



GOV. MSG. NO. **547**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

May 10, 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 May 10, 2010, the following bill was signed into law:

SB910 SD1 HD2 CD1

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

**ACT 089 (10)**

Sincerely,



LINDA LINGLE

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# 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 Act is to transfer the  
2 functions and duties of the homeless programs branch of the  
3 Hawaii public housing authority, an agency attached to the  
4 department of human services, to the benefit, employment, and  
5 support services division of the department of human services.  
6 The benefit, employment, and support services division is the  
7 appropriate place within the department of human services to  
8 embed homeless programs since the division offers programs that  
9 give homeless individuals the tools to attain self-sufficiency,  
10 such 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 individuals and families.

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

17                           **"PART . HOMELESS PROGRAMS**



1           **§346-A Definitions.** As used in this part, unless the  
2 context otherwise requires:

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

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

16           "Homeless" means:

- 17           (1) An individual or family who lacks a fixed, regular,  
18           and adequate night-time residence; or  
19           (2) An individual or family who has a primary night-time  
20           residence that is:



- 1 (A) A supervised publicly or privately operated
- 2 shelter designed to provide temporary living
- 3 accommodations;
- 4 (B) An institution that provides temporary residence
- 5 for individuals intended to be institutionalized;
- 6 or
- 7 (C) A public or private place not designed for or
- 8 ordinarily used as sleeping accommodations for
- 9 human beings.

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

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

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

20 "Provider agency" means an organization, including its  
21 governing board, officers, employees, contractors, or agents,  
22 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 laws  
4 of the State; or

5 (2) A nonprofit organization determined by the Internal  
6 Revenue Service to be exempt from the federal income  
7 tax; that has a governing board whose members have no  
8 material conflict of interest and who serve without  
9 compensation, and that has adopted bylaws or policies  
10 that describe the manner in which business is  
11 conducted, including policies that relate to nepotism  
12 and management of potential conflict of interest  
13 situations.

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

18 **§346-B Duties.** (a) The department of human services  
19 shall administer and operate homeless facilities and any other  
20 program for the homeless authorized by this part; establish  
21 programs for the homeless; and take any other actions necessary  
22 to effectuate 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 **§346-C 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 resulting  
18 from the donation, except as may result from the donor's gross  
19 negligence or wanton acts or omissions; provided that if the  
20 donor at the time of donation gave the department a full  
21 disclosure of all the dangers concerning the land and



1 improvements known to the donor, the donor shall not be liable  
2 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 **§346-D 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 **§346-E 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 facilities  
10 or any other program for the homeless authorized by this part  
11 shall not be subject to chapters 42F, 102, and 103. The  
12 selection of provider agencies shall be subject to qualifying  
13 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 **§346-F 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       **§346-G 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 **§346-H 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 for any other program for the homeless, pursuant to standards  
12 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 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 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       **§346-I 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 §346-J Emergency or transitional shelter volunteers. (a)

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

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

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

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

11 (4) Provides up to eighty hours of volunteer labor or  
12 services per month to the provider agency operating or  
13 managing the shelter, notwithstanding payment of  
14 stipends or credits for 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 of  
21 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       **§346-K 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. The audit shall be conducted by a certified  
11 public accounting firm. This audit and report shall contain  
12 information specific to the funds received under state homeless  
13 program contracts. The audit shall include recommendations to  
14 address any problems 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       **§346-L 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       **§346-M Construction of part.** If there is any conflict  
15 between this part and any other law, this part shall control.

16       **§346-N Homeless shelter stipends.** (a) The stipend limits  
17 per shelter unit of zero bedrooms shall be adjusted by the  
18 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 proportional 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, if the  
8 department itself operates and manages a homeless facility, to  
9 the department in amounts and under circumstances as provided by  
10 rule. The contract may specify a minimum total amount of  
11 homeless shelter stipends to be received by a provider agency  
12 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 **§346-O 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 **§346-P 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





- 1 (C) All proceeds from the sale of park lands shall be  
2 expended only for the acquisition of property for  
3 park or recreational purposes;
- 4 (17) Each county shall have the power to provide by charter  
5 for the prosecution of all offenses and to prosecute  
6 for offenses against the laws of the State under the  
7 authority of the attorney general of the State;
- 8 (18) Each county shall have the power to make  
9 appropriations in amounts deemed appropriate from any  
10 moneys in the treasury, for the purpose of:
- 11 (A) Community promotion and public celebrations;
- 12 (B) The entertainment of distinguished persons as may  
13 from time to time visit the county;
- 14 (C) The entertainment of other distinguished persons,  
15 as well as, public officials when deemed to be in  
16 the best interest of the community; and
- 17 (D) The rendering of civic tribute to individuals  
18 who, by virtue of their accomplishments and  
19 community service, merit civic commendations,  
20 recognition, or remembrance;
- 21 (19) Each county shall have the power to:



