

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE TRANSFER OF HOMELESS PROGRAMS WITHIN THE
DEPARTMENT OF HUMAN SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this bill is to transfer the
2 functions and duties of the homeless programs branch of the
3 hawaii public housing authority, an attached agency to the
4 department of human services, to the benefits, employment, and
5 support services division of the department of human services.
6 The benefits, employment, and support services division is the
7 appropriate place within the department of human services to
8 embed homeless programs since it offers programs that give
9 homeless individuals the tools to attain self-sufficiency, such
10 as employment and job training, child care, and general
11 assistance. This realignment will improve the department of
12 human services' coordination and delivery of homeless services
13 to Hawaii's homeless population, both singles and families.

14 SECTION 2. Chapter 346, Hawaii Revised Statutes, is
15 amended by adding a part to be appropriately designated and to
16 read as follows:

17

1 **"PART HOMELESS PROGRAMS OFFICE**

2 **§ -1 Definitions.** As used in this part, unless the
3 context otherwise requires:

4 "Donor" means any individual, partnership, corporation,
5 joint-stock company, unincorporated organization, foundation,
6 estate, trust, or any other person or firm that donates money,
7 real property, goods, or services to a homeless facility, or any
8 other program for the homeless authorized by this part,
9 including members of any governing body, trustees, officers,
10 partners, principals, stockholders, members, managers,
11 employees, contractors, agents of these entities, or any person
12 who was involved with the donation.

13 "Emergency shelter" means a homeless facility designed to
14 provide temporary shelter and appropriate and available services
15 to homeless families or individuals for a specified period of
16 time.

17 "Homeless" means:

- 18 (1) An individual or family who lacks a fixed,
19 regular, and adequate night-time residence; or
- 20 (2) An individual or family who has a primary night-
21 time residence that is:
 - 22 (A) A supervised publicly or privately operated

1 shelter designed to provide temporary living
2 accommodations;

3 (B) An institution that provides temporary
4 residence for individuals intended to be
5 institutionalized; or

6 (C) A public or private place not designed for
7 or ordinarily used as sleeping
8 accommodations for human beings.

9 This term does not include any individual imprisoned or
10 otherwise detained under an Act of Congress or a state law.

11 "Homeless facility" means a development designed to provide
12 shelter for homeless families or individuals pursuant to this
13 part, or to facilitate any other homeless program authorized by
14 this part, and may include emergency or transitional shelters.

15 "Homeless shelter stipend" means a payment to a provider
16 agency or to the department on behalf of a homeless family or
17 individual to assist with the costs of operating a homeless
18 facility and providing appropriate services.

19 "Provider agency" means an organization, including its
20 governing board, officers, employees, contractors, or agents,
21 contracted by the department to provide labor and services to

1 any homeless facility, or any other program for the homeless
2 authorized by this part, that is:

3 (1) A for-profit organization incorporated under the
4 laws of the State or a nonprofit organization determined by the
5 Internal Revenue Service to be exempt from the federal income
6 tax; or

7 (2) A nonprofit organization, with a governing board
8 whose members have no material conflict of interest and who
9 serve without compensation, with bylaws or policies that
10 describe the manner in which business is conducted and policies
11 that relate to nepotism and management of potential conflict of
12 interest situations.

13 "Transitional shelter" means a homeless facility designed
14 to provide temporary shelter and appropriate and available
15 services to homeless families or individuals for up to twenty-
16 four months, pursuant to rule.

17 **§ -2 Duties.** The department of human services shall
18 administer and operate homeless facilities and any other program
19 for the homeless authorized by this part; establish programs for
20 the homeless; and take any other actions necessary to effectuate
21 the purposes of this part.

1 (b) The department shall adopt rules pursuant to chapter
2 91 for the purposes of this part; provided that these rules or
3 any rules relating directly to homelessness authorized by any
4 statute, shall be exempt from the public notice, public hearing,
5 and gubernatorial approval requirements of chapter 91, and shall
6 take effect immediately upon filing with the office of the
7 lieutenant governor.

8 **§ -3 Exception to liability for donors.** (a) Any donor
9 who gives money to a provider agency, to a homeless facility to
10 or through the department, or for any other program for the
11 homeless authorized by this part, shall not be liable for any
12 civil damages resulting from the donation.

13 (b) Any donor who gives land and improvements, or who
14 leases land and improvements at a nominal consideration, to a
15 provider agency, to a homeless facility to or through the
16 department, or for any other program for the homeless authorized
17 by this part, shall not be liable for any civil damages
18 resulting from the donation except as may result from the
19 donor's gross negligence or wanton acts or omissions; provided
20 that, if the donor at the time of donation gave the department a
21 full disclosure of all the dangers concerning the land and

1 improvements known to the donor, then the donor shall not be
2 liable for any civil damages resulting from the donation.

3 (c) Any donor who in good faith and without remuneration
4 or expectation of remuneration provides services or materials
5 used to build and construct a facility for the homeless, or who
6 renovates, repairs, or maintains an existing or acquired
7 facility for the homeless, or who provides shelter to homeless
8 persons, shall not be liable for any civil damages resulting
9 from the donor's acts or omissions, except for damages resulting
10 from the donor's gross negligence relating to the donation.

11 (d) The department shall be responsible for inspecting,
12 reviewing, analyzing, qualifying, and determining that the land,
13 structures, materials, or services donated to the department for
14 use by the department in facilities for the homeless are
15 reasonably safe for public use.

