, 249-6, 323D-13(b), 334-72, 363-11, 412:5-305(a)(1), 412:6-306(a)(1), 412:7-306(a)(1), 412:8-301(a)(1), 412:10-502(a)(1), 447-1.5(e), 448-1(2), 448-9.6(e), 516-35.1, 516-63, and 516-91, Hawaii Revised Statutes, are amended by substituting the term "Department of Veterans Affairs" wherever the term "Veterans Administration", "Veterans' Administration", or "veterans administration", or similar term, appears, as the context requires.

SECTION 2. Section 23G-14, Hawaii Revised Statutes, is amended to read as follows:

**"§23G-14 Publication of supplements.** As soon as possible after the close of each regular session of the legislature, the revisor of statutes, subject to section 23G-15, shall prepare for publication a cumulative [~~pocket-part~~] supplement to the last revision of the laws of Hawaii. The supplement shall contain all laws of a general and permanent nature enacted at any session of the legislature subsequent to the last revision of the laws and not included therein and a cumu-

lative index of the material. The material in the supplement shall be arranged in the same order as like material is arranged in the last revision, shall show all sections repealed or amended, and shall be annotated to decisions and opinions subsequent to those included in the last revision.”

SECTION 3. Section 28-152, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Notwithstanding any law to the contrary, no member shall be liable in any civil action founded upon a statute or the case law of this State, for damage, injury, or loss caused by or resulting from the member’s performance of ~~for~~ failure to perform any duty that is required or authorized to be performed by a person holding the position to which the member was appointed, unless the member acted with a malicious or improper purpose, except when the plaintiff in a civil action is the State.”

SECTION 4. Section 37-68, Hawaii Revised Statutes, is amended to read as follows:

“§37-68 **Responsibilities of agencies.** Under rules as may be prescribed by the director of finance with the approval of the governor:

- (1) Each agency assigned the task of developing programs and preparing program and financial plans, budgetary requests, and program performance reports shall develop the programs and prepare the plans, requests, and reports and submit ~~the same~~ them to the director of finance at times, on forms, and in a manner as the director may prescribe. For informational purposes, the University of Hawaii shall submit its program and financial plans, budgetary requests, and program performance reports to the legislature at the same time the university submits them to the director of finance. Where new programs are being proposed, each agency shall demonstrate that the program:
  - (A) Is an appropriate function of state government; and, [as applicable]
  - (B) ~~Can~~ As applicable, can be implemented by the public sector as cost-effectively as the private sector while meeting the same plans, goals, objectives, standards, measures of effectiveness, wage, salary, conditions of employment, and employee benefit programs of the State;
- (2) Each agency administering state programs and each agency responsible for the formulation of programs and the preparation of program and financial plans, budgetary requests, and program performance reports~~;~~ shall furnish the department of budget and finance all documents and information as the department may from time to time require. Each agency shall make available all documents and information, as may be requested, to the legislature and any member or committee of either house of the legislature;
- (3) The director of finance or any employee of the department of budget and finance, when duly authorized, for the purpose of securing information, shall have access to and may examine any books, documents, papers, or records of any agency;
- (4) Each agency submitting a capital improvement project proposal shall furnish the department of budget and finance with an estimate of operational costs for the proposed capital improvement project and all documents that support the estimate of operational costs.

Each agency shall make available all documents and related information, as may be requested, to the legislature and any member or committee of either house.

The director of finance shall provide a summary of this information in the multi-year program and financial plan and budget submitted to the legislature before the regular session of each odd-numbered year and the supplemental budget submitted to the legislature before the regular session of each even-numbered year; and

- (5) Each agency responsible for operating or maintaining a state-owned building, facility, or other improvement shall furnish the department of budget and finance with an estimate of the deferred maintenance costs for the building, facility, or other improvement.

The director of finance shall provide a summary of this information in the multi-year program and financial plan and budget submitted to the legislature before the regular session of each odd-numbered year and the supplemental budget submitted to the legislature before the regular session of each even-numbered year.

For the purposes of this paragraph, "deferred maintenance costs" means the costs to catch up on the repair and maintenance of the state-owned building, facility, or other improvement that has been delayed past the ordinarily scheduled repair and maintenance cycle. The department of budget and finance may further refine this definition in its instructions to the agencies furnishing the information."

SECTION 5. Section 87A-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This section shall apply to state and county contributions to the fund for employees specified in paragraph ~~[(1)(E)]~~ (1)(D) of the definition of "employee" in section 87A-1 who:

- (1) Were hired on or before June 30, 1996; and
- (2) Retired after June 30, 1984, with fewer than ten years of credited service, excluding sick leave."

SECTION 6. Section 87A-36, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees based on the self plan with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (2) For retired employees based on the self plan with at least fifteen but fewer than twenty-five years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (3) For retired employees based on the self plan with twenty-five or more years of service, a monthly contribution equal to ~~[one hundred]~~ one hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b); and
- (4) One-half of the monthly contributions for the employee-beneficiary or employee-beneficiary with dependent-beneficiaries upon the death of the employee, as defined in paragraph ~~[(1)(E)]~~ (1)(D) of the definition of "employee" in section 87A-1.

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for two supplemental medicare self or non-medicare self plans, as appropriate.”

SECTION 7. Section 88-211, Hawaii Revised Statutes, is amended to read as follows:

“~~§88-211~~ **Definitions.** For the purposes of this part:

- ~~(1)~~ The term “wages” means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of the remuneration which, even if it were for “employment” within the meaning of the Federal Insurance Contributions Act, would not constitute “wages” within the meaning of that Act;
- ~~(2)~~ The term “employment” means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer except
  - ~~(A)~~ Service which in the absence of an agreement entered into under this part would constitute “employment” as defined in the Social Security Act; or
  - ~~(B)~~ Service which under the Social Security Act may not be included in an agreement between the State and the Department of Health and Human Services entered into under this part. Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that Act shall be included in the term “employment” if and when the governor issues, with respect to such service, a certificate to the Secretary of Health and Human Services pursuant to section 88-219;
- ~~(3)~~ The term “employee” includes an officer of the State or political subdivision thereof;
- ~~(4)~~ The term “state agency” means the executive director of the state employees’ retirement system;
- ~~(5)~~ The term “Secretary of Health and Human Services” includes an individual to whom the Secretary of Health and Human Services has delegated any of the Secretary’s functions under the Social Security Act with respect to coverage under the Act of employees of the states and territories and their political subdivisions;
- ~~(6)~~ The term “political subdivision” includes an instrumentality of the State, of one or more of its political subdivisions, or of the State and one or more of its political subdivisions, but only if the instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the State or subdivision;
- ~~(7)~~ The term “Social Security Act” means the Act of Congress approved August 14, 1935, chapter 531, 49 Statutes At Large 620, officially cited as the “Social Security Act”, (including regulations and requirements issued pursuant thereto), as such Act has been and may from time to time be amended;
- ~~(8)~~ The term “Federal Insurance Contributions Act” means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as such Codes have been and may from time to time

~~be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954.]~~

"Employee" includes an officer of the State or political subdivision thereof.

"Employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for that employer, except:

- (1) Service that, in the absence of an agreement entered into under this part, would constitute "employment" as defined in the Social Security Act; or
- (2) Service that under the Social Security Act may not be included in an agreement between the State and the Department of Health and Human Services entered into under this part. Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that Act shall be included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the Secretary of Health and Human Services pursuant to section 88-219.

"Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Internal Revenue Code of 1954, as those Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954.

"Political subdivision" includes an instrumentality of the State, of one or more of its political subdivisions, or of the State and one or more of its political subdivisions, but only if the instrumentality is a juristic entity that is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the State or subdivision.

"Secretary of Health and Human Services" includes an individual to whom the Secretary of Health and Human Services has delegated any of the Secretary's functions under the Social Security Act with respect to coverage under the Act of employees of the states and territories and their political subdivisions.

"Social Security Act" means the Act of Congress approved August 14, 1935, chapter 531, 49 Statutes At Large 620, officially cited as the "Social Security Act", (including regulations and requirements issued pursuant thereto), as that Act has been and may from time to time be amended.

"State agency" means the executive director of the state employees' retirement system.

"Wages" means all remuneration for employment as defined in this section, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of the remuneration that, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that Act."

SECTION 8. Section 103-55, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel[-];

- (2) Contracts for supplies, materials, or printing[-];
- (3) Contracts for utility services[-];
- (4) Contracts to perform personal services under ~~[paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77.] section 46-33(7), (8), and (9), section 76-16(b)(2), (3), (12), and (15), and section 76-77(7), (8), and (12);~~
- (5) Contracts for professional services[-];
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions[-];
- (7) Contracts to provide transportation services for school children[-];
- ~~or~~
- (8) Contracts with nonprofit institutions.”

SECTION 9. Section 183D-66, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) To the extent permitted under federal law, none of the prohibitions set forth in this section shall apply if:

- (1) The covered animal species part or product is part of a bona fide antique; provided that:
  - (A) The antique status of ~~[such a]~~ the part or product is established by the owner or seller thereof with historical documentation showing the antique to be not less than one hundred years old;
  - (B) The covered animal species part or product is less than twenty per cent by volume of ~~[such an]~~ the antique; and
  - (C) The covered animal species part or product is a fixed component or components of a larger manufactured item and is not, in its current form, the primary source of value of the item;
- (2) The distribution of the covered animal species part or product is:
  - (A) For a bona fide educational or scientific purpose; or
  - (B) To or from a museum;
- (3) The distribution of the covered animal species part or product is to a legal beneficiary of an estate, trust, or other inheritance;
- (4) The covered animal species part or product is less than twenty per cent by volume of a gun, knife, or musical instrument, including without limitation string instruments and bows, wind and percussion instruments, and pianos, if the owner or seller provides historical documentation showing the item was manufactured no later than 1975 and the covered animal species part or product is a fixed component or components of a larger manufactured item and is not, in its current form, the primary source of value of the item;
- (5) The sale, offer for sale, purchase, trade, ~~[possession]~~ with intent to sell, or barter of the covered animal species part or product is expressly authorized by federal law or permit; or
- (6) The activity is authorized under section 183D-6.”

