



GOV. MSG. NO. 501

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 21, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 21, 2010, the following bill was signed into law:

HB2136 SD1

A BILL FOR AN ACT
RELATING TO DISTRIBUTIONS BY NONPROFIT
CORPORATIONS.
ACT 043 (10)

Sincerely,



LINDA LINGLE

Approved by the Governor

on APR 21 2010

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

ACT 043

H.B. NO. 2136
S.D. 1

A BILL FOR AN ACT

RELATING TO DISTRIBUTIONS BY NONPROFIT CORPORATIONS.

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

1 SECTION 1. The Hawaii Nonprofit Corporations Act currently
2 prohibits any distributions from nonprofit corporations except
3 upon dissolution. For example, this prohibition bars public
4 benefit corporations organized and operated as supporting
5 organizations from making current distributions to their
6 supported organizations. The adoption of the Hawaii Nonprofit
7 Corporations Act was not intended to prohibit such current
8 distributions. Federal law already permits such distributions.

9 Therefore, the purpose of this Act is to permit current
10 distributions by public benefit corporations to their public
11 benefit corporation members and affiliates; provided that the
12 distributions are in accordance with the distributing public
13 benefit corporations' purposes and will not jeopardize their
14 liquidity.

15 SECTION 2. Section 414D-14, Hawaii Revised Statutes, is
16 amended by adding a new definition to be appropriately inserted
17 and to read as follows:



1 "Affiliate" means an entity that directly or indirectly
2 controls, is controlled by, or is under common control with the
3 public benefit corporation. Control includes the power to
4 select the public benefit corporation's board of directors."

5 SECTION 3. Section 414D-232, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§414D-232 Authorized distributions.** (a) A corporation
8 may purchase its memberships if, after the purchase is
9 completed:

10 (1) The corporation would be able to pay its debts as they
11 become due in the usual course of its activities; and

12 (2) The corporation's total assets would [~~at least~~] be
13 equal to at least the sum of its total liabilities.

14 (b) Corporations may make distributions upon dissolution
15 in conformity with part XIII.

16 (c) The public benefit corporation, in conformity with its
17 purposes, may make distributions to and confer benefits on a
18 member or an affiliate that is another public benefit
19 corporation if, after any distribution is completed:

20 (1) The public benefit corporation would be able to pay
21 its debts as they become due in the usual course of
22 its activities; and



1 (2) The public benefit corporation's total assets would be
2 equal to at least the sum of its total liabilities."

3 SECTION 4. Section 414D-245, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A dissolved corporation continues its corporate
6 existence but [~~may~~] shall not carry on any activities except
7 those appropriate to wind up and liquidate its affairs,
8 including:

9 (1) Preserving and protecting its assets and minimizing
10 its liabilities;

11 (2) Discharging or making provision for discharging its
12 liabilities and obligations;

13 (3) Disposing of its properties that will not be
14 distributed in kind;

15 (4) Returning, transferring, or conveying assets held by
16 the corporation upon a condition requiring return,
17 transfer, or conveyance, which [~~condition~~] occurs by
18 reason of the dissolution[~~]~~ in accordance with [~~such~~]
19 that condition;

20 (5) Transferring, subject to any contractual or legal
21 requirements, its assets as provided in or authorized
22 by its articles of incorporation or bylaws;



1 (6) If the corporation is a public benefit corporation and
2 no provision has been made in its articles or bylaws
3 for distribution of assets on dissolution, [~~or~~]
4 transferring, subject to any contractual or legal
5 requirement, its assets to one or more persons
6 described in section 501(c)(3) of the Internal Revenue
7 Code of 1986, as amended, or if the dissolved
8 corporation is not described in section 501(c)(3) of
9 the Internal Revenue Code, to one or more public
10 benefit corporations;

11 (7) If the corporation is not a public benefit corporation
12 and no provision has been made in its articles or
13 bylaws for distribution of assets on dissolution,
14 transferring its assets to its members or, if it has
15 no members, to those persons whom the corporation
16 holds itself out as benefiting or serving; and

17 (8) Doing every other act necessary to wind up and
18 liquidate its assets and affairs."

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect upon its approval.
22



H.B. NO. 2136
S.D. 1

APPROVED this 21 day of APR, 2010



GOVERNOR OF THE STATE OF HAWAII