

SENATE FLOOR AMENDMENT

FLOOR AMENDMENT NO. _____

18

Date _____

MAY 05 2009

TO: S.B. No. 387, S.D. 1, H.D. 1, C.D. 1

SECTION 1. Senate Bill No. 387, S.D. 1, H.D. 1, C.D. 1, is amended by designating section 1 as Part I.

SECTION 2. Senate Bill No. 387, S.D. 1, H.D. 1, C.D. 1, is amended by deleting sections 2 and 3.

SECTION 3. Senate Bill No. 387, S.D. 1, H.D. 1, C.D. 1, is amended by inserting the following:

"PART II

SECTION 2. The purpose of this Act is to reorganize certain state executive branch departments to reflect the provisions of the General Appropriations Act of 2009.

SECTION 3. The purpose of this part is to transfer the position of tourism liaison from the department of business, economic development, and tourism to the office of the governor.

SECTION 4. Chapter 27, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . TOURISM

§27- Special advisor for tourism. (a) There is established within the office of the governor a special advisor for tourism who shall be appointed by the governor without regard to section 26-34. The special advisor shall not be subject to chapters 76 and 89.

(b) The special advisor for tourism shall serve as the liaison between the governor and the Hawaii tourism authority, department of business, economic development, and tourism, and other public and private parties on matters relating to tourism."

PART III

SECTION 5. The purpose of this part is to transfer the small business regulatory review board, with its statutory duties and powers, from the department of business, economic development, and tourism to the department of commerce and consumer affairs.

SECTION 6. Section 201M-5, Hawaii Revised Statutes, is amended to read as follows:

"§201M-5 Small business regulatory review board; powers.

(a) There shall be established within the department of



~~[business, economic development, and tourism,]~~ commerce and consumer affairs for administrative purposes[7] a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. Nominations to fill vacancies shall be made from names submitted by the review board. The appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules.

(g) The expenses of the board shall be funded entirely from the compliance resolution fund; provided that this provision shall not require the board to charge any fee for its



service. The director of commerce and consumer affairs shall include, as part of any other fee charged to a person or organization, an amount with a reasonable nexus to the small business regulatory review activities of the board.

For the purpose of this subsection, "expenses" includes operating expenses, cash capital expenses, and debt service attributable to the board."

PART IV

SECTION 7. The purpose of this part is to the transfer the natural energy laboratory of Hawaii authority, with its statutory duties and powers, from the department of business, economic development, and tourism to the department of accounting and general services.

SECTION 8. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established the natural energy laboratory of Hawaii authority, which shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the [~~department of business, economic development, and tourism~~] department of accounting and general services for administrative purposes [~~pursuant to section 26-35~~]. The purpose of the natural energy laboratory of Hawaii authority shall be to facilitate research, development, and commercialization of natural energy resources and ocean-related research, technology, and industry in Hawaii and to engage in retail, commercial, or tourism activities that will financially support that research, development, and commercialization at a research and technology park in Hawaii. Its duties shall include:

- (1) Establishing, managing, and operating facilities that provide sites for:
 - (A) Research and development;
 - (B) Commercial projects and businesses utilizing natural resources, such as ocean water or geothermal energy;
 - (C) Compatible businesses engaged in scientific and technological investigations, or retail, commercial, and tourism activities; and
 - (D) Businesses or educational facilities that support the primary projects and activities;
- (2) Providing support, utilities, and other services to facility tenants and government agencies;
- (3) Maintaining the physical structure of the facilities;
- (4) Promoting and marketing these facilities;
- (5) Promoting and marketing the reasonable utilization of available natural resources;



- (6) Supporting ocean research and technology development projects that support national and state interests, use facilities and infrastructure in Hawaii, and foster potential commercial development; and
- (7) Engaging in retail, commercial, and tourism activities that are not related to facilitating research, development, and commercialization of natural energy resources in Hawaii; provided that all income derived from these activities shall be deposited in the natural energy laboratory of Hawaii authority special fund.

(b) The governing body of the authority shall consist of a board of directors having eleven voting members. Three members from the general public shall be appointed by the governor for staggered terms pursuant to section 26-34, except that one of these members shall be a resident of the county of Hawaii. The members shall be selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, energy management, real estate development, property management, aquaculture, and ocean science. The chairperson and secretary of the research advisory committee shall serve on the board. The [~~director of business, economic development, and tourism,~~ the] chairperson of the board of land and natural resources, the [~~president of the University of Hawaii,~~] comptroller, the mayor of the county of Hawaii, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the Hawaii strategic development corporation, or their designated representatives, shall serve as ex officio, voting members of the board. The [~~director of business, economic development, and tourism]~~ comptroller shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary."