SECTION 10. Section 188-70, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) Any person violating section 188-23, is guilty of a class C felony and shall be sentenced pursuant to chapter 706; provided that the environmental court, in addition to any term of imprisonment or any other terms and conditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of ~~[subsection (b)]~~ section 188-23(b), as a first offense, shall

## ACT 12

be sentenced to a mandatory minimum period of imprisonment without possibility of parole ~~[for]~~ of thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

(c) The environmental court may require the defendant to complete an aquatic resources educational class administered by the department of land and natural resources in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

(d) The environmental court may direct the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section.”

SECTION 11. Section 201H-110, Hawaii Revised Statutes, is amended to read as follows:

- “~~[[~~**§201H-110]** **Loans; default.** The corporation may ~~[renegotiate];~~
- (1) ~~Renegotiate~~, refinance, or foreclose any loan in default~~[-];~~
  - (2) ~~[The corporation may waive]~~ **Waive** any default or consent to the modification of the terms of any loan or security agreement~~[-];~~
  - (3) ~~[The corporation may commence]~~ **Commence** any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement~~[-];~~
  - (4) ~~[The corporation may bid]~~ **Bid** for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan~~[-]; and~~
  - (5) ~~[The corporation may operate;]~~ **Operate**, manage, lease, dispose of, or otherwise deal with the property secured by the loan.”

SECTION 12. Section 201M-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency’s determination to the ~~[small-business review]~~ board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.”

SECTION 13. Section 201M-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
  - (2) When a violation involves wilful or criminal conduct;
  - (3) When a violation results in serious health and safety impacts;
  - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
  - (5) To violations of sections 200-9(b) ~~[and (e);]~~ to (d), 200-24(4), 200-37, and 200-38; or

- (6) To violations of administrative rules promulgated pursuant to section [200-4(a)(6)]; except for rules pertaining to matters listed in section [200-4(a)(6)(A), (B), (C), and (D)].”

SECTION 14. Section 202-2, Hawaii Revised Statutes, is amended to read as follows:

“**§202-2 Duties of council.** In accordance with P.L. 113-128 (29 U.S.C. section 3111), the workforce development council shall assist the governor in:

- (1) The development, implementation, and modification of the state plan consistent with P.L. 113-128 (29 U.S.C. section 3112);
- (2) The review of statewide policies, statewide programs, and recommendations on actions that should be taken by the State to align workforce development programs in a manner that supports a comprehensive and streamlined workforce development system in the State, including consideration of programs and activities of one-stop partners that are not core programs;
- (3) The development and continuous improvement of the workforce development system in the State;
- (4) The development and updating of comprehensive state performance accountability measures, including state adjusted levels of performance, to assess the effectiveness of the core programs in the State as required under P.L. 113-128 (29 U.S.C. section 3141(b));
- (5) The identification and dissemination of information on best practices for the effective operation of one-stop centers, and the development of effective local boards and effective training programs;
- (6) The development and review of statewide policies affecting the coordinated provision of services through the State’s one-stop delivery system;
- (7) The development of strategies for technological improvements to facilitate access to, and improve the quality of, services and activities provided through the one-stop delivery system;
- (8) The development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including the design and implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes, and the incorporation of local input into [such] the design and implementation, to improve coordination of services across one-stop partner programs;
- (9) The development of allocation formulas for the distribution of funds for employment and training activities for adults, and youth workforce investment activities, to local areas as permitted under P.L. 113-128 (29 U.S.C. sections 3163(b)(3), 3173(b)(3));
- (10) The preparation of annual reports as described in P.L. 113-128 (29 U.S.C. section 3141(d));
- (11) The development of the statewide workforce and labor market information system described in the Wagner-Peyser Act (29 U.S.C. section 491-2(e));
- (12) The development of [such] other policies as may promote statewide objectives for, and enhance the performance of, the workforce development system;



ACT 12

- (13) Creating public awareness and understanding of the State's workforce development plans, policies, programs, and activities, and promoting the plans, policies, programs, and activities as economic investments;
- (14) Submitting annual reports of the council's activities and recommendations to the governor and the legislature, and posting the annual reports electronically on the council's website no later than twenty days before the convening of each regular session. Annual reports shall include:
  - (A) The status of the comprehensive state plan for workforce development; and
  - (B) Information regarding the workforce development programs offered throughout the State, the number of individuals placed in high-demand or high-growth employment through workforce development programs by departments, the type or category of employment garnered, and allocations of state, federal, and other funding to achieve placements into higher-skilled jobs;
- (15) Evaluating the state workforce development plan in terms of how its purposes, goals, and objectives have been carried out throughout the State;
- (16) Providing technical assistance to local workforce development boards and other similar organizations;
- (17) Carrying out required functions and duties related to workforce development of any advisory body required or made optional by federal legislation;
- (18) The review and certification of local workforce development boards and plans prepared by local workforce development boards for the use of federal workforce development funds as provided in P.L. 113-128 (29 U.S.C. section 3122(b)-(c)); and
- (19) Commenting on the measures taken pursuant to section 122(c)(17) of the Carl D. Perkins Career and Technical Education Act of 2006, P.L. 109-270."

SECTION 15. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;
- (6) Solar energy facilities; provided that:
  - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
  - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres

- of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);
  - (8) Wind machines and wind farms;
  - (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
  - (10) Agricultural parks;
  - (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
  - (12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;
  - (13) Open area recreational facilities;
  - (14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1;
  - (15) Agricultural-based commercial operations, including:
    - (A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
    - (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items; and
    - (C) A retail food establishment owned and operated by a producer and permitted under ~~[title 11, chapter 12 of the rules of the department of health]~~ chapter 11-50, Hawaii administrative

rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph; and

(16) Hydroelectric facilities as described in section 205-4.5(a)(23). Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 16. Section 205-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any other provisions of law to the contrary notwithstanding, agencies and persons may intervene in the proceedings in accordance with this subsection.

- (1) The petitioner, the office of planning, and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change[-];
- (2) All departments and agencies of the State and of the county in which the land is situated shall be admitted as parties upon timely application for intervention[-];
- (3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention[-];
- (4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted[-]; provided that the commission or its hearing officer, if one is appointed, may deny an application to intervene when in the commission’s or hearing officer’s sound discretion it appears that:
  - (A) ~~the~~ The position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and
  - (B) ~~the~~ The admission of additional parties will render the proceedings inefficient and unmanageable.

A person whose application to intervene is denied may appeal ~~such~~ the denial to the circuit court pursuant to section 91-14[-]; and

- (5) The commission ~~shall~~, pursuant to chapter 91, shall adopt rules governing the intervention of agencies and persons under this subsection. ~~Such~~ The rules shall without limitation establish:
  - (A) ~~the~~ The information to be set forth in any application for intervention;
  - (B) ~~time~~ The limits within which ~~such~~ applications shall be filed; and
  - (C) ~~reasonable~~ Reasonable filing fees to accompany ~~such~~ applications.”

SECTION 17. Section 206-1, Hawaii Revised Statutes, is amended by amending the definition of "government" to read as follows:  
 "'Government" shall have the [respective] meaning set forth in section 201H-1."

SECTION 18. Section 206-6, Hawaii Revised Statutes, is amended to read as follows:

"§206-6 Acquisition of land within a development area. (a) After the declaration of a development area, the board of land and natural resources may acquire a parcel or parcels of land, which it shall thereafter designate for the appropriate development project or projects within the area. If necessary lands cannot reasonably be acquired by voluntary transaction, the board may institute eminent domain proceedings to acquire the land and improvements; provided that negotiations for the acquisition by voluntary transaction shall not be required before the institution of eminent domain proceedings. The board [shall], within twelve months [next] following its designation, shall acquire or institute eminent domain proceedings to acquire the lands so designated. If the lands are not acquired or eminent domain proceedings are not instituted within the twelve month period, [it] the board shall reimburse the owner of the lands so designated for out-of-pocket expenses of appraisal, survey, and [attorney] attorney's fees [as] that the owner may have incurred as a result of the designation.

(b) Subject to the restrictions in [~~the following section,~~] section 206-7, the board may acquire for development projects any lands suitable for residential use or suitable for such use or uses upon subdivision and development. The board may also acquire, in connection with the development projects, lands necessary for roads, sidewalks, parks, schools, utilities, and playground and recreational facilities[~~, and~~]; rights to water and access[~~. The board may also acquire, in connection with the development projects,~~]; and lands for business use where the use is reasonably necessary to provide services to the prospective occupants of the projects. Plans and specifications for projects shall include provisions for roads, sidewalks, parks, schools, utilities, playground and recreational facilities, and other appropriate improvements, so that they will be suitable for disposition as hereinafter provided."

SECTION 19. Section 206-7, Hawaii Revised Statutes, is amended to read as follows:

"§206-7 Property [~~which~~] that shall not be acquired for development projects. (a) In declaring development areas, and acquiring land therein, the board of land and natural resources shall avoid disturbing existing uses [~~which~~] that are in accord with the highest use permitted under any existing zoning ordinance in the political subdivision concerned.