16 **§ -4 Contract or conveyance to the department.**

17 Notwithstanding any other law to the contrary, the board of land
18 and natural resources or other state agency holding lands and
19 improvements, may contract or otherwise convey at a nominal
20 consideration, by direct negotiation and without recourse to
21 public auction, the land and improvements, or the management,
22 operation, and administrative responsibility over the land and

1 improvements, to the department or its designee. The land and
2 improvements shall be used by the department or its designee for
3 homeless facilities or for any other program for the homeless
4 authorized by this part.

5 **§ -5 Program administration.** To the extent that
6 appropriations are made available, the department may contract
7 with a provider agency to administer homeless facilities or any
8 other program for the homeless created by this part. The
9 selection of provider agencies to administer homeless
10 facilities, or any other program for the homeless authorized by
11 this part, shall not be subject to chapters 42F, 102, 103, and
12 103F. The selection of provider agencies shall be subject to
13 qualifying standards and criteria established by rule.

14 The provider agency shall be qualified by the department to
15 operate and manage a homeless facility, or any other program for
16 the homeless authorized by this part, pursuant to standards and
17 criteria established by rules for eligibility.

18 **§ -6 Time limits.** To the extent that appropriations are
19 made available, a provider agency shall provide shelter or any
20 other program assistance authorized by this part to eligible
21 homeless families and homeless individuals not later than three
22 days after a vacancy occurs, or such time as is set by rule

1 which shall not be later than seven days, after they apply and
2 qualify for the shelter or other program assistance. These time
3 limits may be waived at the discretion of the department for a
4 maximum period of fourteen days for the purpose of implementing
5 repairs to the subject shelter that the department deems major
6 or extensive.

7 **§ -7 Determination of eligibility and need.** (a) The
8 provider agency operating and managing a homeless facility or
9 any other program for the homeless authorized by this part, or
10 the department operating and managing its own homeless facility,
11 shall be responsible for determining if an applicant is eligible
12 for shelter or other services at the homeless facility or
13 through any other program for the homeless, pursuant to
14 standards and criteria established by rule.

15 (b) The provider agency or the department operating and
16 managing its own homeless facility shall determine the degree of
17 need for each homeless family or individual and in its
18 determination shall consider the resources available and the
19 number of potential eligible applicants in the area served by
20 the homeless facility or other program for the homeless
21 authorized by this part.

1 (c) The department may establish by rule standards and
2 criteria for eligibility, need, and priority for each program;
3 provided that the department may establish by rule exceptions to
4 these eligibility requirements based on special circumstances.

5 **§ -8 Abuse of assistance.** (a) The provider agency
6 operating and managing a homeless facility or any other program
7 for the homeless authorized by this part, or the department
8 operating and managing its own homeless facility, shall be
9 responsible for determining whether a participant is no longer
10 eligible for shelter or other services at the homeless facility
11 or through any other program for the homeless, pursuant to
12 standards and criteria established by rule.

13 (b) Pursuant to rule and the right of due process, the
14 department or its designee, or provider agencies together with
15 the department, may act to bar homeless families or individuals
16 from participating further in any homeless facility or services,
17 may issue a writ of possession, and take such other actions as
18 provided by rule.

19 The enforcement of a writ of possession shall be effected
20 either by an officer appointed by the department, who shall have
21 all of the powers of a police officer for all action in
22 connection with the enforcement of the writ, or any other law

1 enforcement officer of the State or any county, whose duty it
2 shall be to enforce the writ. The person enforcing the writ
3 shall remove all persons from the premises and put the
4 department or its designee, or the provider agency designated by
5 the department, in full possession thereof.

6 Upon eviction, the household goods and personal effects of
7 the person against whom the writ is entered, and those of any
8 persons using the premises incident to the person's holding, may
9 be removed from the premises immediately and sold or otherwise
10 disposed of by the department or its designee, or the provider
11 agency. The department or its designee, or the provider agency,
12 shall have a lien on the property so removed for the expenses
13 incurred by it in moving the property.

14 (c) Any person who enters or remains unlawfully in or upon
15 the premises or living quarters of any homeless facility or any
16 other program for the homeless authorized by this part, after
17 reasonable warning or request to leave by that provider agency's
18 agents, the department or its designee, or a police officer,
19 shall be guilty of a misdemeanor; provided that the offense in
20 this subsection shall be in addition to any other applicable
21 offense in the Hawaii Penal Code. A warning or request shall
22 only be issued if the person has engaged in unlawful conduct or

1 has violated house rules and regulations. The house rules shall
2 be reasonable and a copy shall be provided to each tenant or
3 participant. The warning or request shall supersede any
4 invitation by a tenant or participant at the shelter, facility,
5 or program to that person to visit the premises or living
6 quarters.

7 **§ -9 Exemptions.** (a) Any compensation received by a
8 provider agency for services rendered to homeless families or
9 individuals, or in operating or managing a homeless facility
10 authorized by this part, is exempt from taxation under chapter
11 237.

12 (b) Any county mayor may exempt, by executive order,
13 donors and provider agencies from real property taxes, water and
14 sewer development fees, rates collected for water supplied to
15 consumers and for use of sewers, and any other county taxes,
16 charges, or fees; provided that any county may enact ordinances
17 to regulate the exemptions granted by this subsection.

18 (c) Any provider agency operating or managing a homeless
19 facility, or any other program for the homeless authorized by
20 this part, is exempt, for purposes of those facilities or
21 programs, from any requirements contained in part VIII of
22 chapter 346 and chapters 467 and 521.

1 **§ -10 Emergency or transitional shelter volunteers.**

2 (a) For the purposes of this section, "emergency or
3 transitional shelter volunteer" means an individual who:

4 (1) Is a tenant at an emergency or transitional
5 shelter administered pursuant to this part;

6 (2) Is not an employee of the provider agency
7 operating or managing the shelter;

8 (3) Is under the direction of the provider agency
9 operating or managing the shelter and not the department or the
10 State; and

11 (4) Provides up to eighty hours of volunteer labor or
12 services per month to the provider agency operating or managing
13 the shelter, notwithstanding payment of stipends or credits for
14 the labor and services.

