

GOV. MSG. NO. 1345

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 06, 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 July 06, 2012, the following bill was signed into law:

SB2236 HD2 CD1

RELATING TO INFORMATION TECHNOLOGY.
Act 242 (12)

Coloka
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

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A BILL FOR AN ACT

RELATING TO INFORMATION TECHNOLOGY.

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

1 PART I

2 SECTION 1. Chapter 39A, part VI, Hawaii Revised Statutes,
3 is amended by amending its title to read as follows:

4 "Part VI. ASSISTING UTILITIES SERVING THE GENERAL PUBLIC
5 IN PROVIDING ELECTRIC ENERGY [OR], GAS, OR TELECOMMUNICATIONS"

6 SECTION 2. Section 39A-191, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By adding four new definitions to read:

9 "Project" means any energy project or telecommunications
10 project.

11 "Telecommunications carrier" or "telecommunications common
12 carrier" has the meaning defined by section 269-1.

13 "Telecommunications project" means any facilities for each
14 single project or multiproject program for the provision of
15 telecommunications service of a project party that is a
16 telecommunications carrier or a telecommunications common
17 carrier.



1 "Telecommunications service" has the meaning defined by
2 section 269-1."

3 2. By amending the definitions of "project agreement" and
4 "project party" to read:

5 "Project agreement" means any agreement entered into under
6 this part by the department with the project party for the
7 financing from the proceeds of special purpose revenue bonds of
8 a telecommunications project or an energy project, including
9 without limitation any loan agreement.

10 "Project party" means an electric or gas utility serving
11 the general public and [~~which~~] that is regulated by the public
12 utilities commission under chapter 269[-], or a
13 telecommunications carrier or telecommunications common carrier,
14 whether or not subject to regulation by the public utilities
15 commission under chapter 269."

16 SECTION 3. Section 39A-192, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§39A-192 Department powers as to [energy] projects.** In
19 addition to powers that it may now have, the department shall
20 have all powers necessary or convenient to accomplish the
21 purposes of this part. The powers of the department include but
22 are not limited to the following:



- 1 (1) Notwithstanding and without compliance with section
2 103-7 and chapter 103D, but with the approval of the
3 governor, to:
- 4 (A) Enter into and carry out a project agreement, or
5 an amendment or supplement to an existing project
6 agreement, with a project party; and
- 7 (B) Enter into and carry out any agreement, whereby
8 the obligation of a project party under a project
9 agreement will be unconditionally guaranteed by a
10 person other than a project party;
- 11 (2) To issue special purpose revenue bonds pursuant to and
12 in accordance with this part;
- 13 (3) To lend the proceeds of the special purpose revenue
14 bonds issued for an ~~[energy]~~ project to the project
15 party for use and application by the project party for
16 the acquisition, purchase, construction,
17 reconstruction, improvement, betterment, or extension
18 of ~~[an energy]~~ a project;
- 19 (4) As security for the payment of the principal of and
20 interest on the special purpose revenue bonds issued
21 for ~~[an energy]~~ a project, to:



- 1 (A) Pledge, assign, hypothecate, or otherwise
2 encumber all or any part of the revenues and
3 receipts derived or to be derived by the
4 department under the project agreement for the
5 [energy] project for which the special purpose
6 revenue bonds are issued;
- 7 (B) Pledge and assign the interest and rights of the
8 department under the project agreement or other
9 agreement with respect to the project or the
10 special purpose revenue bonds;
- 11 (C) Pledge and assign any bond, debenture, note, or
12 other evidence of indebtedness received by the
13 department with respect to the [energy] project;
14 or
- 15 (D) Any combination of the foregoing;
- 16 (5) To extend or renew any project agreement or any other
17 agreement related thereto; provided that any renewal
18 or extension shall be subject to the approval of the
19 governor unless made in accordance with provisions for
20 the extension or renewal contained in a project
21 agreement or related agreement theretofore approved by
22 the governor; and



1 (6) To do any and all things necessary or convenient to
2 carry out its purposes and exercise the powers given
3 and granted in this part.