(b) The board shall not acquire for development projects:

- (1) Lands already developed and improved as business or industrial areas where use of the lands for residential purposes or as a part of a development project would be economically unsound or where an undue hardship would be suffered by the community through loss of service because of the acquisition;
- (2) Lands already in use for residential purposes by the owner thereof or by a lessee holding a lease with an original term of twenty years or more, except where the acquisition of parts of the lands is reasonably necessary for the proper development of a project, but in no

case shall any part of the lands be taken where the taking will reduce the parcel to less than three acres in extent;

- (3) Lands in the process of subdivision and development where the owner or the owner's agent has provided that at least fifty per cent of the lots to be sold shall be sold in fee simple, prepared subdivision and construction plans, arranged for financing, and applied to government agencies and otherwise taken ~~[such]~~ steps ~~[as]~~ that may be appropriate for the construction of the proposed development in good faith and filed an affidavit with the board to that effect; or
- (4) Lands used or to be used as sites for churches, private or parochial schools, clubs, meeting houses, or other private uses of a community, civic, social, or religious nature;

provided that portions of the lands mentioned under paragraphs (1), (2), (3), and (4) ~~[of this section]~~, or interests therein, may be taken to provide access and utility easements where no other reasonable means of access or utility easements are available.

(c) In acquiring agricultural land for a development project, where the land though used for agricultural purposes is not being used in accord with the highest use permitted under any existing zoning ordinance, the board shall exercise all reasonable care not to jeopardize the agricultural enterprise concerned. If, however, the board finds that the land is necessary for a development project, ~~[it]~~ the board may provide assistance, monetary or otherwise, in relocating the enterprise elsewhere or pay ~~[such]~~ damages to the owner or operator of ~~[such]~~ the enterprise ~~[as]~~ that will reasonably compensate the owner or operator for the owner's or operator's loss, if the owner or operator has not already been so compensated under a lease agreement, or both."

SECTION 20. Section 206-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any original purchaser intending to sell ~~[such]~~ any lot and improvements within the five-year period shall first notify the board in writing of the original purchaser's intention. The notice shall specify the original purchaser's address and shall expressly offer to sell ~~[such]~~ the property to the board at a price ~~[which]~~ that shall not exceed the sum of the:

- (1) ~~[the original]~~ Original cost of the land~~[-]~~; and
- (2) ~~[the replacement]~~ Replacement value, less depreciation at the rates used for real property tax purposes, of all buildings and improvements thereon, to be determined by three appraisers; one appointed by the board, one appointed by the owner, and the third by the two appraisers so appointed, the cost to be borne equally by the parties.

Within thirty days after the receipt of the notice, the board ~~[shall]~~ in writing shall notify the original purchaser at the specified address ~~[so specified]~~ whether it elects to exercise the option. If the board refuses, or fails within the thirty-day period, to reply to the offer, the original purchaser may sell the property to any other person free from any price restrictions~~[-]~~; provided that if the board elects to purchase, the board shall ~~[thereupon]~~ use its best efforts to dispose of ~~[it]~~ the property as soon as practicable subject to the lien of any mortgage, to a qualified and responsible person who will assume the obligation of mortgage and debt secured thereby."

SECTION 21. Section 206-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Nothing in this chapter shall be construed as limiting the power of the board~~[-(1)]~~ to vest in an obligee the right, in the event of a default by the ~~board~~;

- (1) Board or by the purchaser, to take possession of a development project or lot or cause the appointment of a receiver thereof, free from all the restrictions imposed by this chapter; or
- (2) ~~[to vest in the obligee the right, in the event of a default by the purchaser,]~~ Purchaser, to acquire title to a lot or the property mortgaged by the purchaser free from all the restrictions imposed by this chapter.”

SECTION 22. Section 206E-2, Hawaii Revised Statutes, is amended to read as follows:

“**§206E-2 Definitions.** As used in this chapter, the following ~~[words and terms shall]~~ have the following meanings, unless the context ~~[shall indicate another or]~~ indicates a different meaning or intent:

~~[(1)]~~ “Authority” means the Hawaii community development authority established by section 206E-3.

~~[(2)]~~ “County” means any county of the State.

~~[(3)]~~ “Local governing body” means the county council.

~~[(4)]~~ “Project” means a specific work or improvement, including real and personal properties, or any interest therein, acquired, owned, constructed, reconstructed, rehabilitated, or improved by the authority, including a ~~[residential]~~ commercial project, a redevelopment project, or a ~~[commercial]~~ residential project, all as defined ~~[herein,]~~ as follows, or any combination thereof, which combination shall hereinafter be called and known as a “multipurpose project”.

~~[(A)]~~ “Residential project” means a project or that portion of a multipurpose project, including residential dwelling units, designed and intended for the purpose of providing housing and such facilities as may be incidental or appurtenant thereto;

~~[(B)]~~ “Redevelopment project” means an undertaking for the acquisition, clearance, replanning, reconstruction, and rehabilitation or a combination of these and other methods, of an area for a residential project, for an incidental commercial project, and for other facilities incidental or appurtenant thereto, pursuant to and in accordance with this chapter. The terms “acquisition, clearance, replanning, reconstruction, and rehabilitation” shall include renewal, redevelopment, conservation, restoration, or improvement, or any combination thereof;

~~[(C)]~~ “Commercial project” means an undertaking involving commercial or light industrial development, which includes a mixed-use development where commercial or light industrial facilities may be built into, adjacent to, under or above residential units.] As used in this definition:

(1) “Commercial project” means an undertaking involving commercial or light industrial development, which includes a mixed-use development where commercial or light industrial facilities may be built into, adjacent to, under, or above residential units;

(2) “Redevelopment project” means an undertaking for the acquisition, clearance, replanning, reconstruction, and rehabilitation, or a combination of these and other methods, of an area for a residential project, for an incidental commercial project, and for other facilities

incidental or appurtenant thereto, pursuant to and in accordance with this chapter. The terms “acquisition, clearance, replanning, reconstruction, and rehabilitation” shall include renewal, redevelopment, conservation, restoration, or improvement, or any combination thereof; and

- (3) “Residential project” means a project or that portion of a multi-purpose project, including residential dwelling units, designed and intended for the purpose of providing housing and any facilities as may be incidental or appurtenant thereto.

[(5)] “Project cost” means the total of all costs incurred by the authority in carrying out all undertakings ~~which~~ that it deems reasonable and necessary for the development of a project, including but not limited to: studies; surveys; plans; specifications; architectural, engineering, or any other development related services; acquisition of land and any improvement thereon; site preparation and development; construction; reconstruction; rehabilitation; the necessary expenses in administering the chapter; the cost of financing the project; and relocation costs.

[(6)] “Public agency” means any office, department, board, commission, bureau, division, public corporation agency, or instrumentality of the federal, state, or county government.

[(7)] “Public facilities” includes streets, utility and service corridors, and utility lines where applicable, sufficient to adequately service developable improvements in the district, sites for schools, parks, parking garage, sidewalks, pedestrian ways, and other community facilities. “Public facilities” shall also include public highways, as defined by statute, storm drainage systems, water systems, street lighting systems, off-street parking facilities, and sanitary sewerage systems.

[(8)] “Qualified person” includes any individual, partnership, corporation, or any public agency~~;~~ possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible resources, required for the purposes of the project and ~~[such]~~ other qualifications as may be deemed desirable by the authority in administering ~~[the]~~ this chapter.

[(9)] “Real property” means lands, structures, and interests in land, including lands under water and riparian rights, space rights, and air rights and any and all other things and rights usually included within the term. Real property also means any and all interests in ~~[such]~~ the property less than full title, such as easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.”

SECTION 23. Section 206J-12, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (d) and (e) to read:

“(d) ~~Should~~ If any bond issued under this chapter or any coupon appertaining thereto ~~[become]~~ is mutilated or ~~[be]~~ lost, stolen, or destroyed, the development corporation may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of ~~[such]~~ the mutilated bond or coupon, or in lieu of and in substitution for, ~~[such]~~ the lost, stolen, or destroyed bond or coupon. ~~[Such]~~ The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon;

- (1) ~~[has]~~ Has paid the reasonable expense and charges in connection therewith~~;~~;

- (2) ~~[in]~~ In the case of a lost, stolen, or destroyed bond or coupon, has filed with the development corporation or its fiduciary evidence satisfactory to the development corporation or its fiduciary that ~~[such]~~ the bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof~~[-]~~; and
- (3) ~~[has]~~ Has furnished indemnity satisfactory to the development corporation.
- (e) The development corporation in its discretion may provide that CUSIP identification numbers shall be printed on ~~[such]~~ bonds. ~~[In the event such]~~ If CUSIP identification numbers are imprinted on any [such] bonds:
  - (1) ~~[no such]~~ No CUSIP identification number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted~~[-]~~; and
  - (2) ~~[no]~~ No liability shall attach to the development corporation or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for ~~[such]~~ any bonds by reason of ~~[such]~~ any CUSIP identification numbers or any use made thereof, including any use thereof made by the development corporation~~[-]~~ or any ~~[such]~~ officer~~[-]~~ or ~~[any such agent,]~~ agent thereof, or by reason of any inaccuracy, error, or omission with respect thereto or in such use.

The development corporation in its discretion may require that all costs of obtaining and imprinting ~~[such]~~ CUSIP identification numbers shall be paid by the purchaser of ~~[such]~~ the bonds. For the purposes of this subsection, the term “CUSIP identification numbers” means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.”

2. By amending subsection (i) to read:

“(i) The development corporation may issue bonds for the purpose of refunding any bonds then outstanding and issued under this chapter whether or not ~~[such]~~ the outstanding bonds have matured or are then subject to redemption. The development corporation may issue bonds for the combined purposes of:

- (1) ~~[financing]~~ Financing or refinancing the cost of a project, improvement, or expansion thereof~~[-]~~; and
- (2) ~~[refunding]~~ Refunding bonds ~~[which]~~ that shall theretofore have been issued under this chapter and shall then be outstanding, whether or not ~~[such]~~ the outstanding bonds have matured or are then subject to redemption.