PART V

SECTION 9. The purpose of this part is to transfer the arts and culture development branch within the department of business, economic development, and tourism to the state foundation on culture and the arts, which is placed within the department of accounting and general services for administrative purposes.

SECTION 10. All rights, powers, functions, and duties of the arts and culture development branch of the department of business, economic development, and tourism are transferred to the state foundation on culture and the arts.

PART VI



SECTION 11. The purpose of this part is to transfer the film industry branch within the department of business, economic development, and tourism to the Hawaii tourism authority.

SECTION 12. Chapter 201B, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . HAWAII TELEVISION AND FILM DEVELOPMENT

§201B-A Definitions. As used in this part:

"Applicant" means a person applying for a grant or venture capital investment from the authority under this part.

"Board" means the Hawaii television and film development board.

"Eligible Hawaii project" or "project" means an entertainment project in which at least seventy-five per cent of the budget for the production costs, excluding salaries and costs for the producer, director, writer, screenplay, and actors in the project, is dedicated for the purchase or lease of goods or services from a vendor or supplier who is located and doing business in the State.

"Fund" means the Hawaii television and film development special fund.

"Venture capital investment" means any of the following investments in a project:

- (1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;
- (2) A right to purchase stock or equity securities;
- (3) Any debenture, whether or not convertible or having stock purchase rights, which is subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders, and that is for a term of not less than three years, and that has no part amortized during the first three years; and
- (4) General or limited partnership interests.

§201B-B Hawaii television and film development board. (a) There is established the Hawaii television and film development board. The board shall be attached to the Hawaii tourism authority for administrative purposes only. The board shall administer the grant and venture capital investment programs and the Hawaii television and film development special fund established under this part. The board shall also assess and consider the overall viability and development of the television and film industries and make recommendations to appropriate state or county agencies.

(b) The board shall be composed of nine members, four of whom shall be appointed by the governor pursuant to section



26-34, and all of whom shall serve four-year staggered terms. One of the governor's appointments shall be made from a list of nominees submitted by the president of the senate and another appointment shall be made from a list of nominees submitted by the speaker of the house of representatives. The four appointed members shall possess a current working knowledge of the film, television, or entertainment industry. The executive director of the Hawaii tourism authority and the chairs of the four county film commissions, or their equivalent, shall serve as ex officio voting members, who may be represented on the board by designees.

The chairperson and vice chairperson of the board shall be selected by the board by majority vote. Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board. The members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) The film industry branch development manager shall serve as the executive secretary of the board.

(d) The board may adopt rules pursuant to chapter 91 to effectuate the purposes of this part.

§201B-C Hawaii television and film development special fund. (a) There is established in the state treasury the Hawaii television and film development special fund into which shall be deposited:

- (1) Appropriations by the legislature;
- (2) Donations and contributions made by private individuals or organizations for deposit into the fund;
- (3) Grants provided by governmental agencies or any other source; and
- (4) Any profits or other amounts received from venture capital investments.

(b) The fund shall be used by the board to assist in, and provide incentives for, the production of eligible Hawaii projects that are in compliance with criteria and standards established by the board in accordance with rules adopted by the board pursuant to chapter 91. In particular, the board shall adopt rules to provide for the implementation of the following programs:

- (1) A grant program. The board shall adopt rules pursuant to chapter 91 to provide conditions and qualifications for grants. Applications for grants shall be made to the board and shall contain such information as the board shall require by rules adopted pursuant to chapter 91. At a minimum, the applicant shall agree to the following conditions:



- (A) The grant shall be used exclusively for eligible Hawaii projects;
- (B) The applicant shall have applied for or received all applicable licenses and permits;
- (C) The applicant shall comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (D) The applicant shall comply with other requirements as the board may prescribe;
- (E) All activities undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances;
- (F) The applicant shall indemnify and save harmless the State of Hawaii and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department;
- (G) The applicant shall make available to the board all records the applicant may have relating to the project, to allow the board to monitor the applicant's compliance with the purpose of this chapter; and
- (H) The applicant, to the satisfaction of the board, shall establish that sufficient funds are available for the completion of the project for the purpose for which the grant is awarded;

and

- (2) A venture capital program. The board shall adopt rules pursuant to chapter 91 to provide conditions and qualifications for venture capital investments in eligible Hawaii projects. The program may include a written agreement between the borrower and the board, as the representative of the State, that as consideration for the venture capital investment made under this part, the borrower shall share any royalties, licenses, titles, rights, or any other monetary benefits that may accrue to the borrower pursuant to terms and conditions established by the board by rule pursuant to chapter 91. Venture capital investments may be made on such terms and conditions as the board shall determine to be reasonable,



appropriate, and consistent with the purposes and objectives of this part.