- 1 (A) Construct, purchase, take on lease, lease,  
2 sublease, or in any other manner acquire, manage,  
3 maintain, or dispose of buildings for county  
4 purposes, sewers, sewer systems, pumping  
5 stations, waterworks, including reservoirs,  
6 wells, pipelines, and other conduits for  
7 distributing water to the public, lighting  
8 plants, and apparatus and appliances for lighting  
9 streets and public buildings, and manage,  
10 regulate, and control the same;
- 11 (B) Regulate and control the location and quality of  
12 all appliances necessary to the furnishing of  
13 water, heat, light, power, telephone, and  
14 telecommunications service to the county;
- 15 (C) Acquire, regulate, and control any and all  
16 appliances for the sprinkling and cleaning of the  
17 streets and the public ways, and for flushing the  
18 sewers; and
- 19 (D) Open, close, construct, or maintain county  
20 highways or charge toll on county highways;  
21 provided that all revenues received from a toll



1 charge shall be used for the construction or  
2 maintenance of county highways;

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

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

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

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



1 appurtenances belonging thereto, and sewer systems,  
2 and to enlarge, develop, and improve the same;

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

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



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



1 rights to real property belonging to any person  
2 liable for the unpaid civil fines. The lien in  
3 favor of the county shall be subordinate to any  
4 lien in favor of any person recorded or  
5 registered prior to the recordation of the notice  
6 of unpaid civil fines and senior to any lien  
7 recorded or registered after the recordation of  
8 the notice. The lien shall continue until the  
9 unpaid civil fines are paid in full or until a  
10 certificate of release or partial release of the  
11 lien, prepared by the county at the owner's  
12 expense, is recorded. The notice of unpaid civil  
13 fines shall state the amount of the fine as of  
14 the date of the notice and maximum permissible  
15 daily increase of the fine. The county shall not  
16 be required to include a social security number,  
17 state general excise taxpayer identification  
18 number, or federal employer identification number  
19 on the notice. Recordation of the notice in the  
20 bureau of conveyances shall be deemed, at such  
21 time, for all purposes and without any further  
22 action, to procure a lien on land registered in



1 land court under chapter 501. After the unpaid  
2 civil fines are added to the taxes, fees, or  
3 charges as specified by county ordinance, the  
4 unpaid civil fines shall be deemed immediately  
5 due, owing, and delinquent and may be collected  
6 in any lawful manner. The procedure for  
7 collection of unpaid civil fines authorized in  
8 this paragraph shall be in addition to any other  
9 procedures for collection available to the State  
10 and county by law or rules of the courts;

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



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

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

18 (i) The nature and egregiousness of the  
19 violation;

20 (ii) The duration of the violation;

21 (iii) The number of recurring and other similar  
22 violations;





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

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

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



1 to correcting the violation, shall immediately  
2 become due and collectible following reasonable  
3 notice to the violator, at the completion of all  
4 appeal proceedings;

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

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

20 (26) Any county may establish a captive insurance company  
21 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 sanitarium;
- 21          (7) Cooperative associations incorporated under chapter  
22          421 or Code section 521 cooperatives which fully meet

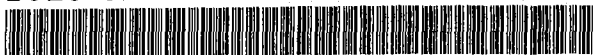


1 the requirements of section 421-23, except Code  
2 section 521 cooperatives need not be organized in  
3 Hawaii; provided that:

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:



- 1 (1) A person caring for children related to the  
2 caregiver by blood, marriage, or adoption;
- 3 (2) A person, group of persons, or facility caring  
4 for a child less than six hours a week;
- 5 (3) A kindergarten, school, or program licensed by  
6 the department of education;
- 7 (4) A program that provides exclusively for a  
8 specialized training or skill development for  
9 children, including but not limited to programs  
10 providing activities such as athletic sports,  
11 foreign language, the Hawaiian language, dance,  
12 drama, music, or martial arts;
- 13 (5) A multiservice organization or community  
14 association, duly incorporated under the laws of  
15 the State that operates for the purpose of  
16 promoting recreation, health, safety, or social  
17 group functions for eligible pupils in public and  
18 private schools through seventeen years of age;
- 19 (6) Programs for children four years of age and older  
20 that operate for no more than two consecutive  
21 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 [VII of  
4 ~~chapter 356D,~~] \_\_\_\_\_;

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 [VII] \_\_\_\_  
17 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 514A-14.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) This section shall not apply:

4 (1) To apartments developed under chapter 201H, 346, or  
5 356D;

6 (2) To apartments in a mixed-use project developed under  
7 chapter 206E that has a shared parking program  
8 approved by the Hawaii community development  
9 authority; provided that such a program shall require  
10 the availability of the use of not less than one  
11 parking space per apartment; and

12 (3) To apartments designated in the declaration of  
13 condominium property regime for hotel, time share,  
14 transient vacation rental, or commercial use."

15 SECTION 9. Section 514A-108, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) This part shall not apply to a project developed  
18 pursuant to section 46-15 or 46-15.1, or chapter 53, 201H, 206,  
19 346, or 356D; provided that the developer of the project may  
20 elect to be subject to this part through a written notification  
21 to the commission."