4 When the department finances [~~an energy~~] a project by the
5 issuance of special purpose revenue bonds as contemplated by
6 this part, the State shall not exercise the power of eminent
7 domain to acquire [~~an energy~~] a project or any part thereof for
8 lease or transfer to a project party, nor shall the State
9 operate a project on behalf of a project party."

10 SECTION 4. Section 39A-193, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§39A-193 Compliance with state and local law.** The
13 financing of any [~~energy~~] project under this part shall not
14 relieve any project party or other user of such [~~energy~~] project
15 from the laws, ordinances, [~~and~~] rules, and regulations of the
16 State and county or any departments or boards thereof with
17 respect to the construction, operation, and maintenance of
18 [~~energy~~] projects, compliance with master plans or zoning laws
19 or regulations, obtaining of building permits, compliance with
20 building and health codes and other laws, ordinances, or rules
21 and regulations of similar nature pertaining to the [~~energy~~]
22 project, and such laws shall be applicable to such party or such



1 other user to the same extent they would be if the costs of the
2 [energy] project were directly financed by the project party."

3 SECTION 5. Section 39A-194, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The department shall not enter into any project
6 agreement with respect to any [energy] project unless the
7 department shall determine that:

8 (1) The project party is a responsible party, whether by
9 reason of economic assets or experience in the type of
10 enterprise to be undertaken through the project, or
11 otherwise; or

12 (2) The obligations of the project party under the project
13 agreement will be unconditionally guaranteed by a
14 person who is a responsible party, whether by reason
15 of economic assets or experience in the type of
16 enterprise to be undertaken through the [energy]
17 project, or otherwise."

18 SECTION 6. Section 39A-195, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§39A-195 Project agreement.** No special purpose revenue
21 bonds shall be issued unless at the time of issuance the
22 department shall have already entered into a project agreement



1 with respect to the [energy] project for the financing of which
2 the bonds are to be issued. Any project agreement entered into
3 by the department shall contain provisions unconditionally
4 obligating the project party:

5 (1) To pay to the department during the period or term of
6 the project agreement, exclusive of any renewal or
7 extension thereof and whether or not the [energy]
8 project is used or occupied by the project party, the
9 sum or sums, at the time or times, and in the amount
10 or amounts that shall be sufficient:

11 (A) To pay the principal and interest on all special
12 purpose revenue bonds issued to finance the
13 [energy] project as the bonds become due,
14 including any premium payable upon any required
15 redemption of the bonds;

16 (B) To establish or maintain a reserve, if any, as
17 may be required by the instrument authorizing or
18 securing the special purpose revenue bonds;

19 (C) To pay all fees and expenses (including the fees
20 and expenses of the paying agents and trustees)
21 assessed in connection with the special purpose
22 revenue bonds; and



1 (D) To pay the fees, costs, and expenses (direct or
2 indirect) assessed by the department in
3 administering the bonds or in carrying out the
4 project agreement, as determined by the
5 department; and

6 (2) To operate, maintain, and repair the [energy] project
7 as long as it is used in the business of local
8 furnishing of electric energy or gas, or in the
9 business of providing telecommunications service, and
10 to pay all costs of the operation, maintenance, and
11 repair.

12 Moneys received by the department pursuant to paragraph (1) (D)
13 shall not be, nor be deemed to be, revenues of the [energy]
14 project and shall be paid into the general fund of the State."

15 SECTION 7. Section 39A-196, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§39A-196 Issuance of special purpose revenue bonds to**
18 **finance [energy] projects.** In addition to the other powers
19 [~~which~~] that it may otherwise have, the department may issue
20 special purpose revenue bonds to finance, in whole or in part,
21 the costs of [~~an energy~~] a project. All bonds issued under this
22 part are special purpose revenue bonds and the provisions of



1 part III of chapter 39 shall not apply thereto. All special
2 purpose revenue bonds issued pursuant to this part shall be
3 issued in the name of the department and not in the name of the
4 State.