15 (b) Provider agencies may accept labor and services from
16 emergency or transitional shelter volunteers.

17 (c) In addition to any exemptions granted to nonpaid
18 labor, emergency or transitional shelter volunteers who
19 acknowledge in writing that they are emergency or transitional
20 shelter volunteers, shall not be construed to be in the employ
21 of the provider agency operating or managing the shelter. The
22 volunteers' labor and services provided to the provider agency

1 operating or managing the shelter shall not be construed to
2 constitute employment, and the volunteers shall not be construed
3 to be employees of the provider agency operating or managing the
4 shelter, under any labor law.

5 **§ -11 Annual performance audits.** (a) The department
6 shall require any provider agency that dispensed shelter or
7 assistance for any homeless facility or any other program for
8 the homeless authorized by this part to submit to the department
9 a financial audit and report when requested but no later than
10 every three years conducted by a certified public accounting
11 firm. This audit and report shall contain information specific
12 to the funds received under state homeless program contracts.
13 The audit shall include recommendations to address any problems
14 found.

15 (b) Continuing contracts with provider agencies to
16 participate in any program for the homeless authorized by this
17 part shall require that the provider agency address the
18 recommendations made by the auditing agency, subject to
19 exceptions as set by the department.

20 (c) Failure to carry out the recommendations made by the
21 auditing agency may be grounds for the department to bar a
22 provider agency from further contracts for programs authorized

1 by this part until the barred provider has addressed all
2 deficiencies.

3 **§ -12 Provider agency and donor cooperation are not in**
4 **restraint of trade.** No provider agency or any other agency, or
5 donor or donors, or method or act thereof that complies with
6 this part, shall be deemed a conspiracy or combination in
7 restraint of trade or an illegal monopoly, or an attempt to
8 lessen competition or fix prices arbitrarily, or the creation of
9 a combination or pool, or to accomplish any improper or illegal
10 purpose. Any cooperation or agreement established pursuant to
11 rule shall not be considered as illegal, in restraint of trade,
12 or as part of a conspiracy or combination to accomplish an
13 illegal purpose or act.

14 **§ -13 Construction of part.** If there is any conflict
15 between this part and any other law, this part shall control.

16 **§ -14 Homeless shelter stipends.** (a) The stipend
17 limits per shelter unit of zero bedrooms shall be adjusted by
18 the department annually on the first day of July pursuant to
19 standards established by rule which may consider changes in the
20 cost of operating homeless facilities, the fair market rents,
21 the consumer price index, or other relevant factors. A "shelter
22 unit of zero bedrooms" means a living unit that is a studio unit

1 or a single-room occupancy unit. The homeless shelter stipend
2 at transitional shelters for larger shelter units shall be
3 related to the difference in unit size.

4 (b) The department may make or may contract to make
5 homeless shelter stipend payments on behalf of one or more
6 homeless families or individuals to a provider agency operating
7 or managing an emergency or transitional shelter or, in the case
8 that the department itself operates and manages a homeless
9 facility, to the department in amounts and under circumstances
10 as provided by rule. The contract may specify a minimum total
11 amount of homeless shelter stipends to be received by a provider
12 agency for making its shelter and services available to eligible
13 homeless families or individuals.

14 (c) In making homeless shelter stipend payments to a
15 provider agency, the department may establish minimum services
16 to be provided by the provider agency to homeless families or
17 individuals at the provider agency's shelter. The department
18 may also direct provider agencies to establish and manage a
19 savings account program as described in subsection (d).
20 Additionally, the department may direct provider agencies to
21 subcontract for outreach services from other private agencies
22 specializing in programs for the unsheltered homeless.

1 (d) Provider agencies and the department may establish and
2 collect shelter and services payments from homeless families or
3 individuals in addition to the amount received in homeless
4 shelter stipend payments pursuant to rule. Provider agencies
5 and the department may also set aside a portion of the payments
6 in a savings account to be made available to homeless families
7 or individuals when these families and individuals vacate the
8 shelter.

9 **§ -15 Temporary emergency shelter.** (a) In addition to
10 any other duties prescribed by law, the department shall
11 develop, in consultation with the four counties, a procedure for
12 identifying locations that shall be used for temporary emergency
13 shelters for homeless individuals and families. The department
14 shall actively partner with and monitor the efforts of the
15 counties.

16 (b) Each county shall be responsible for partnering with
17 nonprofit organizations to locate, designate, and maintain the
18 areas that shall be used for temporary emergency shelters. The
19 designated locations may include private, county, state, and
20 federal lands.

21 **§ -16 Additional powers.** The powers conferred upon the
22 department by this part shall be in addition and supplemental to

1 the powers conferred by any other law, and nothing in this part
2 shall be construed as limiting any powers, rights, privileges,
3 or immunities conferred."