Nothing in this subsection shall require or be deemed to require the development corporation to elect to redeem or prepay bonds being refunded, or to redeem or prepay bonds being refunded ~~[which]~~ that were issued, in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any proceedings authorizing the issuance thereof, or, ~~[in the event]~~ if the development corporation elects to redeem or prepay any ~~[such]~~ bonds, to redeem or prepay as of any particular date or dates. The issuance of ~~[such]~~ bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the development corporation with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.”

SECTION 24. Section 207-11, Hawaii Revised Statutes, is amended by amending the definition of “foreign lender” to read as follows:

““Foreign lender” means ~~(A)~~ “a”;



- (1) ~~“A~~ depository institution” as defined in section 501(a)(2) of the federal Depository Institutions Deregulation and Monetary Control Act of 1980, a “real estate investment trust” as defined in the Internal Revenue Code, an insurance company, the principal office of which is in another state, whether incorporated or unincorporated and whether acting in its individual capacity or in a fiduciary capacity~~;~~ ~~B-the~~;
- (2) ~~The~~ trustee or trustees from time to time in office of any employee benefit plan~~;~~ ~~(C)-a~~;
- (3) A lender approved by the Secretary of the United States Department of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act~~;~~ ~~(D) any~~;
- (4) ~~Any~~ corporation of which all of the capital stock (except the directors’ qualifying shares) is owned by one or more foreign lenders specified in ~~[(A), (B),]~~ paragraphs (1), (2), and ~~[(C),]~~ (3); and ~~[(E) any]~~
- (5) ~~Any~~ corporation of which all of the capital stock (except for the directors’ qualifying shares) is owned by one or more foreign lenders specified in ~~[(D), but]~~ paragraph (4); provided that the term “foreign lender” does not include any financial services loan company licensed under article 9 of chapter 412.”

SECTION 25. Section 207-12, Hawaii Revised Statutes, is amended to read as follows:

**“§207-12 Exemptions and immunities.** A foreign lender ~~[which]~~ that:

- (1) ~~[does]~~ Does not maintain a place of business in this State~~;~~;
- (2) ~~[conducts]~~ Conducts its principal activities outside this State~~;~~;
- (3) ~~[complies]~~ Complies with this part,

does not by engaging in this State in any or all of the activities specified in section 207-13, violate the laws of this State relating to doing business or doing a banking, trust, or insurance business, or become subject to chapter 412, 414, or 431, or become subject to any taxation ~~[which]~~ that would otherwise be imposed for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation under chapter 235, 237, or 241, and no income or receipts of any foreign lender arising out of any of the activities specified in ~~[the following]~~ section 207-13 shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State~~;~~ ~~provided that nothing~~. Nothing in this part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under chapter 235 to the same extent as is included dividends and other income from domestic lenders; ~~and~~ provided ~~[further]~~ that if any ~~[such]~~ foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by section 207-13(4), then commencing one year after title to ~~[such]~~ that property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, ~~[such]~~ that property shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of this State; and provided further that

if any ~~[such]~~ foreign lender shall otherwise acquire any property in this State or engage in any business or activities in this State not specified in section 207-13, then the rents and other receipts received by the foreign lender from ~~[such]~~ that property and the proceeds of sale by the foreign lender of ~~[such]~~ that property and all income and receipts from the foreign lender's business or activities in this State not specified in section 207-13 shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if ~~[such]~~ the rents, other receipts, proceeds, and income were received by a resident of this State, but ~~[such]~~ the other activities and business shall not deprive the foreign lender of the immunities and exemptions from taxation ~~[hereinabove stated]~~ provided in this section with respect to the activities specified in section 207-13."

SECTION 26. Section 207-13, Hawaii Revised Statutes, is amended to read as follows:

**"§207-13 Permitted activities.** The activities referred to in ~~[the preceding]~~ section 207-12 are:

- (1) Making loans;
- (2) Receiving security for loans;
- (3) Acquiring, by assignment or otherwise, partial or entire interests in loans or in security for loans;
- (4) Servicing (but servicing only by or through individuals who are residents of, or corporations doing business in, this State), collecting, enforcing, or otherwise realizing upon loans or upon security for loans or upon interests therein; and taking, holding, and disposing of any property acquired (whether by purchase at any sale pursuant to foreclosure by suit or foreclosure under power of sale, or by foreclosure by entry, or by conveyance in lieu of foreclosure) in enforcement of the rights of the foreign lender in the event of default by any borrower; and
- (5) Empowering agents and servants or in connection with, and entering into and performing contracts, and doing other acts and things necessary or appropriate for or preliminary or incident to, any of the foregoing activities, but not maintaining any office in this State for the conduct of any such activities."

SECTION 27. Section 209-2, Hawaii Revised Statutes, is amended to read as follows:

**"§209-2 [Governor's determination.] State disaster; determination by governor.** (a) After ~~[the occurrence of]~~ any sudden and extraordinary event ~~[which]~~ that causes losses and suffering, the governor shall make a determination as to whether a state disaster has occurred and thereafter may declare a state disaster for the entire State or any portion thereof. In making this determination, the governor shall consider whether the effect on the health and living standards of a substantial number of persons and the effect on the economy of the State are of such a nature~~[-]~~ as to warrant assistance from the state government.

(b) The governor ~~[may]~~, in ~~[the]~~ a proclamation, may designate the whole or any part of the State eligible for the relief provided for in this chapter and unless otherwise provided herein may authorize any or all of the relief measures provided for in parts II, III, and IV ~~[of this chapter]~~."

SECTION 28. Section 211F-5.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

ACT 12

- “(b) Moneys in the fund shall be expended by the corporation [tø]:
- (1) [Provide] To provide seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of the Hawaii renewable hydrogen program, as set forth in section 196-10; and
  - (2) For any other purpose deemed necessary to carry out the purposes of section 196-10.”

SECTION 29. Section 214-2, Hawaii Revised Statutes, is amended to read as follows:

“§214-2 Funds, allotment, and expenditure. Money allotted under this chapter by the State shall be available to the several counties; provided that no part of state or county moneys shall be expended for capital improvement projects [which] that are not a part of the general plan of the State[-] or [which] that will not reasonably contribute to the economic development of the county. The determination of:

- (1) [the] The extent of participation by the State[-]; and
- (2) [what] What capital improvement projects shall reasonably contribute to the economic development of a county,

shall be made by the governor, taking into consideration the State’s goal for specific segments of its general plan and the financial position of the county.”

SECTION 30. Section 225M-3, Hawaii Revised Statutes, is amended to read as follows:

“§225M-3 Cooperation. (a) The office of planning shall seek the widest possible cooperation from public and private agencies and individuals and the federal government to achieve the purposes of this chapter. [H] The office of planning shall work closely with and assist the counties in the promotion of coordinated state and county planning.

(b) Every state department, county agency, or other public or private [agencies] agency or [individuals] individual providing planning programs and services shall be encouraged to participate actively in the activities of the office of planning. The executive heads of all state departments and agencies shall cooperate with the office of planning by providing information as the governor and the director of business, economic development, and tourism [deem] necessary for the effective discharge of its duties.

(c) Nothing in this chapter shall be deemed to delegate or detract in any way from the functions, powers, and duties conferred by law on any state or county department or agency [of the State or county].”

SECTION 31. Section 231-2, Hawaii Revised Statutes, is amended to read as follows:

“§231-2 Taxation districts. For the purpose of taxation, the State is divided into the following four districts[-, viz-]:

- [a] (1) The city and county of Honolulu, to be called the first district;
- [b] (2) The counties of Maui and Kalawao, to be called the second district;
- [c] (3) The county of Hawaii, to be called the third district; and
- [d] (4) The county of Kauai, to be called the fourth district.”

SECTION 32. Section 231-11, Hawaii Revised Statutes, is amended to read as follows:

“**§231-11 Police to aid assessing or collecting officers.** The director of taxation or any assessing or collecting officer of the department of taxation, when resisted or impeded in the exercise of ~~[his]~~ the director’s or assessing or collecting officer’s office, may require any police officer to aid ~~[him]~~ the director or assessing or collecting officer in the discharge of ~~[his]~~ the director’s or assessing or collecting officer’s duties, and if any ~~[such]~~ police officer refuses to render aid ~~[he]~~, the police officer shall be deemed guilty of a misdemeanor.”

SECTION 33. Section 231-15.5, Hawaii Revised Statutes, is amended to read as follows:

“**§231-15.5 Disclosure by return preparers.** (a) Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, tax returns or any person who, for compensation, prepares any ~~[such]~~ tax return for any other person and ~~[who]~~, without the written consent or request of ~~[such other]~~ the person, ~~[discloses]~~ for whom the return is prepared:

(1) Discloses any information furnished to ~~[him]~~ the return preparer or person providing services for~~;~~ or in connection with~~;~~ the preparation of any ~~[such]~~ return; or ~~[uses any such]~~

(2) Uses the information for any purpose other than to prepare~~;~~ or assist in preparing any ~~[such]~~ return,

shall be guilty of a misdemeanor~~;~~ and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Except as otherwise provided, this section shall not apply to a disclosure of information if ~~[such]~~ the disclosure is made pursuant to section 231-3 or ~~[pursuant to]~~ an order of a court.”

SECTION 34. Section 231-37, Hawaii Revised Statutes, is amended to read as follows:

“**§231-37 Neglect of duty, etc., misdemeanor.** Any officer of the department of taxation, the state director of finance, any person duly authorized by the director of taxation, or any police officer, on whom duties are imposed under this chapter, who wilfully fails or refuses or neglects to perform faithfully any duty or duties ~~[of him]~~ as required by this chapter, shall be deemed guilty of a misdemeanor.”

