



GOV. MSG. NO. 1137

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

April 20, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

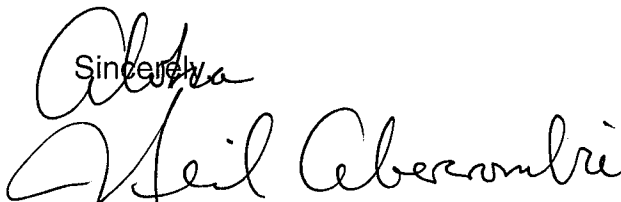
Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 20, 2012, the following bill was signed into law:

HB2458

RELATING TO CONVERSIONS BY NONPROFIT  
CORPORATIONS.

**Act 037 (12)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

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## A BILL FOR AN ACT

RELATING TO CONVERSIONS BY NONPROFIT CORPORATIONS.

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

1 SECTION 1. Section 414D-207, Hawaii Revised Statutes, is  
2 repealed.

3 [~~"§414D-207 Conversions into and from corporations. (a)~~  
4 ~~A domestic corporation may adopt a plan of conversion and~~  
5 ~~convert to a foreign corporation or any other business entity~~  
6 ~~if:~~

7 ~~(1) The board of directors and members of the domestic~~  
8 ~~corporation approve a plan of conversion in the manner~~  
9 ~~prescribed by section 414D-202 and if the conversion~~  
10 ~~is treated as a merger to which the converting entity~~  
11 ~~is a party and not the surviving entity;~~

12 ~~(2) The conversion is permitted by and complies with the~~  
13 ~~laws of the state or country in which the converted~~  
14 ~~entity is to be incorporated, formed, or organized,~~  
15 ~~and the incorporation, formation, or organization of~~  
16 ~~the converted entity complies with those laws;~~

17 ~~(3) At the time the conversion becomes effective, each~~  
18 ~~member of the converting entity, unless otherwise~~

1 ~~agreed to by the member or directors, owns an equity~~  
2 ~~interest or other ownership interest in, and is a~~  
3 ~~shareholder, partner, member, or other owner of, the~~  
4 ~~converted entity;~~

5 ~~(4) The members of the domestic corporation, as a result~~  
6 ~~of the conversion, shall not become personally liable~~  
7 ~~without the members' consent, for the liabilities or~~  
8 ~~obligations of the converted entity; and~~

9 ~~(5) The converted entity is incorporated, formed, or~~  
10 ~~organized as part of or pursuant to the plan of~~  
11 ~~conversion.~~

12 ~~(b) Any foreign corporation or other business entity may~~  
13 ~~adopt a plan of conversion and convert to a domestic corporation~~  
14 ~~if the conversion is permitted by and complies with the laws of~~  
15 ~~the state or country in which the foreign corporation or other~~  
16 ~~business entity is incorporated, formed, or organized.~~

17 ~~(c) A plan of conversion shall set forth:~~

18 ~~(1) The name of the converting entity and the converted~~  
19 ~~entity;~~

20 ~~(2) A statement that the converting entity is continuing~~  
21 ~~its existence in the organizational form of the~~  
22 ~~converted entity;~~

1       ~~(3) A statement describing the organizational form of the~~  
2           ~~converted entity and the state or country under the~~  
3           ~~laws of which the converted entity is to be~~  
4           ~~incorporated, formed, or organized; and~~

5       ~~(4) The manner and basis of converting the shares or other~~  
6           ~~forms of ownership, of the converting entity into~~  
7           ~~shares or other forms of ownership, of the converted~~  
8           ~~entity, or any combination thereof.~~

9       ~~(d) A plan of conversion may set forth any other~~  
10       ~~provisions relating to the conversion that are not prohibited by~~  
11       ~~law, including without limitation the initial bylaws and~~  
12       ~~officers of the converted entity.~~

13       ~~(e) After the conversion of a domestic corporation is~~  
14       ~~approved, and at any time before the conversion becomes~~  
15       ~~effective, the plan of conversion may be abandoned by the~~  
16       ~~domestic corporation in accordance with the procedures set forth~~  
17       ~~in the plan of conversion or, if these procedures are not~~  
18       ~~provided in the plan, in the manner determined by the board of~~  
19       ~~directors. If articles of conversion have been filed with the~~  
20       ~~department director but the conversion has not become effective,~~  
21       ~~the conversion may be abandoned if a statement, executed on~~  
22       ~~behalf of the converting entity by an officer or other duly~~

1 ~~authorized representative and stating that the plan of~~  
2 ~~conversion has been abandoned in accordance with applicable law,~~  
3 ~~is filed with the department director prior to the effective~~  
4 ~~date of the conversion. If the department director finds that~~  
5 ~~the statement satisfies the requirements provided by law, the~~  
6 ~~department director, after all fees have been paid, shall:~~

7 ~~(1) Stamp the statement and include the date of the~~  
8 ~~filing,~~

9 ~~(2) File the document in the department director's office,~~  
10 ~~and~~

11 ~~(3) Issue a certificate of abandonment to the converting~~  
12 ~~entity or its authorized representatives.~~

13 ~~(f) Once the statement provided in subsection (e) is filed~~  
14 ~~with the department director, the conversion shall be deemed~~  
15 ~~abandoned and shall not be effective."]~~

16 SECTION 2. Section 414D-208, Hawaii Revised Statutes, is  
17 repealed.

18 [~~"§414D-208 Articles of conversion. (a) If a plan of~~  
19 ~~conversion has been approved in accordance with section 414D-202~~  
20 ~~and has not been abandoned, articles of conversion shall be~~  
21 ~~executed by an officer or other duly authorized representative~~  
22 ~~of the converting entity and shall set forth.~~

- 1       ~~(1) A statement certifying the following:~~
- 2               ~~(A) The name, form of entity, and state or country of~~  
3               ~~incorporation, formation, or organization of the~~  
4               ~~converting and converted entities;~~
- 5               ~~(B) That a plan of conversion has been approved;~~
- 6               ~~(C) That an executed plan of conversion is on file at~~  
7               ~~the principal place of business of the~~  
8               ~~converting entity and stating the address~~  
9               ~~thereof; and~~
- 10              ~~(D) That a copy of the plan of conversion shall be~~  
11              ~~furnished by the converting entity prior to the~~  
12              ~~conversion or by the converted entity after the~~  
13              ~~conversion on written request and without cost,~~  
14              ~~to any member or director, as the case may be, of~~  
15              ~~the converting entity or the converted entity;~~  
16              ~~and~~
- 17       ~~(2) If the converting entity is a domestic or foreign~~  
18       ~~corporation or other entity, a statement that the~~  
19       ~~approval of the plan of conversion was duly authorized~~  
20       ~~and complied with the laws under which it was~~  
21       ~~incorporated, formed, or organized.~~

1       ~~(b) The articles of conversion shall be delivered to the~~  
2 ~~department director. The converted entity, if a domestic~~  
3 ~~corporation, domestic professional corporation, domestic~~  
4 ~~nonprofit corporation, domestic general partnership, domestic~~  
5 ~~limited partnership, or domestic limited liability company shall~~  
6 ~~attach a copy of its respective registration documents with the~~  
7 ~~articles of conversion.~~

8       ~~(c) If the department director finds that the articles of~~  
9 ~~conversion satisfy the requirements provided by law, and that~~  
10 ~~all required documents are filed, the department director, after~~  
11 ~~all fees have been paid shall.~~

12       ~~(1) Stamp the articles of conversion and include the date~~  
13               ~~of the filing,~~

14       ~~(2) File the document in the department director's office,~~  
15               ~~and~~

16       ~~(3) Issue a certificate of conversion to the converted~~  
17               ~~entity or its authorized representatives." ]~~

18       SECTION 3. Section 414D-210, Hawaii Revised Statutes, is  
19 repealed.

20       ~~["§414D-210 Effect of conversion. When a conversion~~  
21 ~~becomes effective.~~

- 1       ~~(1) The converting entity shall continue to exist without~~  
2               ~~interruption, but in the organizational form of the~~  
3               ~~converted entity;~~
- 4       ~~(2) All rights, title, and interest in all real estate and~~  
5               ~~other property owned by the converting entity shall~~  
6               ~~automatically be owned by the converted entity without~~  
7               ~~reversion or impairment, subject to any existing liens~~  
8               ~~or other encumbrances;~~
- 9       ~~(3) All liabilities and obligations of the converting~~  
10              ~~entity shall automatically be liabilities and~~  
11              ~~obligations of the converted entity without impairment~~  
12              ~~or diminution due to the conversion;~~
- 13       ~~(4) The rights of creditors of the converting entity shall~~  
14              ~~continue against the converted entity and shall not be~~  
15              ~~impaired or extinguished by the conversion;~~
- 16       ~~(5) Any action or proceeding pending by or against the~~  
17              ~~converting entity may be continued by or against the~~  
18              ~~converted entity without any need for substitution of~~  
19              ~~parties;~~
- 20       ~~(6) The shares and other forms of ownership in the~~  
21              ~~converting entity that are to be converted into~~  
22              ~~shares, or other forms of ownership, in the converted~~



1           ~~entity as provided in the plan of conversion shall be~~  
2           ~~converted;~~

3           ~~(7) A shareholder, partner, member, or other owner of the~~  
4           ~~converted entity shall be liable for the debts and~~  
5           ~~obligations of the converting entity that existed~~  
6           ~~before the conversion takes effect; provided that the~~  
7           ~~shareholder, partner, member, or other owner:~~

8           ~~(A) Agreed in writing to be liable for the debts or~~  
9           ~~obligations;~~

10           ~~(B) Was liable under applicable law prior to the~~  
11           ~~effective date of the conversion for the debts or~~  
12           ~~obligations; or~~

13           ~~(C) Becomes liable under applicable law for existing~~  
14           ~~debts and obligations of the converted entity by~~  
15           ~~becoming a shareholder, partner, member, or other~~  
16           ~~owner of the converted entity.~~

17           ~~(8) If the converted entity is a foreign corporation or~~  
18           ~~other business entity incorporated, formed, or~~  
19           ~~organized under a law other than the law of this~~  
20           ~~State, the converted entity shall file with the~~  
21           ~~director:~~

- 1           ~~(A) An agreement that the converted entity may be~~
- 2                   ~~served with process in this State in any action~~
- 3                   ~~or proceeding for the enforcement of any~~
- 4                   ~~liability or obligation of the converting~~
- 5                   ~~domestic corporation;~~
- 6           ~~(B) An irrevocable appointment of a resident of this~~
- 7                   ~~State, including the street address, as its agent~~
- 8                   ~~to accept service of process in any such~~
- 9                   ~~proceeding; and~~
- 10          ~~(C) An agreement for the enforcement, as provided in~~
- 11                   ~~this chapter, of the right of any dissenting~~
- 12                   ~~shareholder, partner, member, or other owner to~~
- 13                   ~~receive payment for their interest against the~~
- 14                   ~~converted entity." ]~~

15           SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken.

17           SECTION 5. This Act shall take effect upon its approval.

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19  
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APPROVED this 20 day of APR , 2012

  
GOVERNOR OF THE STATE OF HAWAII