4 SECTION 3. Section 46-1.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§46-1.5 General powers and limitation of the counties.**

7 Subject to general law, each county shall have the following
8 powers and shall be subject to the following liabilities and
9 limitations:

10 (1) Each county shall have the power to frame and adopt a
11 charter for its own self-government that shall
12 establish the county executive, administrative, and
13 legislative structure and organization, including but
14 not limited to the method of appointment or election
15 of officials, their duties, responsibilities, and
16 compensation, and the terms of their office;

17 (2) Each county shall have the power to provide for and
18 regulate the marking and lighting of all buildings and
19 other structures that may be obstructions or hazards
20 to aerial navigation, so far as may be necessary or
21 proper for the protection and safeguarding of life,
22 health, and property;

1 (3) Each county shall have the power to enforce all claims
2 on behalf of the county and approve all lawful claims
3 against the county, but shall be prohibited from
4 entering into, granting, or making in any manner any
5 contract, authorization, allowance payment, or
6 liability contrary to the provisions of any county
7 charter or general law;

8 (4) Each county shall have the power to make contracts and
9 to do all things necessary and proper to carry into
10 execution all powers vested in the county or any
11 county officer;

12 (5) Each county shall have the power to:

13 (A) Maintain channels, whether natural or artificial,
14 including their exits to the ocean, in suitable
15 condition to carry off storm waters;

16 (B) Remove from the channels, and from the shores and
17 beaches, any debris that is likely to create an
18 unsanitary condition or become a public nuisance;
19 provided that, to the extent any of the foregoing
20 work is a private responsibility, the
21 responsibility may be enforced by the county in
22 lieu of the work being done at public expense;

1 (C) Construct, acquire by gift, purchase, or by the
2 exercise of eminent domain, reconstruct, improve,
3 better, extend, and maintain projects or
4 undertakings for the control of and protection
5 against floods and flood waters, including the
6 power to drain and rehabilitate lands already
7 flooded; and

8 (D) Enact zoning ordinances providing that lands
9 deemed subject to seasonable, periodic, or
10 occasional flooding shall not be used for
11 residence or other purposes in a manner as to
12 endanger the health or safety of the occupants
13 thereof, as required by the Federal Flood
14 Insurance Act of 1956 (chapter 1025, Public Law
15 1016);

16 (6) Each county shall have the power to exercise the power
17 of condemnation by eminent domain when it is in the
18 public interest to do so;

19 (7) Each county shall have the power to exercise
20 regulatory powers over business activity as are
21 assigned to them by chapter 445 or other general law;

- 1 (8) Each county shall have the power to fix the fees and
2 charges for all official services not otherwise
3 provided for;
- 4 (9) Each county shall have the power to provide by
5 ordinance assessments for the improvement or
6 maintenance of districts within the county;
- 7 (10) Except as otherwise provided, no county shall have the
8 power to give or loan credit to, or in aid of, any
9 person or corporation, directly or indirectly, except
10 for a public purpose;
- 11 (11) Where not within the jurisdiction of the public
12 utilities commission, each county shall have the power
13 to regulate by ordinance the operation of motor
14 vehicle common carriers transporting passengers within
15 the county and adopt and amend rules the county deems
16 necessary for the public convenience and necessity;
- 17 (12) Each county shall have the power to enact and enforce
18 ordinances necessary to prevent or summarily remove
19 public nuisances and to compel the clearing or removal
20 of any public nuisance, refuse, and uncultivated
21 undergrowth from streets, sidewalks, public places,
22 and unoccupied lots. In connection with these powers,

1 each county may impose and enforce liens upon the
2 property for the cost to the county of removing and
3 completing the necessary work where the property
4 owners fail, after reasonable notice, to comply with
5 the ordinances. The authority provided by this
6 paragraph shall not be self-executing, but shall
7 become fully effective within a county only upon the
8 enactment or adoption by the county of appropriate and
9 particular laws, ordinances, or rules defining "public
10 nuisances" with respect to each county's respective
11 circumstances. The counties shall provide the
12 property owner with the opportunity to contest the
13 summary action and to recover the owner's property;

- 14 (13) Each county shall have the power to enact ordinances
15 deemed necessary to protect health, life, and
16 property, and to preserve the order and security of
17 the county and its inhabitants on any subject or
18 matter not inconsistent with, or tending to defeat,
19 the intent of any state statute where the statute does
20 not disclose an express or implied intent that the
21 statute shall be exclusive or uniform throughout the
22 State;

- 1 (14) Each county shall have the power to:
- 2 (A) Make and enforce within the limits of the county
- 3 all necessary ordinances covering all:
- 4 (i) Local police matters;
- 5 (ii) Matters of sanitation;
- 6 (iii) Matters of inspection of buildings;
- 7 (iv) Matters of condemnation of unsafe
- 8 structures, plumbing, sewers, dairies, milk,
- 9 fish, and morgues; and
- 10 (v) Matters of the collection and disposition of
- 11 rubbish and garbage;
- 12 (B) Provide exemptions for homeless facilities and
- 13 any other program for the homeless authorized by
- 14 part of chapter ~~[356D]~~ 346 for all matters
- 15 under this paragraph;
- 16 (C) Appoint county physicians and sanitary and other
- 17 inspectors as necessary to carry into effect
- 18 ordinances made under this paragraph, who shall
- 19 have the same power as given by law to agents of
- 20 the department of health, subject only to
- 21 limitations placed on them by the terms and
- 22 conditions of their appointments; and

1 (D) Fix a penalty for the violation of any ordinance,
2 which penalty may be a misdemeanor, petty
3 misdemeanor, or violation as defined by general
4 law;

5 (15) Each county shall have the power to provide public
6 pounds; to regulate the impounding of stray animals
7 and fowl, and their disposition; and to provide for
8 the appointment, powers, duties, and fees of animal
9 control officers;

10 (16) Each county shall have the power to purchase and
11 otherwise acquire, lease, and hold real and personal
12 property within the defined boundaries of the county
13 and to dispose of the real and personal property as
14 the interests of the inhabitants of the county may
15 require, except that:

16 (A) Any property held for school purposes may not be
17 disposed of without the consent of the
18 superintendent of education;

19 (B) No property bordering the ocean shall be sold or
20 otherwise disposed of; and

21 (C) All proceeds from the sale of park lands shall be

1 expended only for the acquisition of property for
2 park or recreational purposes;