SECTION 35. Section 231-59, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§231-59]]** **Procedure additional.** The setoff procedure authorized by sections 231-53 to ~~[231-57]~~ 231-57.5 is in addition to and not in substitution of any other remedy available by law.”

SECTION 36. Section 231-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon enforcement or foreclosure by the State, in any manner whatsoever, of any state tax lien on real property, all state taxes of whatsoever nature and howsoever accruing and due at the time of the foreclosure sale from the taxpayer against whose property the tax lien is so enforced or foreclosed shall be

ACT 12

satisfied as far as possible out of the proceeds of the sale remaining after payment of ~~the~~:

- (1) ~~[the costs]~~ Costs and expenses of the enforcement and foreclosure, including a title search, if any~~[-]~~;
- (2) ~~[the amount]~~ Amount of subsisting state tax liens on real property~~[-]~~; and
- (3) ~~[the amount]~~ Amount of any recorded liens against the property, in the order of their priority.”

SECTION 37. Section 232-3, Hawaii Revised Statutes, is amended to read as follows:

“**§232-3 Grounds of appeal, real property taxes.** In the case of a real property tax appeal, no taxpayer or county shall be deemed aggrieved by an assessment, nor shall an assessment be lowered or an exemption allowed, unless there is shown:

- (1) Assessment of the property exceeds by more than twenty per cent the ratio of assessment to market value used by the director of taxation as the real property tax base~~[-or]~~;
- (2) Lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved~~[-or]~~;
- (3) Denial of an exemption to which the taxpayer is entitled and for which the taxpayer has qualified~~[-]~~; or
- (4) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State (in addition to the ground of illegality of the methods used, mentioned in ~~[clause]~~ paragraph (2)).”

SECTION 38. Section 233-2, Hawaii Revised Statutes, is amended to read as follows:

“**§233-2 Same: application of taxes.** In the event of the adoption of a rule or regulation pursuant to section 233-1:

- (1) The person, firm, corporation, or the like, who is the subject of the rule or regulation and thereafter engages or continues in the business of selling tangible personal property shall be:
  - (A) ~~[shall be deemed]~~ Deemed to be selling the ~~[same]~~ property to the persons or entities who would be the buyers if, in fact, ~~[such]~~ the representatives, distributors, dealers, salespersons, peddlers, canvassers, carriers, truckers, or the like were employees~~[-]~~;
  - (B) ~~[shall be deemed]~~ Deemed to be the employer of the persons classed by ~~[such]~~ the rule or regulation as employees~~[-]~~; and
  - (C) ~~[shall be subject]~~ Subject to all of the liabilities, duties, and obligations of the sellers and employers under the tax laws administered by the department of taxation~~[-]~~;
- (2) The persons so classed as employees shall:
  - (A) ~~[shall not]~~ Not be deemed to be buying ~~[such]~~ the property or reselling the ~~[same,]~~ property;
  - (B) ~~[shall be]~~ Be deemed to be the employees of the person so deemed an employer~~[-]~~; and

- (C) ~~[shall be]~~ Be subject to all of the liabilities, duties, and obligations of employees, under the tax laws administered by the department~~[-]; and~~
- (3) The rule or regulation of the department shall:
- (A) ~~[shall provide]~~ Provide for the collection, in lieu of withholding, of taxes levied upon the persons so classed as employees in cases in which the persons themselves retain, from receipts handled by them, their fees, charges, commissions, markups, percentages, or other remuneration~~[-];~~
- (B) ~~[shall designate]~~ Designate the fees, charges, commissions, markups, percentages, or other remuneration~~[-]~~ constituting the taxable compensation of the ~~[person]~~ persons classed as employees~~[-]; and~~
- (C) ~~[shall contain such]~~ Contain other provisions ~~[as]~~ that may be necessary or proper to effectuate this chapter.”

SECTION 39. Section 235-1, Hawaii Revised Statutes, is amended by amending the definitions of “legal service plan”, “person totally disabled”, and “resident” to read as follows:

““Legal service plan” (~~“Plan”~~) or “plan” means a plan in which the cost of the services are paid by a member or by some other person or organization in the member’s behalf. A legal service plan is a plan by which legal services are rendered to members identifiable in terms of some common interest. A plan shall provide:

- ~~[(A)]~~ (1) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under ~~[such] the plan[-]; and~~
- ~~[(B)]~~ (2) 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] the selection.~~

“Person totally disabled” means a person who is totally and permanently disabled, either physically or mentally, which results in the person’s inability to engage in any substantial gainful business or occupation.

The disability shall be certified to by a:

- (1) ~~[a physician]~~ Physician or osteopathic physician licensed under chapter 453~~[-];~~
- (2) ~~[a qualified]~~ Qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides~~[-]; or~~
- (3) ~~[a commissioned]~~ Commissioned medical officer in the United States Army, Navy, Marine Corps, or Public Health Service, engaged in the discharge of ~~[one’s] the officer’s~~ official duty.

Certification shall be on forms prescribed by the department of taxation.

“Resident” means every:

- (1) ~~[every individual]~~ Individual domiciled in the State~~[-]; and~~
- (2) ~~[every other]~~ Other individual, whether domiciled in the State or not, who resides in the State. To “reside” in the State means to be in the State for other than a temporary or transitory purpose. Every individual who is in the State more than two hundred days of the taxable year in the aggregate shall be presumed to be a resident of the State. This presumption may be overcome by evidence satisfactory to the department of taxation that the individual maintains a permanent place of abode outside of the State and is in the State for a temporary or transitory purpose. No person shall be deemed to

have gained or lost a residence simply because of the person's presence or absence in compliance with military or naval orders of the United States, or while engaged in aviation or navigation, or while a student at any institution of learning."

SECTION 40. Section 235-5.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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, a credit union, or a depository financial services loan company, chartered, licensed, or supervised under federal or state law, whose accounts are insured by the Federal Deposit 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]~~ that 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;
- (5) Except as provided in subsection (g), the trustee shall not distribute the funds in the account unless ~~[it]~~ the trustee:
  - (A) ~~[verifies]~~ 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]~~ 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 ~~[se]~~ 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 41. Section 235-34, Hawaii Revised Statutes, is amended to read as follows:

“§235-34 **Compensation; where paid.** Compensation is paid in this State if:

- (1) The individual’s service is performed entirely within the State; ~~or~~
- (2) The individual’s service is performed both within and without the State, but the service performed without the State is incidental to the individual’s service within the State; or
- (3) Some of the service is performed in the State and:
  - (A) ~~the~~ The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State~~;~~; or
  - (B) ~~the~~ The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this State.”

SECTION 42. Section 235-36, Hawaii Revised Statutes, is amended to read as follows:

“§235-36 **Apportionment; sales factor; tangible personalty.** Sales of tangible personal property are in this State if:

- (1) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale; or
- (2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this State and ~~the~~:
  - (A) ~~the purchaser~~ Purchaser is the United States government; or
  - (B) ~~the taxpayer~~ Taxpayer is not taxable in the state of the purchaser.”

SECTION 43. Section 235-51, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There is hereby imposed on the taxable income of every:

- (1) ~~every taxpayer~~ Taxpayer who files a joint return under section 235-93; and
- (2) ~~every surviving~~ Surviving spouse,

a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.40% of taxable income
Over \$4,000 but not over \$8,000	\$56.00 plus 3.20% of excess over \$4,000
Over \$8,000 but not over \$16,000	\$184.00 plus 5.50% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$624.00 plus 6.40% of excess over \$16,000
Over \$24,000 but not over \$32,000	\$1,136.00 plus 6.80% of excess over \$24,000
Over \$32,000 but not over \$40,000	\$1,680.00 plus 7.20% of excess over \$32,000
Over \$40,000 but not over \$60,000	\$2,256.00 plus 7.60% of excess over \$40,000



Over \$60,000 but not over \$80,000	\$3,776.00 plus 7.90% of excess over \$60,000
Over \$80,000	\$5,356.00 plus 8.25% of excess over \$80,000.

In the case of any taxable year beginning after December 31, 2006:

If the taxable income is:	The tax shall be:
Not over \$4,800	1.40% of taxable income
Over \$4,800 but not over \$9,600	\$67.00 plus 3.20% of excess over \$4,800
Over \$9,600 but not over \$19,200	\$221.00 plus 5.50% of excess over \$9,600
Over \$19,200 but not over \$28,800	\$749.00 plus 6.40% of excess over \$19,200
Over \$28,800 but not over \$38,400	\$1,363.00 plus 6.80% of excess over \$28,800
Over \$38,400 but not over \$48,000	\$2,016.00 plus 7.20% of excess over \$38,400
Over \$48,000 but not over \$72,000	\$2,707.00 plus 7.60% of excess over \$48,000
Over \$72,000 but not over \$96,000	\$4,531.00 plus 7.90% of excess over \$72,000
Over \$96,000	\$6,427.00 plus 8.25% of excess over \$96,000.”

2. By amending subsection (e) to read:

“(e) Any taxpayer, other than a corporation, acting as a business entity in more than one state who is required by this chapter to file a return may elect to report and pay a tax of .5 per cent of [its] the taxpayer’s annual gross sales if the:

- (1) [~~where the taxpayer’s~~] Taxpayer’s only activities in this State consist of sales; [~~and~~]
- (2) [~~who~~] Taxpayer does not own or rent real estate or tangible personal property; and
- (3) [~~whose~~] Taxpayer’s annual gross sales in or into this State during the tax year is not in excess of \$100,000.”