5 The department, in determining the cost of any [energy]
6 project, may also include the following:

- 7 (1) Financing charges, fees, and expenses of any trustee
8 and paying agents for special purpose revenue bonds
9 issued to pay the cost of such [energy] project;
- 10 (2) Interest on such bonds and the expenses of the State
11 in connection with such bonds and the [energy] project
12 to be financed from the proceeds of such bonds
13 accruing or incurred prior to and during the period of
14 construction and for not exceeding six months
15 thereafter;
- 16 (3) Amounts necessary to establish or increase reserves
17 for the special purpose revenue bonds;
- 18 (4) The cost of plans, specifications, studies, surveys,
19 and estimates of cost and of revenues;
- 20 (5) Other expenses incidental to determining the
21 feasibility or practicability of the [energy] project;
- 22 (6) Administration expenses;



1 (7) Interest cost incurred by the project party with
2 respect to the [energy] project prior to the issuance
3 of the special purpose revenue bonds; and

4 (8) Such other costs, commissions, and expenses incidental
5 to the construction, acquisition, reconstruction,
6 renovation, rehabilitation, improvement, betterment,
7 operation, or extension of the [energy] project, the
8 financing thereof, placing of the [energy] project in
9 operation, and the issuance of the special purpose
10 revenue bonds, whether incurred prior to or after the
11 issuance of such bonds.

12 The legislature finds and determines that the exercise of
13 the powers vested in the department by this part constitutes
14 assistance to utilities serving the general public and that the
15 issuance of special purpose revenue bonds to finance facilities
16 of, or for, or to loan the proceeds of such bonds to assist,
17 project parties, is in the public interest."

18 SECTION 8. Section 39A-197, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Special purpose revenue bonds for each single project
21 or multiproject program for each type of utility serving the
22 general public shall be authorized by a separate act of the



1 legislature, by an affirmative vote of two-thirds of the members
2 to which each house is entitled; provided that the legislature
3 shall find that the issuance of such bonds is in the public
4 interest; provided further that no authorization shall be made
5 for a period exceeding five years of its enactment. Any such
6 special purpose revenue bond authorization, or any portion of
7 such special purpose revenue bond authorization, [~~which~~] that
8 has not been issued at the close of the fiscal year for the
9 period for which the authorization is made, shall lapse.

10 Special purpose revenue bonds issued pursuant to this part may
11 be in one or more series for each [energy] project. The special
12 purpose revenue bonds of each issue shall be dated, shall bear
13 interest at such rate or rates, shall mature at such time or
14 times not exceeding thirty years from their date or dates, shall
15 have such rank or priority and may be made redeemable before
16 maturity at the option of the department, at such price or
17 prices and under such terms and conditions, all as may be
18 determined by the department. The department shall determine
19 the form of the special purpose revenue bonds, including any
20 interest coupons to be attached thereto, and the manner of
21 execution of the special purpose revenue bonds, and shall fix
22 the denomination or denominations of the special purpose revenue



1 bonds and the place or places of payment of principal and
2 interest, which may be at any bank or trust company within or
3 without the State. The special purpose revenue bonds may be
4 issued in coupon or in registered form, or both, as the
5 department may determine, and provisions may be made for the
6 registration of any coupon bonds as to principal alone and also
7 as to both principal and interest, and for the reconversion into
8 coupon bonds of any bonds registered as to both principal and
9 interest. The department may sell special purpose revenue bonds
10 in such manner, either at public or at private sale, and for
11 such price as it may determine."

12 SECTION 9. Section 39A-199, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§39A-199 Powers with respect to and security for special**
15 **purpose revenue bonds.** [~~In order to~~] To secure the payment of
16 any of the special purpose revenue bonds issued pursuant to this
17 part, and interest thereon, or in connection with such bonds,
18 the department shall have the power as to such bonds:

19 (1) To pledge all or any part of the revenues derived by
20 the department from the project agreement to the
21 punctual payment of special purpose revenue bonds
22 issued for the [energy] project financed from proceeds



1 thereof, and interest thereon, and to covenant against
2 thereafter pledging any such revenues or receipts to
3 any other bonds or any other obligations of the
4 department for any other purpose, except as otherwise
5 stated in the law providing for the issuance of
6 additional special purpose revenue bonds to be equally
7 and ratably secured by a lien upon such revenues.