§201B-D Inspection of premises and records. The board shall have the right to inspect, at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any applicant in connection with the processing of a grant to the applicant."

SECTION 13. Part IX of chapter 201, Hawaii Revised Statutes, is repealed.

PART VII

SECTION 14. The purpose of this part is to conform various sections of the Hawaii Revised Statutes to the amendments made under more than one of the previous parts.

SECTION 15. Section 26-18, Hawaii Revised Statutes, is amended to read as follows:

"§26-18 Department of business, economic development, and tourism. [~~(a)~~] The department of business, economic development, and tourism shall be headed by a single executive to be known as the director of business, economic development, and tourism.

The department shall undertake statewide business and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawaii's ocean resources, and encourage the development and promotion of industry and international commerce through programs established by law.

[~~(b)~~] The following are placed in the department of business, economic development, and tourism for administrative purposes as defined by section 26-35: Aloha Tower development corporation, Hawaii community development authority, Hawaii housing finance and development corporation, high technology development corporation, land use commission, [~~natural energy laboratory of Hawaii authority,~~] and any other boards and commissions as shall be provided by law.

The department of business, economic development, and tourism shall be empowered to establish, modify, or abolish statistical boundaries for cities, towns, or villages in the State and shall publish, as expeditiously as possible, an up-to-date list of cities, towns, and villages after changes to statistical boundaries have been made."

SECTION 16. Section 201-2, Hawaii Revised Statutes, is amended to read as follows:

"§201-2 General objective, functions, and duties of department. It shall be the objective of the department of business, economic development, and tourism to make broad policy determinations with respect to economic development in the State and to stimulate through research and demonstration projects

those industrial and economic development efforts that offer the most immediate promise of expanding the economy of the State. The department shall endeavor to gain an understanding of those functions and activities of other governmental agencies and of private agencies that relate to the field of economic development. [~~It shall,~~] The department, at all times, shall encourage initiative and creative thinking in harmony with the objectives of the department.

The department of business, economic development, and tourism shall have sole jurisdiction over the land use commission under chapter 205, state planning under chapter 225M, and the Hawaii State Planning Act under chapter 226. Due to the inherently interdependent functions of development, planning, and land use, these functions shall not be transferred by executive order, directive, or memorandum, to any other department, nor shall these functions be subject to review or approval by any other department."

SECTION 17. Section 201-3, Hawaii Revised Statutes, is amended to read as follows:

"§201-3 **Specific research and promotional functions of the department.** Without prejudice to its general functions and duties the department of business, economic development, and tourism shall have specific functions in the following areas:

- (1) Industrial development. The department shall determine through technical and economic surveys the profit potential of new or expanded industrial undertakings; develop through research projects and other means new and improved industrial products and processes; promote studies and surveys to determine consumer preference as to design and quality and to determine the best methods of packaging, transporting, and marketing the State's industrial products; disseminate information to assist the present industries of the State, to attract new industries to the State, and to encourage capital investment in present and new industries in the State; assist associations of producers and distributors of industrial products to introduce these products to consumers; and make grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (2) Land development. The department shall encourage the most productive use of all land in the State in accordance with a general plan developed by the department; encourage the improvement of land tenure practices on leased private lands; promote an informational program directed to landowners, producers of agricultural and industrial commodities,



and the general public regarding the most efficient and most productive use of the lands in the State; and make grants or contracts as may be necessary or advisable to accomplish the foregoing;

- (3) Credit development. The department shall conduct a continuing study of agricultural and industrial credit needs; encourage the development of additional private and public credit sources for agricultural and industrial enterprises; promote an informational program to acquaint financial institutions with agricultural and industrial credit needs and the potential for agricultural and industrial expansion, and inform producers of agricultural and industrial products as to the manner in which to qualify for loans; and make grants or contracts as may be necessary or advisable to accomplish the foregoing; and
- (4) Promotion. The department shall disseminate information developed for or by the department pertaining to economic development to assist present industry in the State, attract new industry and investments to the State, and assist new and emerging industry with good growth potential or prospects in jobs, exports, and new products. The industrial and economic promotional activities of the department may include the use of literature, advertising, demonstrations, displays, market testing, lectures, travel, motion picture and slide films, and other promotional and publicity devices as may be appropriate;
- (5) Tourism research and statistics. The department shall maintain a program of research and statistics for the purpose of:
 - (A) Measuring and analyzing tourism trends;
 - (B) Providing information and research to assist in the development and implementation of state tourism policy;
 - (C) Encouraging and arranging for the conduct of tourism research and information development through voluntary means or through contractual services with qualified agencies, firms, or persons; and
 - (D) Providing tourism information to policy makers, the public, and the visitor industry. This includes:

- (i) Collecting and publishing visitor-related data including visitor arrivals, visitor characteristics and expenditures;
- (ii) Collecting and publishing hotel-related statistics including the number of units available, occupancy rates, and room rates;
- (iii) Collecting and publishing airline-related data including seat capacity and number of flights;
- (iv) Collecting information and conducting analyses of the economic, social, and physical impacts of tourism on the State;
- (v) Conducting periodic studies of the impact of ongoing marketing programs of the Hawaii tourism authority on Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underutilized destinations; and
- (vi) Cooperate with the Hawaii tourism authority and provide it with the above information in a timely manner;

and

- (6) Self-sufficiency standard. The department shall establish and update biennially a self-sufficiency standard that shall incorporate existing methods of calculation, and shall reflect, at a minimum, costs relating to housing, food, child care, transportation, health care, clothing and household expenses, federal and state tax obligations, family size, children's ages, geography, and the number of household wage earners. The department shall report to the legislature concerning the self-sufficiency standard no later than twenty days prior to the convening of the regular session of 2009, and every odd-numbered year thereafter. The recommendations shall address, among other things, the utilization of any federal funding that may be available for the purposes of establishing and updating the self-sufficiency standard.

~~[The department shall be the central agency to coordinate film permit activities in the State.] "~~

PART VIII

SECTION 18. The purpose of this part is to provide for the transition of various state agencies and programs that are transferred under parts II, III, IV, V, and VI of this Act.

SECTION 19. (a) All rights, powers, functions, and duties of the agencies, divisions, or programs transferred under parts



II, III, IV, V, and VI, are transferred to the successor agencies as provided under those parts.

(b) All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act; except that an officer or employee whose position is no longer authorized under the General Appropriations Act of 2009 shall not be transferred.

(c) No officer or employee who has been transferred pursuant to subsection (b) and who has tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

(d) If a position held by an officer or employee having tenure is no longer authorized under the General Appropriations Act of 2009, the movement of an officer or employee to another position shall be subject to the appropriate collective bargaining agreement.

SECTION 20. (a) Nothing in this Act shall be deemed to affect the civil service status of any civil service member transferred to the Hawaii tourism authority pursuant to part VI of this Act as it existed on June 30, 2009; provided that upon the vacancy of any transferred position, the Hawaii tourism authority may hire an employee to fill the vacated position without regard to chapters 76 and 89, Hawaii Revised Statutes.

(b) No officer or employee of the State whose functions are transferred by part VI of this Act, and who is employed by the Hawaii tourism authority pursuant to this section, shall suffer any loss of salary, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

(c) Any officer or employee having tenure whose office or position is abolished by part VI of this Act shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department of the governor.

SECTION 21. All rules, policies, procedures, guidelines, and other material adopted or developed by an agency, division, or program transferred under parts II, III, IV, V, and VI, shall be transferred to the successor agency and shall remain in full force and effect until amended or repealed by the successor agency.



SECTION 22. All records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, or acquired or held by an agency, division, or program transferred under parts II, III, IV, V, and VI, shall be transferred to the successor agency.

SECTION 23. Unless specifically required by this Act, this Act shall not affect the membership or term of any appointed member of a board or other policy-making or advisory body transferred under parts II, III, IV, V, and VI. Such a member shall continue to serve on the board or other body for the member's term without necessity of reappointment.

SECTION 24. The legislative reference bureau shall review this Act for the purpose of making recommendations as to the appropriate placement of parts or chapters of the Hawaii Revised Statutes affected by this Act. The legislative reference bureau shall submit its findings and recommendations, accompanied by any necessary proposed legislation, to the legislature by January 1, 2010.

SECTION 25. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

PART IX

SECTION 26. The provisions of this part shall supersede section 15 of House Bill 1271 H.D. 3, S.D. 2, C.D. 1, of the 2009 regular session. There is established within the department of business, economic development, and tourism, the position of energy program administrator. The employment status of the incumbent employee occupying the energy program administrator position on the effective date of this Act shall retain the employee's civil service status which shall not be affected by any Act enacted in the regular session of 2009.

PART X

SECTION 27. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 28. This Act shall take effect upon its approval."

Offered by: *Anna Mercedes K.* () Carried

() Failed to Carry

() Withdrawn