1 SECTION 10. Section 514B-99.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) This subpart shall not apply to:

4 (1) A project developed pursuant to section 46-15 or  
5 46-15.1, or chapter 53, 201H, 206, 346, or 356D;  
6 provided that the developer of the project may elect  
7 to be subject to this subpart through a written  
8 notification to the commission;

9 (2) Condominium projects where the developer conveys all  
10 of the residential units in the project to a spouse,  
11 or family members related by blood, descent, or  
12 adoption; and

13 (3) Condominium projects consisting of two or fewer  
14 units."

15 SECTION 11. Section 521-7, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§521-7 Exclusions from application of chapter.** Unless  
18 created solely to avoid the application of this chapter, this  
19 chapter shall not apply to:

20 (1) Residence at an institution, whether public or  
21 private, where residence is merely incidental to



- 1           detention or the provision of medical, geriatric,  
2           educational, religious, or similar services;
- 3           (2) Residence in a structure directly controlled and  
4           managed by the University of Hawaii for housing  
5           students or faculty of the University of Hawaii or  
6           residence in a structure erected on land leased from  
7           the University of Hawaii by a nonprofit corporation  
8           for the exclusive purpose of housing students or  
9           faculty of the University of Hawaii;
- 10          (3) Occupancy under a bona fide contract of sale of the  
11          dwelling unit or the property of which it is a part  
12          where the tenant is, or succeeds to the interest of,  
13          the purchaser;
- 14          (4) Residence by a member of a fraternal organization in a  
15          structure operated without profit for the benefit of  
16          the organization;
- 17          (5) Transient occupancy on a day-to-day basis in a hotel  
18          or motel;
- 19          (6) Occupancy by an employee of the owner or landlord  
20          whose right to occupancy is conditional upon that  
21          employment or by a pensioner of the owner or landlord  
22          or occupancy for a period of up to four years



1 subsequent thereto, pursuant to a plan for the  
2 transfer of the dwelling unit or the property of which  
3 it is a part to the occupant;

4 (7) A lease of improved residential land for a term of  
5 fifteen years or more, measured from the date of the  
6 commencement of the lease;

7 (8) Occupancy by the prospective purchaser after an  
8 accepted offer to purchase and prior to the actual  
9 transfer of the owner's rights;

10 (9) Occupancy in a homeless facility or any other program  
11 for the homeless authorized under part [VII] \_\_\_\_\_ of  
12 chapter [~~356D,~~] 346;

13 (10) Residence or occupancy in a public housing project or  
14 complex directly controlled, owned, or managed by the  
15 Hawaii public housing authority pursuant to the  
16 federal low rent public housing program; or

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

19 SECTION 12. Chapter 356D, part VII, Hawaii Revised  
20 Statutes, is repealed.

21 SECTION 13. The department of human services shall  
22 transfer four permanent full time positions (4.0 FTE) from the



1 Hawaii public housing authority to its benefit, employment, and  
2 support services division to carry out the purposes of this Act.  
3 Any position that was exempt from chapter 76, Hawaii Revised  
4 Statutes, under section 356D-2, Hawaii Revised Statutes, may  
5 remain exempt under part \_\_\_\_\_ of chapter 346, Hawaii Revised  
6 Statutes.

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

14 In the event that an office or position held by an officer  
15 or employee having tenure is abolished, the office or employee  
16 shall remain in the employment of the State with the same pay  
17 and classification and shall be transferred to some other office  
18 or position for which the officer or employee is eligible under  
19 the personnel laws of the State as determined by the director of  
20 human resources development.

21 All appropriations, records, equipment, machines, files,  
22 supplies, contracts, books, papers, documents, maps, and other



1 personal property heretofore made, used, acquired, or held by  
2 the agencies, divisions, or offices transferred or placed for  
3 administrative purposes under this Act relating to the functions  
4 transferred to the department of human services shall be  
5 transferred with the functions to which they relate.

6 All rules, policies, procedures, guidelines, and other  
7 material adopted or developed by the agencies, divisions, or  
8 offices transferred or placed for administrative purposes under  
9 this Act, shall remain in full force and effect until amended or  
10 repealed by the department of human services pursuant to chapter  
11 91, Hawaii Revised Statutes; provided that the amended rules or  
12 any new rules relating directly to homelessness adopted by the  
13 department of human services shall be exempt from the public  
14 notice, public hearing, and gubernatorial approval requirements  
15 for chapter 91.

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

21 The provisions of this section are to be liberally  
22 construed to effectuate its purposes.





1 SECTION 14. All acts passed by the legislature during this  
2 regular session of 2010, whether enacted before or after the  
3 effective date of this Act, shall be amended to conform to this  
4 Act unless such acts specifically provide that this Act is being  
5 amended.

6 SECTION 15. In codifying the new sections added by section  
7 2 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 16. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 17. This Act shall take effect on July 1, 2010.

13

APPROVED this 10 day of MAY, 2010



GOVERNOR OF THE STATE OF HAWAII