8 (2) To pledge and assign the interest and rights of the
9 department under the project agreement and other
10 agreements related thereto and the rights, duties, and
11 obligations of the department thereunder, including
12 the right to receive revenues thereunder.

13 (3) To covenant as to the use and disposition of the
14 proceeds from the sale of such bonds.

15 (4) To covenant to set aside or pay over reserves and
16 sinking funds for such bonds and as to the disposition
17 thereof.

18 (5) To covenant and prescribe as to what happenings or
19 occurrences shall constitute "events of default" and
20 the terms and conditions upon which any or all of such
21 bonds shall become or may be declared due before



1 maturity and as to the terms and conditions upon which
2 such declaration and its consequences may be waived.

3 (6) To covenant as to the rights, liabilities, powers, and
4 duties arising upon the breach by it of any covenant,
5 conditions, or obligation.

6 (7) To designate a national or state bank or trust company
7 within or without the State, incorporated in the
8 United States, to serve as trustee for the holders of
9 the special purpose revenue bonds and to enter into a
10 trust indenture or trust agreement or indenture of
11 mortgage with such trustee. The trustee may be
12 authorized by the department to receive and receipt
13 for, hold, and administer the proceeds of the special
14 purpose revenue bonds issued for the [energy] project
15 and to apply the proceeds to the purposes for which
16 such bonds are issued, or to receive and receipt for,
17 hold, and administer the revenues derived by the
18 department under the project agreement and to apply
19 such revenues to the payment of the principal and
20 interest on such bonds, or both, and any excess
21 revenues to the payment of expenses incurred by the
22 State in administering such bonds or in carrying out



1 the project agreement. In the event that such trustee
2 shall be appointed, any trust indenture or trust
3 agreement or indenture of mortgage entered into by the
4 department with the trustee may contain whatever
5 covenants and provisions as may be necessary or
6 convenient or desirable [~~in order~~] to secure such
7 bonds. The department may pledge and assign to the
8 trustee the interest of the department under the
9 project agreement and other agreements related thereto
10 and the rights, duties, and obligations of the
11 department thereunder, including the right to receive
12 revenues thereunder. The department may appoint the
13 trustee to serve as fiscal agent for the payment of
14 the principal and interest, and for the purchase,
15 registration, transfer, exchange, and redemption of
16 the special purpose revenue bonds, and may authorize
17 and empower the trustee to perform such functions with
18 respect to such payment, purchase, registration,
19 transfer, exchange, and redemption, as the department
20 may deem necessary, advisable, or expedient, including
21 without limitation, the holding of the special purpose
22 revenue bonds and coupons [~~which~~] that have been paid



1 and the supervision of the destruction thereof in
2 accordance with law.

3 (8) To execute all instruments necessary or convenient in
4 the exercise of the powers herein granted or in the
5 performance of its covenants and duties.

6 (9) To make such covenants and do any and all acts and
7 things as may be necessary or convenient or desirable
8 in order to secure such bonds, notwithstanding that
9 such covenants, acts, or things may not be enumerated
10 herein; it being the purpose hereof to give the
11 department power to do all things in the issuance of
12 such bonds and for their security that may be
13 consistent with the Constitution of the State of
14 Hawaii."

15 SECTION 10. Section 39A-203, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§39A-203 Use of revenues derived from project agreement.**

18 The department shall have the right to appropriate, apply, or
19 expend the revenues derived from the project agreement for [~~an~~
20 energy] a project for the following purposes:

21 (1) To pay when due all special purpose revenue bonds and
22 interest thereon, for the payment of which the



1 revenues are or have been pledged, charged, or
 2 otherwise encumbered, including reserves therefor; and
 3 (2) To the extent not paid by the project party to provide
 4 for all expenses of administration, operation, and
 5 maintenance of the [energy] project, including
 6 reserves therefor.