SECTION 44. Section 235-61, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) As used in this section:

[(1)] ~~“Wages” means wages, commissions, fees, salaries, bonuses, and every and all other kinds of remuneration for, or compensation attributable to, services performed by an employee for the employee’s employer, including the cash value of all remuneration paid in any medium other than cash and the cost of living allowances and other payments included in gross income by section 235-7(b), but excluding income excluded from gross income by section 235-7 or other provisions of this chapter;~~

[(2)] ~~“Employee” includes an officer or elected official, or any other employee[;].~~

[(3)] ~~“Employer” means [(A) the];~~

(1) The person or government for whom an individual performs or performed any service, of whatever nature, as the employee of [such] that person or government[; and (B) the];

- (2) The person having control of the payment of the wages if the employer as heretofore defined does not have control thereof[-]; and [~~(C)~~ any]
- (3) Any person subject to the jurisdiction of the State and paying wages on behalf of an employer as heretofore defined if the employer is not subject to the jurisdiction of the State;

provided that the term employer shall not include any government that is not subject to the laws of the State except as, and to the extent that, it consents to the application of sections 235-61 to 235-67 to it.

“Wages” means wages, commissions, fees, salaries, bonuses, and every and all other kinds of remuneration for, or compensation attributable to, services performed by an employee for the employee’s employer, including the cash value of all remuneration paid in any medium other than cash and the cost-of-living allowances and other payments included in gross income by section 235-7(b), but excluding income excluded from gross income by section 235-7 or other provisions of this chapter.”

2. By amending subsection (c) to read:

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

- (1) That the employee’s annual wage, as estimated from the employee’s current wage in the withholding period, will be the employee’s sole income for the taxable year;
- (2) That there will be no deductions therefrom in determining adjusted gross income;
- (3) That in determining taxable income there shall be a standard deduction allowance, which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the director) unless the taxpayer:
  - (A) [~~the taxpayer is~~] Is married and the taxpayer’s spouse is an employee receiving wages subject to withholding[-]; or
  - (B) [~~the taxpayer has~~] Has withholding exemption certificates in effect with respect to more than one employer.

For the purposes of this section, any standard deduction allowance under this paragraph shall be treated as if it were denominated a withholding exemption;

- (4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection (f); and
- (5) If it appears from the certificate filed pursuant to subsection (f) that the employee, under section 235-93, is entitled to make a joint return, that the employee and the employee’s spouse will so elect.”

3. By amending subsection (e) to read:

“(e) The department, by rule, may require the deduction and withholding of tax from any remuneration or compensation paid for or attributable to services that are not subject to the general excise tax imposed by chapter 237, whether or not [~~such~~] a withholding is provided for hereinabove. Every person

## ACT 12

so required to deduct and withhold tax, or from whom tax is required to be deducted and withheld, shall be subject to sections 235-61 to 235-67, and every person so required to deduct and withhold tax shall be deemed an employer for the purposes of this chapter.

The department, by rule, may exempt any employer from the requirement of deduction and withholding of taxes, even though the requirement is imposed by this section, if and to the extent that the department finds the requirement unduly onerous or impracticable of enforcement.”

SECTION 45. Section 235-101, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be the duty of every person who is required by section 235-92 to make a return, to report to the department, as to any taxable year governed by this chapter, if:

- (1) ~~[the]~~ The amount of taxable income as returned to the United States is changed, corrected, or adjusted by an officer of the United States or other competent authority~~[-or]~~;
- (2) ~~[a]~~ A change in taxable income results from a renegotiation of a contract with the United States or a subcontract thereunder~~[-or]~~;
- (3) ~~[a]~~ A recomputation of the income tax imposed by the United States under the Internal Revenue Code results from any cause~~[-]~~; or
- (4) ~~[an]~~ An amended income tax return is made to the United States.

The report shall be made within ninety days after the change, correction, adjustment, or recomputation is finally determined or the amended return is filed, as the case may be. The report required by this subsection shall be made in the form of an amendment of the person’s return filed under this chapter. The amended return shall be accompanied by a copy of the document issued by the United States under paragraphs (1) to (3). The statutory period for the assessment of any deficiency or the determination of any refund attributable to this report shall not expire before the expiration of one year from the date the department is notified by the taxpayer or the Internal Revenue Service, whichever is earlier, of ~~[such a]~~ the report in writing. Before the expiration of this one-year period, the department and the taxpayer may agree in writing to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.”

SECTION 46. Section 235-110.8, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) As provided in section 42(e), rehabilitation expenditures shall be treated as a separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.”

SECTION 47. Section 236E-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The Internal Revenue Code, so far as made operative by this chapter, is a statute adopted and incorporated by reference. The Internal Revenue Code shall be applied using changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effectuate the intent of this section. References to the following terms in the Internal Revenue Code shall have the following meanings:

- (1) ~~“Secretary or his delegate”~~ means the director of taxation or the director’s duly authorized subordinates; and

~~(2)~~ "Interest at the underpayment rate" or "interest at the overpayment rate" means the interest rate set forth in section 231-39(b)(4) or section 231-23(d)(1), as the case may be.

"Secretary or his delegate" means the director of taxation or the director's duly authorized subordinates."

SECTION 48. Section 237-1, Hawaii Revised Statutes, is amended by amending the definition of "legal service plan" to read as follows:

~~"Legal service plan" ["Plan"]~~ or "plan" means a plan in which the cost of the services are paid by a member or by some other person or organization in the member's behalf. A legal service plan is a plan by which legal services are rendered to members identifiable in terms of some common interest. A plan shall provide:

- ~~(A)~~ (1) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under ~~[such] the plan~~; and
- ~~(B)~~ (2) 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] the~~ selection."

SECTION 49. Section 237-2, Hawaii Revised Statutes, is amended to read as follows:

**§237-2 "Business", "engaging" in business, defined.** As used in this chapter:

"Business" ~~[as used in this chapter,]~~ includes all activities (personal, professional, or corporate)~~]~~ engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, but does not include casual sales.

~~[The term "engaging" as used in this chapter]~~ "Engaging" with reference to engaging or continuing in business ~~[also]~~, includes the exercise of corporate or franchise powers."

SECTION 50. Section 237-39, Hawaii Revised Statutes, is amended to read as follows:

**§237-39 Audits; procedure, penalties.** (a) For the purpose of verification or audit of a return made by the taxpayer, or where there is reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, or for the purpose of making an assessment where no return has been made, the department of taxation or the Multi-state Tax Commission pursuant to chapter 255, or the authorized representative thereof, may examine all account books, bank books, bank statements, records, vouchers, taxpayer's copies of federal tax returns, and any and all other documents and ~~[evidences]~~ evidence having any relevancy to the determination of the gross income or gross proceeds of sales of any taxpayer as required to be returned under this chapter and may summon or require the attendance of the person by or for whom the return, if any, has been made or whose tax is being assessed, and any employee of the person, and may summon or require the attendance of any person having knowledge in the premises, naming the time and place in the summons, and may require the production of any books, statements, or other ~~[evidences]~~ evidence open to ~~[his]~~ examination, and may take testimony in reference to any ~~[such]~~ matter relevant to the gross income or gross proceeds

## ACT 12

of sales of the taxpayer for the period under consideration, with power to require that the person so called and appearing shall be interrogated under oath and to administer the oath.

(b) If the department determines that any gross income or gross proceeds of sales liable to the tax have not been assessed, the department may assess the same as provided in sections 237-36 and 237-38.

(c) Any individual knowingly giving false testimony under oath at any [such] hearing before the department shall be guilty of perjury and shall be punished as provided by law.

(d) Any person refusing or neglecting to obey any summons issued by the department, and any individual appearing and refusing to testify under oath, shall be fined \$50 for the first offense and \$100 for each succeeding offense."

SECTION 51. Section 237-44, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) As used in this section:

[(1)] "Admission" means the amount paid for admission to any place, including admission by season ticket or subscription, and also includes the amount paid for seats and tables, reserved or otherwise, and other similar accommodations.

[(2)] "Cabaret" means any roof garden, cabaret, or other similar place furnishing a public performance, by or for any patron or guest who is entitled to be present during any portion of the performance, including any room in any hotel, restaurant, hall, or other public place where music and dancing privileges or any other entertainment are afforded the patrons in connection with the serving or selling of food, refreshment, or merchandise.

[(3)] "Transient taxpayer" refers to any person subject to the tax imposed by this chapter who has no permanent place of business in the State."

2. By amending subsection (d) to read:

"(d) Whenever a transient taxpayer is engaged in business at any place for which admissions are charged, or at any cabaret whether or not admissions are charged, the person engaging the transient taxpayer shall collect from [him,] the transient taxpayer, by withholding or otherwise, the tax levied by this chapter on the transient taxpayer, shall hold the [same] tax in trust for the State, and shall return and pay over the [same] tax to the proper collecting officer of the State in the manner and at the time required by this chapter, for the account of the transient taxpayer~~;~~ in the event of his failure. If the person fails to do so [he], the person shall be liable to pay to the State the amount of the tax levied by this chapter on the transient taxpayer, together with penalties and interest as provided by law. The amount of the liability may be collected from the guarantee fund, if any, or may be assessed against and collected from the person so becoming liable in the same manner as if the tax had been levied upon [him,] the person."

SECTION 52. Section 238-13, Hawaii Revised Statutes, is amended to read as follows:

"§238-13 **Other provisions of general excise tax law applicable.** In respect of:

- (1) [the] The examination of books and records and of taxpayers and other persons~~;~~;
- (2) [~~procedure~~] Procedure and powers upon failure or refusal by a taxpayer to make a return or a proper return~~;~~; and

(3) ~~[the]~~ The general administration of this chapter, the director of taxation shall have all the rights and powers conferred upon the director by the general excise tax law with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8, 237-30, 237-34, and 237-36 to 237-41 are hereby made applicable to and with respect to the taxes and the taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by the general excise tax law.”