3 (17) Each county shall have the power to provide by
4 charter for the prosecution of all offenses and to
5 prosecute for offenses against the laws of the State
6 under the authority of the attorney
7 general of the State;

8 (18) Each county shall have the power to make
9 appropriations in amounts deemed appropriate
10 from any moneys in the treasury, for the purpose
11 of:

12 (A) Community promotion and public
13 celebrations;

14 (B) The entertainment of distinguished persons
15 as may from time to time visit the county;

16 (C) The entertainment of other distinguished
17 persons, as well as, public officials when
18 deemed to be in the best interest of the
19 community; and

20 (D) The rendering of civic tribute to individuals
21 who, by virtue of their accomplishments and

1 community service, merit civic commendations,
2 recognition, or remembrance;

3 (19) Each county shall have the power to:

4 (A) Construct, purchase, take on lease, lease,
5 sublease, or in any other manner acquire, manage,
6 maintain, or dispose of buildings for county
7 purposes, sewers, sewer systems, pumping
8 stations, waterworks, including reservoirs,
9 wells, pipelines, and other conduits for
10 distributing water to the public, lighting
11 plants, and apparatus and appliances for lighting
12 streets and public buildings, and manage,
13 regulate, and control the same;

14 (B) Regulate and control the location and quality of
15 all appliances necessary to the furnishing of
16 water, heat, light, power, telephone, and
17 telecommunications service to the county;

18 (C) Acquire, regulate, and control any and all
19 appliances for the sprinkling and cleaning of the
20 streets and the public ways, and for flushing the
21 sewers; and

S.B. NO. 910

1 (D) Open, close, construct, or maintain county
2 highways or charge toll on county highways;
3 provided that all revenues received from a toll
4 charge shall be used for the construction or
5 maintenance of county highways;

6 (20) Each county shall have the power to regulate the
7 renting, subletting, and rental conditions of property
8 for places of abode by ordinance;

9 (21) Unless otherwise provided by law, each county shall
10 have the power to establish by ordinance the order of
11 succession of county officials in the event of a
12 military or civil disaster;

13 (22) Each county shall have the power to sue and be sued in
14 its corporate name;

15 (23) Each county shall have the power to establish and
16 maintain waterworks and sewer works; to collect rates
17 for water supplied to consumers and for the use of
18 sewers; to install water meters whenever deemed
19 expedient; provided that owners of premises having
20 vested water rights under existing laws appurtenant to
21 the premises shall not be charged for the installation
22 or use of the water meters on the premises; to take

1 over from the State existing waterworks systems,
2 including water rights, pipelines, and other
3 appurtenances belonging thereto, and sewer systems,
4 and to enlarge, develop, and improve the same;

5 (24) (A) Each county may impose civil fines, in
6 addition to criminal penalties, for any violation
7 of county ordinances or rules after reasonable
8 notice and requests to correct or cease the
9 violation have been made upon the violator. Any
10 administratively imposed civil fine shall not be
11 collected until after an opportunity for a
12 hearing under chapter 91. Any appeal shall be
13 filed within thirty days from the date of the
14 final written decision. These proceedings shall
15 not be a prerequisite for any civil fine or
16 injunctive relief ordered by the circuit court;

17 (B) Each county by ordinance may provide for the
18 addition of any unpaid civil fines, ordered by
19 any court of competent jurisdiction, to any
20 taxes, fees, or charges, with the exception of
21 fees or charges for water for residential use and
22 sewer charges, collected by the county. Each

S.B. NO. 910

1 county by ordinance may also provide for the
2 addition of any unpaid administratively imposed
3 civil fines, which remain due after all judicial
4 review rights under section 91-14 are exhausted,
5 to any taxes, fees, or charges, with the
6 exception of water for residential use and sewer
7 charges, collected by the county. The ordinance
8 shall specify the administrative procedures for
9 the addition of the unpaid civil fines to the
10 eligible taxes, fees, or charges and may require
11 hearings or other proceedings. After addition of
12 the unpaid civil fines to the taxes, fees, or
13 charges, the unpaid civil fines shall not become
14 a part of any taxes, fees, or charges. The
15 county by ordinance may condition the issuance or
16 renewal of a license, approval, or permit for
17 which a fee or charge is assessed, except for
18 water for residential use and sewer charges, on
19 payment of the unpaid civil fines. Upon
20 recordation of a notice of unpaid civil fines in
21 the bureau of conveyances, the amount of the
22 civil fines, including any increase in the amount

1 of the fine which the county may assess, shall
2 constitute a lien upon all real property or
3 rights to real property belonging to any person
4 liable for the unpaid civil fines. The lien in
5 favor of the county shall be subordinate to any
6 lien in favor of any person recorded or
7 registered prior to the recordation of the notice
8 of unpaid civil fines and senior to any lien
9 recorded or registered after the recordation of
10 the notice. The lien shall continue until the
11 unpaid civil fines are paid in full or until a
12 certificate of release or partial release of the
13 lien, prepared by the county at the owner's
14 expense, is recorded. The notice of unpaid civil
15 fines shall state the amount of the fine as of
16 the date of the notice and maximum permissible
17 daily increase of the fine. The county shall not
18 be required to include a social security number,
19 state general excise taxpayer identification
20 number, or federal employer identification number
21 on the notice. Recordation of the notice in the
22 bureau of conveyances shall be deemed, at such

1 time, for all purposes and without any further
2 action, to procure a lien on land registered in
3 land court under chapter 501. After the unpaid
4 civil fines are added to the taxes, fees, or
5 charges as specified by county ordinance, the
6 unpaid civil fines shall be deemed immediately
7 due, owing, and delinquent and may be collected
8 in any lawful manner. The procedure for
9 collection of unpaid civil fines authorized in
10 this paragraph shall be in addition to any other
11 procedures for collection available to the State
12 and county by law or rules of the courts;