7 Unless and until adequate provision has been made for the
 8 foregoing purposes, the department shall not transfer the
 9 revenues derived from the project agreement to the general fund
 10 of the State."

11 SECTION 11. Section 39A-205, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 **"§39A-205 Exemption from taxation of department property.**
 14 All revenues derived by the department from any [energy] project
 15 or under the project agreement pertaining thereto shall be
 16 exempt from all state and county taxation. Any right, title,
 17 and interest of the department in any [energy] project shall
 18 also be exempt from all state and county taxation. Except as
 19 otherwise provided by law, the interest of the project party or
 20 user of such project in [~~an energy~~] a project or under the
 21 project agreement or related agreement shall not be exempt from
 22 taxation to a greater extent than it would be if the costs of



1 the [energy] project were directly financed by the project party
2 or other user."

3 SECTION 12. Section 39A-206, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§39A-206 Refunding special purpose revenue bonds.** The
6 legislature, by act enacted by an affirmative vote of two-thirds
7 of the members to which each house is entitled, may authorize
8 the issuance of refunding special purpose revenue bonds for the
9 purpose of refunding any special purpose revenue bonds then
10 outstanding and issued under this part, whether or not such
11 outstanding special purpose revenue bonds have matured or are
12 then subject to redemption. The legislature may provide, by act
13 enacted by an affirmative vote of two-thirds of the members to
14 which each house is entitled, for the issuance of a single issue
15 of special purpose revenue bonds for the combined purposes of
16 [~~financing~~]:

- 17 (1) Financing the cost of [~~an energy~~] a project or
18 improvement or expansion thereof [~~7~~]; and
19 (2) [~~refunding~~] Refunding special purpose revenue bonds
20 [~~which~~] that shall theretofore have been issued under
21 this part and shall then be outstanding, whether or



1 not such outstanding special purpose revenue bonds
2 have matured or are then subject to redemption.
3 Nothing in this section shall require or be deemed to require
4 the department to elect to redeem or prepay special purpose
5 revenue bonds being refunded, or to redeem or prepay special
6 purpose revenue bonds being refunded [~~which~~] that were issued in
7 the form customarily known as term bonds in accordance with any
8 sinking fund installment schedule specified in any law
9 authorizing the issuance thereof, or, in the event the
10 department elects to redeem or prepay any such bonds, to redeem
11 or prepay as of any particular date or dates. The issuance of
12 such special purpose revenue bonds, the maturities and other
13 details thereof, the rights and remedies of the holders thereof,
14 and the rights, powers, privileges, duties, and obligations of
15 the department with respect to the bonds, shall be governed by
16 the foregoing provisions of this part insofar as the provisions
17 may be applicable."

18 SECTION 13. Section 39A-208, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) For the purpose of public disclosure, the public
21 utilities commission, in every rate proceeding involving a
22 public utility that is regulated by the public utilities



1 commission under chapter 269 and which has utilized special
2 purpose revenue bonds, shall make estimates of [~~the (A)~~]:

3 (1) The probable amounts [~~which~~] that would have been
4 incurred by the utility as capital costs if financing
5 by means other than special purpose revenue bonds were
6 utilized[~~, (B) the~~];

7 (2) The amount the utility pays for such bonds, including
8 the principal and sinking fund requirements, the
9 interest, and other expenses appropriately
10 attributable to special purpose revenue bond
11 financing[~~,~~]; and [~~(C) the~~]

12 (3) The difference between [~~(A)~~] (1) and [~~(B)~~] (2), or
13 the estimated savings realized by the consumers of the
14 utility services."