SECTION 53. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of “net operating income” to read as follows:

~~“[The “net]~~ “Net operating income” of a public utility subject to the tax rate imposed by section 239-5(a) is the operating revenues less the operating expenses and tax accruals, including in the computation of ~~[such]~~ those revenues and expenses, debits and credits arising from equipment rents and joint facility rents. ~~[In the event that,]~~ If, but for this sentence, deductions could not be had for expenses of services because ~~[such]~~ the services were rendered by the same person or persons constituting the public utility or could not be had for income taxes, because ~~[such]~~ the taxes were levied against the person or persons constituting the public utility in the person’s or their individual capacity and not as a separate entity, there nevertheless shall be allowed as deductions in computing the net operating income a:

- ~~[(A)]~~ (1) ~~[a reasonable]~~ Reasonable allowance for the value of personal services actually rendered~~];~~ and
- ~~[(B)]~~ (2) ~~[such proportion]~~ Proportion of the actual amount of income taxes, federal and state, ~~[as]~~ that fairly represents the portion of the income so taxed ~~[which]~~ that was derived from the public utility business.”

SECTION 54. Section 239-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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]~~ any 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~~]~~ and 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 state 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 to:

- (1) ~~[to the]~~ The taxes and the assessment, payment, and collection thereof, provided by this chapter~~], and~~;
- (2) ~~[to the]~~ The department and the state director of finance in connection with the taxes and the assessment, payment, or enforcement of payment and collection thereof~~];~~ and
- (3) ~~[to taxpayers]~~ Taxpayers and other persons affected by this chapter,

## ACT 12

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 return for the taxable year, or the due date prescribed for the filing of the return, whichever is later. With respect to payments due to a county of the revenues generated from the tax in excess of the four per cent rate imposed under section 239-5(a), a county director of finance shall be afforded ~~such~~ the rights and procedures of the department in the enforcement of payment and collection of the taxes assessed and levied under this chapter.”

SECTION 55. Section 239-8, Hawaii Revised Statutes, is amended to read as follows:

“**§239-8 Allocation and apportionment.** (a) The gross income included in the measure of the tax, as defined in ~~subparagraphs (B)~~ paragraphs (2) and [(C)] (3) of the definition of “gross income” in section 239-2, shall be determined by an allocation and separate accounting so far as practicable.

(b) If under ~~subparagraph (B)~~ paragraph (2) of the definition of “gross income” in section 239-2, an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, ~~which~~ that the direct cost of the transportation, conveyance, or transmission designated in ~~subparagraph (B)~~ paragraph (2) of the definition of “gross income” in section 239-2, bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.

(c) If under ~~subparagraph (C)~~ paragraph (3) of the definition of “gross income” in section 239-2, an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, ~~which~~ that the total direct cost of the transportation, conveyance, or transmission within the State bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.”

SECTION 56. Section 241-1, Hawaii Revised Statutes, is amended by amending the definitions of “financial corporation” and “interbank broker” to read as follows:

““Financial corporation” means:

- (1) ~~any~~ Any corporation, domestic or foreign, other than a bank or building and loan association, ~~which~~ that is a financial corporation within the meaning of section 5219 of the Revised Statutes of the United States, as amended (12 U.S.C. section 548), or other similar law, doing business in the State and not subject to the taxes imposed by chapter 235, but shall not include an insurance company ~~which~~ that pays the tax on premiums imposed by chapter 431~~;~~; and
- (2) ~~an~~ An interbank broker doing business in the State and not subject to the taxes imposed by chapter 235.

“Interbank broker” means a person, who for a fee, brokerage, or other compensation, either directly or indirectly, provides brokerage services as an intermediary or agent in transactions between financial institutions where one financial institution:

- (1) ~~supplies~~ Supplies funds to another financial institution by making a loan, placing funds in a deposit account, or otherwise extending credit to the other institution~~;~~;

- (2) [~~buys,~~] Buys, sells, trades, or swaps currency, commercial paper, banker's acceptances, negotiable certificates of deposit, treasury bills, notes, or bonds with another financial institution~~];~~ or
- (3) [~~enters~~] Enters into interest rate swaps, forward rate agreements, or interest rate futures contracts with another financial institution.

[A~~-financial~~] "Financial institution", as used in this [~~paragraph,~~] definition, means a bank, a savings bank, a building and loan association, a trust company, a financial services loan company, an insurance company, a pension and profit sharing trust, an investment company as defined in the federal Investment Company Act of 1940, an Edge or Agreement Corporation, an international banking facility, and similar United States or foreign institutions."

SECTION 57. Section 244D-1, Hawaii Revised Statutes, is amended by amending the definition of "cooler beverage" to read as follows:

"~~""Cooler beverage"~~ means either a:

- (1) [~~a wine~~] Wine cooler containing wine and more than fifteen per cent added natural or artificial blending material, such as fruit juices, flavors, flavorings, or adjuncts, water (plain, carbonated, or sparkling), colorings, or preservatives, and [~~which~~] that contains less than seven per cent of alcohol by volume; or
- (2) [~~a malt~~] Malt beverage cooler containing beer and added natural or artificial blending material, such as fruit juices, flavors, flavorings, colorings, or preservatives, and [~~which~~] that contains less than seven per cent of alcohol by volume."

SECTION 58. Chapter 249, Hawaii Revised Statutes, is amended by amending the title of the part entitled "BICYCLES AND MOPEDS" to read as follows:

### "~~[[[BICYCLES AND MOPEDS]]]~~"

SECTION 59. Section 249-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An owner of a bicycle having two tandem wheels that are less than twenty inches in diameter is not required to register [~~such~~] that bicycle, but may do so to facilitate the return of recovered stolen bicycles by payment of the registration fee. The fee collected shall not be refunded or prorated. Upon receipt of the fee, the director of finance shall number and register each bicycle for which the fee is paid, in the owner's name, and furnish the owner with a metallic tag or decal for each bicycle, which shall be attached to the bicycle [~~or moped~~]. [~~On bicycles the~~] The decal shall be affixed to a bicycle on the upright post attached to the sprocket facing in the forward direction. Upon initial registration by an owner or transferee, the director of finance shall require proof of ownership and require the owner to furnish verification of the serial number and description contained in the proof of ownership and application for registration. The metallic tags or decals shall be in a form as the director of finance shall from time to time prescribe. It shall be the duty of the director of finance of each county to purchase a sufficient number of these tags or decals."

SECTION 60. Section 249-14.5, Hawaii Revised Statutes, is amended to read as follows:

"**§249-14.5 New bicycles and mopeds.** All new bicycles and mopeds, otherwise requiring the payment of fees under section 249-14, held in stock for



## ACT 12

purposes of sale shall be exempt from the fee. At the time of first sale, the dealer selling the new bicycle or moped shall:

- (1) Require the buyer to complete a license application form furnished by the director of finance;
- (2) Issue a copy of the completed form to the buyer; and
- (3) Transmit a copy of the completed form to the director of finance with the required fees [~~which~~] that the dealer has collected from the buyer.

Upon receipt of the fee and the completed license application form, the director of finance shall mail a license plate and [~~tags~~] tag or [~~emblems~~] emblem for mopeds, or tag or decal for bicycles, and certificate of registration to the registered owner. Until the license plate and [~~tags~~] tag or [~~emblems~~] emblem for mopeds, or tag or decal for bicycles, is received, the bicycle or moped owner shall keep a copy of the completed application form upon the owner's person when riding the bicycle or moped on a public street."

SECTION 61. Chapter 286, Hawaii Revised Statutes, is amended by amending the title of part II to read as follows:

### "PART II. ~~[[INSPECTION OF VEHICLES AND MOPEDS]]~~"

SECTION 62. Section 304A-120, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All University of Hawaii students and employees shall complete the training required under subsection (a)(1), (a)(2), (a)(3), and (a)(4) or may be subject to fines, sanctions, or other discipline, as deemed ~~[[appropriate]]~~ by the University of Hawaii."

SECTION 63. Section 328-91, Hawaii Revised Statutes, is amended by amending the definitions of "interchangeable biological product" and "purple book" to read as follows:

"~~Interchangeable biological product~~" means a biological product approved by the director as substitutable by pharmacists and included in the Hawaii list of equivalent generic [~~drugs~~] drug products and interchangeable biological products.

"Purple Book" means the United States Food and Drug Administration's [~~List~~] Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations" publication and its cumulative supplements, which include [~~a list~~] lists of licensed biological products with biosimilarity and interchangeability evaluations."

SECTION 64. Section 328-96, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The director shall maintain an official record of, and update as necessary, the Hawaii list of equivalent generic [~~drugs~~] drug products and interchangeable biological products electronically on the department's website, which shall be accessible to pharmacists and other interested persons."

SECTION 65. Section 587A-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department or an authorized agency, as resource family or permanent custodian, shall abide by the following guiding principles and ensure that a child in foster care:

- (1) Lives in a safe and healthy home, free from physical, psychological, sexual, and other abuse;
- (2) Has adequate:
  - (A) Food that is nutritious and healthy;
  - (B) Clothing;
  - (C) Medical care, dental and orthodontic services, and corrective vision care; and
  - (D) Mental health services;
- (3) Has supervised or unsupervised in-person, telephone, or other forms of contact with the child's parents and siblings while the child is in foster care, unless prohibited by court order;
- (4) Has in-person contact with the child's assigned child protective services worker, guardian ad litem, and if applicable, the child's probation officer;
- (5) Meets with the presiding judge in the child's case;
- (6) Is enrolled in a comprehensive health insurance plan and, within forty-five days of out-of-home placement, is provided with a comprehensive health assessment and treatment as recommended;
- (7) May freely exercise the child's own religious beliefs, including the refusal to attend any religious activities and services;
- (8) Has a personal bank account and assistance in managing the child's personal income consistent with the child's age and development, unless safety or other concerns require otherwise;
- (9) Has the right to attend school and, if the child is moved during a school year, has the right to complete the school year at the same school, if practicable;
- (10) Beginning at age twelve, is provided with age-appropriate life skills training and a transition plan for appropriately moving out of the foster care system, as well as written information concerning independent living programs, foster youth organizations, transitional planning services, and independent living case management programs that are available to all children in foster care who are twelve years of age or older and their resource families; and
- (11) May participate in extracurricular, enrichment, cultural, and social activities; provided that the child caring institution or resource caregiver authorizes the participation in accordance with the reasonable and prudent parent standard as defined in title 42 United States Code section [§]675(10)(A)[§].”

SECTION 66. Section 621-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
  - “(a) Except as provided for in section 802-7, whenever a witness subpoenaed on behalf of the State in a criminal case or on behalf of a defendant at the expense of the State in a criminal case is discharged, the clerk of the court shall issue to [him] the witness, under seal of the court, a numbered certificate from a book having a stub with like designations, stating the name of the witness, when and where [he] the witness was summoned or subpoenaed, the date of [his] the witness' discharge, the number of miles necessarily traveled from [his] the witness' place of residence to the place of holding court, the number of days' service, and the amount due for transportation and for service. The certificate, when correct, must be so certified by the public prosecutor or county attorney for witnesses subpoenaed on behalf of the State, and by the public defender for witnesses subpoenaed on behalf of a defendant, but no certificate shall be so

## ACT 12

certified unless presented to ~~[him]~~ the public prosecutor, county attorney, or public defender within twelve months after the date of issue. Duly certified witness certificates shall be paid upon vouchers approved by the state director of finance and warrants drawn by the state comptroller.”

2. By amending subsection (c) to read:

“(c) Each public prosecutor or county attorney and the public defender shall submit to the state department of budget and finance for inclusion in the department’s budget request for each fiscal biennium the amount required for each fiscal year for expenses for witnesses subpoenaed by ~~[him]~~ the public prosecutor, county attorney, or public defender and for defendants and postconviction petitioners summoned on ~~[his]~~ behalf of, or required by ~~[him-], the public prosecutor, county attorney, or public defender.~~”

SECTION 67. Section 633-33, Hawaii Revised Statutes, is amended to read as follows:

“**§633-33 Judgment for wages; oral examination; payment.** When a judgment in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the court ~~[shall]~~, upon motion of the party obtaining judgment, shall order the appearance of the party against whom the judgment has been entered but not more often than once each week for four consecutive weeks, for oral examination under oath as to ~~[his]~~ the financial status of the party against whom the judgment has been entered and [his] that party’s ability to pay the judgment, and the court shall make ~~[such]~~ supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.”

SECTION 68. Section 651-8, Hawaii Revised Statutes, is amended to read as follows:

“**§651-8 Amount levied on.** The police officer shall attach a sufficient amount of the property of the defendant if a sufficient amount of property not exempt from execution can be found, giving ~~[that]~~ preference to property to which the defendant has an unquestionable title ~~[a preference over that] over any property~~ to which the defendant’s title is doubtful. The police officer ~~[shall]~~, as nearly as the circumstances of the case will permit, shall levy upon property twenty per cent greater in value than the amount ~~[which]~~ that the plaintiff in the plaintiff’s affidavit claims to be due. When property is seized on attachment, the court may allow reasonable and just compensation to the officer having charge ~~[thereof such compensation]~~ of the property for the officer’s trouble and expenses in keeping the ~~[same as is reasonable and just-] property.~~”

SECTION 69. Section 656-3, Hawaii Revised Statutes, is amended to read as follows:

“**§656-3 Representation of another’s credit, etc., when actionable.** No action shall be brought and maintained~~[-]~~ to charge any person upon, or by reason of, any representation or assurance~~[-]~~ made concerning the character, conduct, credit, ability, trade, or dealings of another person, unless ~~[such]~~ the representation or assurance is made in writing~~[-]~~ and signed by the party to be charged thereby, or by ~~[some] a person[-, thereunto by the party lawfully authorized-]~~ lawfully authorized by the party to sign.”

SECTION 70. Section 662-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) Sections~~ Section 661-2 [and 661-9] shall apply to actions under this chapter.”

SECTION 71. Section 663-9.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

~~(1) “Premises” includes any building or portion thereof or any real property owned, leased, or occupied by the owner or harbinger of an animal.~~

~~(2) “Enter or remain unlawfully” means to be in or upon premises when the person is not licensed, invited, or otherwise privileged to be upon the premises. A person is not licensed or privileged to enter or remain in or upon [a] premises if a warning or warnings have been posted that are reasonably adequate to warn other persons that an animal is present on the premises. A person who, regardless of the person’s intent, enters or remains in or upon premises [which] that are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building [which] that is only partly open to the public is not a license or privilege to enter or remain in that part of the building [which] that is not open to the public. A person who enters or remains upon unimproved and apparently unused land[- which] that is neither fenced nor otherwise enclosed in a manner designed to exclude intruders[-] does so with license and privilege, unless notice against trespass is personally communicated to the person by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.~~

~~(3) The definitions of “intentionally” and “knowingly” as contained in sections 702-206(1) and 702-206(2) shall apply.~~

~~“Intentionally” shall have the same meaning as in section 702-206(1).~~

~~“Knowingly” shall have the same meaning as in section 702-206(2).~~

~~“Premises” includes any building or portion thereof or any real property owned, leased, or occupied by the owner or harbinger of an animal.”~~

SECTION 72. Section 663-10.5, Hawaii Revised Statutes, is amended to read as follows:

**“§663-10.5 Government entity as a tortfeasor; abolition of joint and several liability. (a)** Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where a government entity is determined to be a tortfeasor along with one or more other tortfeasors, the government entity shall be liable for no more than that percentage share of the damages attributable to the government entity; provided that joint and several liability shall be retained for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9.

~~[For purposes of this section, “government entity” means any unit of government in this State, including the State and any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government, or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county.]~~

## ACT 12

(b) For purposes of this section, the liability of a government entity shall include its vicarious liability for the acts or omissions of its officers and employees.

(c) For purposes of this section, "government entity" means any unit of government in this State, including:

- (1) The State;
- (2) Any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government; and
- (3) Any corporation or other establishment owned, operated, or managed by or on behalf of this State or any county."

SECTION 73. Section 663-15.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The court may determine the issue of good faith for purposes of subsection (a) on the basis of affidavits or declarations served with the petition under subsection [(a);] (b) and any affidavits or declarations filed in response. In the alternative, the court, in its discretion, may receive other evidence at a hearing."

SECTION 74. Section 668-11, Hawaii Revised Statutes, is amended to read as follows:

**"§668-11 Liens and [ineumbrancee.] encumbrances.** Where partition is made of any property [which] that is subject as a whole to any lien or [ineumbrancee.] encumbrance, the court [may], with the consent of the [ineumbrancee.] encumbrancer, may apportion the [ineumbrancee.] encumbrance against the separate portions as partitioned to the parties, or if the property is sold and the [ineumbrancee.] encumbrancer's claim is due and may be discharged by payment, the court may discharge the [same] claim out of the proceeds. Otherwise, unless the [ineumbrancee.] encumbrancer consents to receive payment, the court [may], without disturbing or then making any adjudication as to the [ineumbrancee.] encumbrance, may sell, subject to the [ineumbrancee.] encumbrance, the property affected thereby; or if any lien or [ineumbrancee.] encumbrance is only upon the undivided share or interest of any particular party, the court [may], by [its] decree, may make the same a lien and charge only upon the parcel of land partitioned to the party or a charge against the party's share of the proceeds of sale thereof. In every case, the property sold shall first be charged with its just proportion of the costs of the partition in preference to the lien or charge. Any party holding a lien or [ineumbrancee.] encumbrance and also having other securities, [may] in the court's discretion, may be required to exhaust [such others] the other securities before a distribution of the proceeds of sale in partition, or the court may order a just deduction to be made from the amount of the lien on the property on account of [such] the other security."

SECTION 75. Section 668A-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under section [[668A-7]] multiplied by that cotenant's fractional ownership of the entire parcel."

SECTION 76. Act 48, Session Laws of Hawaii 2016, is amended by amending section 14 to read as follows:

“SECTION 14. This Act shall take effect on August 1, 2016, and shall be repealed on July 1, 2019; provided that sections 91-14, 174C-12, 183C-8, ~~[206E-5.6(a); 206E-5.6]~~ 206E-5.6, 269-15.5, and 602-5(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.”

SECTION 77. Act 76, Session Laws of Hawaii 2016, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that ~~[section]~~ sections 1 and 2 shall be applied retroactively and shall be effective on and after January 1, 2016.”

SECTION 78. Act 171, Session Laws of Hawaii 2016, is amended by amending section 3 to read as follows:

“SECTION 3. Chapter 155, Hawaii Revised Statutes, is amended by designating sections 155-1 to ~~[155-14]~~ 155-15 as part I and inserting a title before section 155-1 to read as follows:

**“PART I. AGRICULTURAL LOAN PROGRAM”**”

SECTION 79. Act 173, Session Laws of Hawaii 2016, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2016; provided that the amendments made to section ~~[205-4.5(a)(23)]~~ 205-4.5(a)(19) and (23), Hawaii Revised Statutes, by section 3 of this Act shall not be repealed when section 205-4.5, Hawaii Revised Statutes, is reenacted on June 30, 2019, pursuant to section 3 of Act 52, Session Laws of Hawaii 2014.”

SECTION 80. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 81. This Act shall take effect upon its approval; provided that:  
(1) Section 46 shall be applied retroactively and shall be effective on January 1, 2017; and  
(2) Section 77 shall be applied retroactively and shall be effective on June 20, 2016.

(Approved April 26, 2017.)