13 (C) Each county may impose civil fines upon any
14 person who places graffiti on any real or
15 personal property owned, managed, or maintained
16 by the county. The fine may be up to \$1,000 or
17 may be equal to the actual cost of having the
18 damaged property repaired or replaced. The
19 parent or guardian having custody of a minor who
20 places graffiti on any real or personal property
21 owned, managed, or maintained by the county shall
22 be jointly and severally liable with the minor

1 for any civil fines imposed hereunder. Any such
2 fine may be administratively imposed after an
3 opportunity for a hearing under chapter 91, but
4 such a proceeding shall not be a prerequisite for
5 any civil fine ordered by any court. As used in
6 this subparagraph, "graffiti" means any
7 unauthorized drawing, inscription, figure, or
8 mark of any type intentionally created by paint,
9 ink, chalk, dye, or similar substances;

10 (D) At the completion of an appeal in which the
11 county's enforcement action is affirmed and upon
12 correction of the violation if requested by the
13 violator, the case shall be reviewed by the
14 county agency that imposed the civil fines to
15 determine the appropriateness of the amount of
16 the civil fines that accrued while the appeal
17 proceedings were pending. In its review of the
18 amount of the accrued fines, the county agency
19 may consider:

- 20 (i) The nature and egregiousness of the
21 violation;
- 22 (ii) The duration of the violation;

- 1 (iii) The number of recurring and other
- 2 similar violations;
- 3 (iv) Any effort taken by the violator to
- 4 correct the violation;
- 5 (v) The degree of involvement in causing or
- 6 continuing the violation;
- 7 (vi) Reasons for any delay in the completion of
- 8 the appeal; and
- 9 (vii) Other extenuating circumstances.

10 The civil fine that is imposed by administrative order
11 after this review is completed and the violation is corrected
12 shall be subject to judicial review, notwithstanding any
13 provisions for administrative review in county charters;

14 (E) After completion of a review of the amount of
15 accrued civil fine by the county agency that
16 imposed the fine, the amount of the civil fine
17 determined appropriate, including both the
18 initial civil fine and any accrued daily civil
19 fine, shall immediately become due and
20 collectible following reasonable notice to the
21 violator. If no review of the accrued civil fine
22 is requested, the amount of the civil fine, not

1 to exceed the total accrual of civil fine prior
2 to correcting the violation, shall immediately
3 become due and collectible following reasonable
4 notice to the violator, at the completion of all
5 appeal proceedings;

6 (F) If no county agency exists to conduct appeal
7 proceedings for a particular civil fine action
8 taken by the county, then one shall be
9 established by ordinance before the county shall
10 impose the civil fine;

11 (25) Any law to the contrary notwithstanding, any county
12 mayor may exempt by executive order donors, provider
13 agencies, homeless facilities, and any other program
14 for the homeless under part of chapter [356D] 346
15 from real property taxes, water and sewer development
16 fees, rates collected for water supplied to consumers
17 and for use of sewers, and any other county taxes,
18 charges, or fees; provided that any county may enact
19 ordinances to regulate and grant the exemptions
20 granted by this paragraph;

21 (26) Any county may establish a captive insurance company
22 pursuant to article 19, chapter 431; and

1 (27) Each county shall have the power to enact and enforce
2 ordinances regulating towing operations."

3 SECTION 4. Section 237-23, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) This chapter shall not apply to the following
6 persons:

7 (1) Public service companies as that term is defined in
8 section 239-2, with respect to the gross income,
9 either actual gross income or gross income estimated
10 and adjusted, that is included in the measure of the
11 tax imposed by chapter 239;

12 (2) Public utilities owned and operated by the State or
13 any county, or other political subdivision thereof;

14 (3) Fraternal benefit societies, orders, or associations,
15 operating under the lodge system, or for the exclusive
16 benefit of the members of the fraternity itself,
17 operating under the lodge system, and providing for
18 the payment of death, sick, accident, prepaid legal
19 services, or other benefits to the members of the
20 societies, orders, or associations, and to their
21 dependents;

- 1 (4) Corporations, associations, trusts, or societies
2 organized and operated exclusively for religious,
3 charitable, scientific, or educational purposes, as
4 well as that of operating senior citizens housing
5 facilities qualifying for a loan under the laws of the
6 United States as authorized by section 202 of the
7 Housing Act of 1959, as amended, as well as that of
8 operating a prepaid legal services plan, as well as
9 that of operating or managing a homeless facility, or
10 any other program for the homeless authorized under
11 part [VII] ____ of chapter [356D] 346;
- 12 (5) Business leagues, chambers of commerce, boards of
13 trade, civic leagues, agricultural and horticultural
14 organizations, and organizations operated exclusively
15 for the benefit of the community and for the promotion
16 of social welfare that shall include the operation of
17 a prepaid legal service plan, and from which no profit
18 inures to the benefit of any private stockholder or
19 individual;
- 20 (6) Hospitals, infirmaries, and sanitararia;
- 21 (7) Cooperative associations incorporated under chapter
22 421 or Code section 521 cooperatives which fully meet

1 the requirements of section 421-23, except Code
2 section 521 cooperatives need not be organized in
3 Hawaii; provided that:

4 (A) The exemption shall apply only to the gross
5 income derived from activities that are pursuant
6 to purposes and powers authorized by chapter 421,
7 except those provisions pertaining to or
8 requiring corporate organization in Hawaii do not
9 apply to Code section 521 cooperatives;

10 (B) The exemption shall not relieve any person who
11 receives any proceeds of sale from the
12 association of the duty of returning and paying
13 the tax on the total gross proceeds of the sales
14 on account of which the payment was made, in the
15 same amount and at the same rate as would apply
16 thereto had the sales been made directly by the
17 person, and all those persons shall be so
18 taxable; and

19 (C) As used in this paragraph, "section 521
20 cooperatives" mean associations that qualify as a
21 cooperative under section 521 (with respect to

1 exemption of farmers' cooperatives from tax) of
2 the Internal Revenue Code of 1986, as amended;

3 (8) Persons affected with Hansen's disease and kokuas,
4 with respect to business within the county of Kalawao;

5 (9) Corporations, companies, associations, or trusts
6 organized for the establishment and conduct of
7 cemeteries no part of the net earnings of which inures
8 to the financial benefit of any private stockholder or
9 individual; provided that the exemption shall apply
10 only to the activities of those persons in the conduct
11 of cemeteries and shall not apply to any activity the
12 primary purpose of which is to produce income, even
13 though the income is to be used for or in the
14 furtherance of the exempt activities of those persons;
15 and

16 (10) Nonprofit shippers associations operating under part
17 296 of the Civil Aeronautics Board Economic
18 Regulations."

19 SECTION 5. Section 346-152, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Nothing in this part shall be construed to include:

22 (1) A person caring for children related to the

- 1 caregiver by blood, marriage, or adoption;
- 2 (2) A person, group of persons, or facility caring
- 3 for a child less than six hours a week;
- 4 (3) A kindergarten, school, or program licensed by
- 5 the department of education;
- 6 (4) A program that provides exclusively for a
- 7 specialized training or skill development for
- 8 children, including but not limited to programs
- 9 providing activities such as athletic sports,
- 10 foreign language, the Hawaiian language, dance,
- 11 drama, music, or martial arts;
- 12 (5) A multiservice organization or community
- 13 association, duly incorporated under the laws of
- 14 the State that operates for the purpose of
- 15 promoting recreation, health, safety, or social
- 16 group functions for eligible pupils in public and
- 17 private schools through seventeen years of age;
- 18 (6) Programs for children four years of age and older
- 19 that operate for no more than two consecutive
- 20 calendar weeks in a three-month period;

- 1 (7) A provider agency operating or managing a
2 homeless facility or any other program for
3 homeless persons authorized under part
4 [VII] _____ of chapter [~~356D~~] 346;
- 5 (8) After-school, weekend, and summer recess programs
6 conducted by the department of education pursuant
7 to section 302A-408;
- 8 (9) Child care programs for children five years of
9 age and older conducted by counties pursuant to
10 section 302A-408; provided that each county
11 adopts rules for its programs;
- 12 (10) Any person who enters a home in a child caring
13 capacity and only cares for children who are of
14 that household; and
- 15 (11) A person caring for two or fewer children
16 unrelated to the caregiver by blood, marriage, or
17 adoption."

18 SECTION 6. Section 467-2, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§467-2 Exceptions.** The provisions requiring licensing as
21 a real estate broker or salesperson shall not apply:

- 1 (1) To any individual who, as owner of any real estate or
2 acting under power of attorney from the owner,
3 performs any of the acts enumerated in the definitions
4 of real estate broker and real estate salesperson with
5 reference to the real estate; provided that the term
6 "owner" as used in this paragraph shall not include
7 any individual engaged in the business of real estate
8 development or brokerage or include an individual who
9 acquires any interest in any real estate for the
10 purpose or as a means of evading the licensing
11 requirements of this chapter; and provided further
12 that the term individual "acting under power of
13 attorney" as used in this paragraph shall not include
14 any individual engaged in the business of real estate
15 development or brokerage or any individual who acts
16 under a power of attorney for the purpose or as a
17 means of evading the licensing requirements of this
18 chapter;
- 19 (2) To any person acting as a receiver, trustee in
20 bankruptcy, personal representative, or trustee acting
21 under any trust agreement, deed of trust, or will, or

1 otherwise acting under any order of authorization of
2 any court;

3 (3) To any individual who leases, offers to lease, rents,
4 or offers to rent, any real estate or the improvements
5 thereon of which the individual is the custodian or
6 caretaker;

7 (4) To any person who manages, rents, or operates a hotel;
8 or

9 (5) To any provider agency owning, leasing, operating, or
10 managing a homeless facility or any other program for
11 the homeless authorized under part [VII] ____ of
12 chapter [~~356D~~] 346."

13 SECTION 7. Section 480-11, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:

15 "(d) This chapter shall not apply to:

16 (1) Any provider agencies or donors under part
17 [VII] ____ of chapter [~~356D~~] 346;

18 (2) Any provider agency or donor method or act that
19 complies with part [VII] ____ of chapter [~~356D~~] 346;
20 or

21 (3) Any cooperation or agreement authorized pursuant to
22 rule under part [VII] ____ of chapter [~~356D~~] 346."

1 SECTION 8. Section 521-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§521-7 Exclusions from application of chapter.** Unless
4 created solely to avoid the application of this chapter, this
5 chapter shall not apply to:

6 (1) Residence at an institution, whether public or
7 private, where residence is merely incidental to
8 detention or the provision of medical, geriatric,
9 educational, religious, or similar services;

10 (2) Residence in a structure directly controlled and
11 managed by the University of Hawaii for housing
12 students or faculty of the University of Hawaii or
13 residence in a structure erected on land leased from
14 the University of Hawaii by a nonprofit corporation
15 for the exclusive purpose of housing students or
16 faculty of the University of Hawaii;

17 (3) Occupancy under a bona fide contract of sale of the
18 dwelling unit or the property of which it is a part
19 where the tenant is, or succeeds to the interest of,
20 the purchaser;

- 1 (4) Residence by a member of a fraternal organization in a
2 structure operated without profit for the benefit of
3 the organization;
- 4 (5) Transient occupancy on a day-to-day basis in a hotel
5 or motel;
- 6 (6) Occupancy by an employee of the owner or landlord
7 whose right to occupancy is conditional upon that
8 employment or by a pensioner of the owner or landlord
9 or occupancy for a period of up to four years
10 subsequent thereto, pursuant to a plan for the
11 transfer of the dwelling unit or the property of which
12 it is a part to the occupant;
- 13 (7) A lease of improved residential land for a term of
14 fifteen years or more, measured from the date of the
15 commencement of the lease;
- 16 (8) Occupancy by the prospective purchaser after an
17 accepted offer to purchase and prior to the actual
18 transfer of the owner's rights;
- 19 (9) Occupancy in a homeless facility or any other program
20 for the homeless authorized under part ~~[VII]~~ ____ of
21 chapter ~~[356D]~~ 346;

1 (10) Residence or occupancy in a public housing project or
2 complex directly controlled, owned, or managed by the
3 Hawaii public housing authority pursuant to the
4 federal low rent public housing program; or

5 (11) Residence or occupancy in a transitional facility for
6 abused family or household members."

7 SECTION 9. Chapter 356D, part VII, Hawaii Revised
8 Statutes, is repealed.

9 SECTION 10. The department of human services shall
10 transfer ten positions from the hawaii public housing authority
11 to the benefit, employment, and support services division to
12 carry out the purposes of this Act.

13 All officers and employees whose functions are transferred
14 by this Act shall be transferred with their functions and shall
15 continue to perform their regular duties upon their transfer,
16 subject to the state personnel laws and this Act. No officer or
17 employee of the State shall suffer any loss of salary,
18 seniority, prior service credit, vacation, sick leave, or other
19 employee benefit or privilege as a consequence of this Act.

20 In the event that an office or position held by an officer
21 or employee having tenure is abolished, the office or employee
22 shall remain in the employment of the State with the same pay

1 and classification and shall be transferred to some other office
2 or position for which the officer or employee is eligible under
3 the personnel laws of the State as determined by the director of
4 human resources development.

5 All appropriations, records, equipment, machines, files,
6 supplies, contracts, books, papers, documents, maps, and other
7 personal property heretofore made, used, acquired, or held by
8 the agencies, divisions, or offices transferred or placed for
9 administrative purposes under this Act relating to the functions
10 transferred to the department of human services shall be
11 transferred with the functions to which they relate.

12 All rules, policies, procedures, guidelines, and other
13 material adopted or developed by the agencies, divisions, or
14 offices transferred or placed for administrative purposes under
15 this Act, shall remain in full force and effect until amended or
16 repealed by the department of human services pursuant to chapter
17 91, Hawaii Revised Statutes.

18 All deeds, leases, contracts, loans, agreements, permits,
19 or other documents executed or entered into by or on behalf of
20 the agencies, divisions, or offices transferred or placed for
21 administrative purposes with the department of human services by
22 this Act, shall remain in full force and effect.

S.B. NO. 910

1 The provisions of this section are to be liberally
2 construed to effectuate its purposes.

3 SECTION 11. All acts passed by the legislature during this
4 regular session of 2009, whether enacted before or after the
5 effective date of this Act, shall be amended to conform to this
6 Act unless such acts specifically provide that this Act is being
7 amended.

8 SECTION 12. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

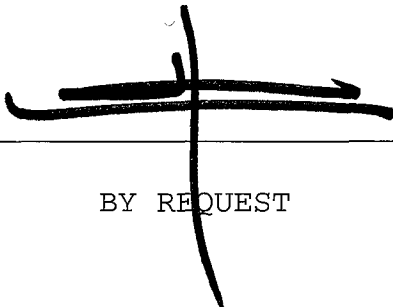
10 SECTION 13. This Act shall take effect on July 1, 2009.

11

12

13

INTRODUCED BY: _____

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BY REQUEST

Report Title:

Homeless Programs

Description:

Improves the coordination of homeless programs and services within the Department of Human Services by relocating the state homeless programs from the Hawaii Public Housing Authority to the Benefit, Employment, and Support Services Division.

SB 910

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO THE TRANSFER OF HOMELESS PROGRAMS WITHIN THE DEPARTMENT OF HUMAN SERVICES.

PURPOSE: Improves the Department of Human Services' coordination and delivery of programs and services to homeless persons.

MEANS: Add a new part to chapter 346, Hawaii Revised Statutes (HRS), amend sections 46.1.5, 237-23(a), 346-152(a), 467-2, 480-11(d), and 521-7, HRS, and repeal part VII of chapter 356D, HRS.

JUSTIFICATION: This bill transfers the functions and duties of the Homeless Programs Branch of the Hawaii Public Housing Authority to the Benefit, Employment, and Support Services Division (BESSD) of the Department of Human Services (DHS).

BESSD is the appropriate section within DHS to effectively coordinate homeless services since it administers programs relating to job training, child care, and general assistance. These programs are a necessary accompaniment to the case management services that are a primary function of emergency and transitional shelters for homeless.

This intradepartmental transfer will improve DHS' ability to coordinate all of the programs and services that homeless persons need to attain a stable living condition and self-sufficiency.

Allows the Hawaii Public Housing Authority to focus on its core mission of managing federal and state public housing projects.

Impact on the public: Improves the quality of services and programs provided to homeless persons.

Impact on the department and other agencies: Increases the level of coordination among the various programs within DHS that serve the needs of homeless persons.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HMS 224

OTHER AFFECTED
AGENCIES: Department of Human Services

EFFECTIVE DATE: July 1, 2009.