15 PART II

16 SECTION 14. The legislature finds that the development of
17 broadband infrastructure to enable access to affordable ultra
18 high-speed internet is essential to build a vibrant and
19 sustainable economy and workforce in Hawaii and improve the
20 quality of life for residents. The legislature further finds
21 that the utilization of abandoned water mains in conjunction
22 with Act 151, Session Laws of Hawaii 2011, provides a unique



1 opportunity to achieve the State's Hawaii broadband initiative
2 goals in a timely and cost effective manner. Underground cables
3 are protected from weather-related risks and accident damage,
4 and preserve Hawaii's uncluttered environment. The use of
5 abandoned water mains is a proven way to facilitate cost
6 efficient and rapid deployment of buried fiber optic
7 infrastructure, while minimizing the unavoidable traffic impacts
8 that plague traditional underground construction methods,
9 especially in the urban core. For these reasons, the
10 legislature finds and declares that the issuance of special
11 purpose revenue bonds under this Act is in the public interest
12 and for the public health, safety, and general welfare.

13 SECTION 15. Pursuant to part VI, chapter 39A, Hawaii
14 Revised Statutes, the department of budget and finance, with the
15 approval of the governor, is authorized to issue special purpose
16 revenue bonds in a total amount not to exceed \$100,000,000, in
17 one or more series, for the purpose of assisting Clearcom, Inc.,
18 or a partnership headed by Clearcom, Inc., with the planning,
19 permitting, designing, constructing, equipping, and operating of
20 broadband infrastructure at locations throughout the State.

21 SECTION 16. The special purpose revenue bonds and the
22 refunding special purpose revenue bonds issued under this Act



1 shall be issued pursuant to part VI, chapter 39A, Hawaii Revised
2 Statutes, relating to the power to issue special purpose revenue
3 bonds to assist utilities serving the general public in
4 providing electric energy, gas, or telecommunications.

5 SECTION 17. The department of budget and finance is
6 authorized, from time to time, including times subsequent to
7 June 30, 2017, to issue special purpose revenue bonds in
8 whatever principal amounts the department shall determine to be
9 necessary to refund the special purpose revenue bonds authorized
10 in section 15 and to refund special purpose revenue bonds
11 authorized in this section, regardless of whether the
12 outstanding special purpose revenue bonds or refunding special
13 purpose revenue bonds have matured or are the subject of
14 redemption or whether the refunding special purpose revenue
15 bonds shall be bonds for the multi-project programs described in
16 section 15. In making this determination, the department shall
17 comply with federal law relating to the exemption from federal
18 income taxation of the interest on bonds of the nature
19 authorized by this section.

20 SECTION 18. The special purpose revenue bonds issued under
21 this Act may be issued in one or more series for a single
22 project, multiple projects, a single-project party, or multiple-



1 project parties pursuant to the authority of this Act or the
 2 combined authority of this Act and any one or more other
 3 separate acts of the legislature pursuant to part VI, chapter
 4 39A, Hawaii Revised Statutes, and the department of budget and
 5 finance may combine a single issue of special purpose revenue
 6 bonds, in one or more series, two or more proposed issues of
 7 special purpose revenue bonds to be issued pursuant to part VI,
 8 chapter 39A, Hawaii Revised Statutes, separately authorized, in
 9 the total amount not to exceed the aggregate of the proposed
 10 separate issues of special purpose revenue bonds.

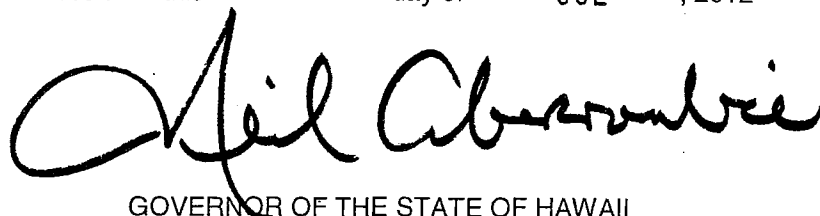
11 SECTION 19. The authorization to issue special purpose
 12 revenue bonds under this Act shall lapse on June 30, 2017.

13 PART III

14 SECTION 20. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 21. This Act shall take effect on July 1, 2012.

APPROVED this 6 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII