

ACT 89

S.B. NO. 910

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:

SECTION 1. The purpose of this Act is to transfer the functions and duties of the homeless programs branch of the Hawaii public housing authority, an agency attached to the department of human services, to the benefit, employment, and support services division of the department of human services. The benefit, employment, and support services division is the appropriate place within the department of human services to embed homeless programs since

the division offers programs that give homeless individuals the tools to attain self-sufficiency, such as employment and job training, child care, and general assistance. This realignment will improve the department of human services' coordination and delivery of homeless services to Hawaii's homeless population, both individuals and families.

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

“PART . HOMELESS PROGRAMS

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

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

“Emergency shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for a specified period of time.

“Homeless” means:

- (1) An individual or family who lacks a fixed, regular, and adequate night-time residence; or
- (2) An individual or family who has a primary night-time residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

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

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

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

“Provider agency” means an organization, including its governing board, officers, employees, contractors, or agents, contracted by the department to provide labor and services to any homeless facility or any other program for the homeless authorized by this part that is:

- (1) A for-profit organization incorporated under the laws of the State; or
- (2) A nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; that has a governing board whose members have no material conflict of interest and who serve without compensation, and that has adopted bylaws or policies that describe the manner in which business is conducted, includ-

ing policies that relate to nepotism and management of potential conflict of interest situations.

“Transitional shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to twenty-four months, pursuant to rule.

§346-B Duties. (a) The department of human services shall administer and operate homeless facilities and any other program for the homeless authorized by this part; establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this part.

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

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

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

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

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

§346-D Contract or conveyance to the department. Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding lands and improvements may contract or otherwise convey at a nominal consideration, by direct negotiation and without recourse to public auction, the land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to the department or its designee. The land and improvements shall be used by the department or its designee for homeless facilities or for any other program for the homeless authorized by this part.

§346-E Program administration. To the extent that appropriations are made available, the department may contract with a provider agency to administer homeless facilities or any other program for the homeless created by this

part. The selection of provider agencies to administer homeless facilities or any other program for the homeless authorized by this part shall not be subject to chapters 42F, 102, and 103. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule.

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

§346-F Time limits. To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this part to eligible homeless families and homeless individuals not later than three days after a vacancy occurs, or such time as is set by rule, which shall not be later than seven days after they apply and qualify for the shelter or other program assistance. These time limits may be waived at the discretion of the department for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter that the department deems major or extensive.

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

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

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

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

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

The enforcement of a writ of possession shall be effected either by an officer appointed by the department, who shall have all of the powers of a police officer for all action in connection with the enforcement of the writ, or any other law enforcement officer of the State or any county, whose duty it shall be to enforce the writ. The person enforcing the writ shall remove all persons from the premises and put the department or its designee, or the provider agency designated by the department, in full possession thereof.

Upon eviction, the household goods and personal effects of the person against whom the writ is entered, and those of any persons using the premises

incident to the person's holding, may be removed from the premises immediately and sold or otherwise disposed of by the department or its designee or the provider agency. The department or its designee or the provider agency shall have a lien on the property so removed for the expenses incurred in moving the property.

(c) Any person who enters or remains unlawfully in or upon the premises or living quarters of any homeless facility or any other program for the homeless authorized by this part, after reasonable warning or request to leave by that provider agency's agents, the department or its designee, or a police officer, shall be guilty of a misdemeanor; provided that the offense in this subsection shall be in addition to any other applicable offense in the Hawaii Penal Code. A warning or request shall only be issued if the person has engaged in unlawful conduct or has violated house rules and regulations. The house rules shall be reasonable and a copy shall be provided to each tenant or participant. The warning or request shall supersede any invitation by a tenant or participant at the shelter, facility, or program to that person to visit the premises or living quarters.

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

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

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

§346-J Emergency or transitional shelter volunteers. (a) For the purposes of this section, "emergency or transitional shelter volunteer" means an individual who:

- (1) Is a tenant at an emergency or transitional shelter administered pursuant to this part;
- (2) Is not an employee of the provider agency operating or managing the shelter;
- (3) Is under the direction of the provider agency operating or managing the shelter and not the department or the State; and
- (4) Provides up to eighty hours of volunteer labor or services per month to the provider agency operating or managing the shelter, notwithstanding payment of stipends or credits for the labor and services.

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

(c) In addition to any exemptions granted to nonpaid labor, emergency or transitional shelter volunteers who acknowledge in writing that they are emergency or transitional shelter volunteers shall not be construed to be in the employ of the provider agency operating or managing the shelter. The volunteers' labor and services provided to the provider agency operating or managing the shelter shall not be construed to constitute employment, and the volunteers shall not be construed to be employees of the provider agency operating or managing the shelter, under any labor law.

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

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

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the department to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.

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

§346-M Construction of part. If there is any conflict between this part and any other law, this part shall control.

§346-N Homeless shelter stipends. (a) The stipend limits per shelter unit of zero bedrooms shall be adjusted by the department annually on the first day of July pursuant to standards established by rule, which may consider changes in the cost of operating homeless facilities, the fair market rents, the consumer price index, or other relevant factors. A "shelter unit of zero bedrooms" means a living unit that is a studio unit or a single-room occupancy unit. The homeless shelter stipend at transitional shelters for larger shelter units shall be proportional to the difference in unit size.

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

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

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

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

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

§346-P Additional powers. The powers conferred upon the department by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities conferred.”

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

“§46-1.5 General powers and limitation of the counties. Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government that shall establish the county executive, administrative, and legislative structure and organization, including but not limited to the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property;
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law;
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer;
- (5) Each county shall have the power to:
 - (A) Maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters;
 - (B) Remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of

the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense;

- (C) Construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded; and
 - (D) Enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016);
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;
 - (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law;
 - (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;
 - (9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;
 - (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;
 - (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity;
 - (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots. In connection with these powers, each county may impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the property owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property;
 - (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State;

- (14) Each county shall have the power to:
- (A) Make and enforce within the limits of the county all necessary ordinances covering all:
 - (i) Local police matters;
 - (ii) Matters of sanitation;
 - (iii) Matters of inspection of buildings;
 - (iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and
 - (v) Matters of the collection and disposition of rubbish and garbage;
 - (B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part of chapter [356D,] 346 for all matters under this paragraph;
 - (C) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and
 - (D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law;
- (15) Each county shall have the power to provide public pounds; to regulate the impounding of stray animals and fowl, and their disposition; and to provide for the appointment, powers, duties, and fees of animal control officers;
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that:
- (A) Any property held for school purposes may not be disposed of without the consent of the superintendent of education;
 - (B) No property bordering the ocean shall be sold or otherwise disposed of; and
 - (C) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes;
- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State;
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of:
- (A) Community promotion and public celebrations;
 - (B) The entertainment of distinguished persons as may from time to time visit the county;
 - (C) The entertainment of other distinguished persons, as well as, public officials when deemed to be in the best interest of the community; and
 - (D) The rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance;

- (19) Each county shall have the power to:
 - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings, and manage, regulate, and control the same;
 - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephone, and telecommunications service to the county;
 - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways, and for flushing the sewers; and
 - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways;
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance;
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster;
- (22) Each county shall have the power to sue and be sued in its corporate name;
- (23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same;
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court;
- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and

sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

- (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportunity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances;

- (D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case shall be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider:
 - (i) The nature and egregiousness of the violation;
 - (ii) The duration of the violation;
 - (iii) The number of recurring and other similar violations;
 - (iv) Any effort taken by the violator to correct the violation;
 - (v) The degree of involvement in causing or continuing the violation;
 - (vi) Reasons for any delay in the completion of the appeal; and
 - (vii) Other extenuating circumstances.

The civil fine that is imposed by administrative order after this review is completed and the violation is corrected shall be subject to judicial review, notwithstanding any provisions for administrative review in county charters;
 - (E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings;
 - (F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose the civil fine;
- (25) Any law to the contrary notwithstanding, any county mayor, by executive order, may exempt [~~by executive order~~] donors, provider agencies, homeless facilities, and any other program for the homeless under part of chapter ~~[356D]~~ 346 from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph;
 - (26) Any county may establish a captive insurance company pursuant to article 19, chapter 431; and
 - (27) Each county shall have the power to enact and enforce ordinances regulating towing operations."

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

- "(a) This chapter shall not apply to the following persons:
 - (1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;

- (2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of the societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part [VII] ___ of chapter [356D;] 346;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitarium;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and
 - (C) As used in this paragraph, "section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- (8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
- (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and

- (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.”

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

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

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or program licensed by the department of education;
- (4) A program that provides exclusively for a specialized training or skill development for children, including but not limited to programs providing activities such as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multiservice organization or community association, duly incorporated under the laws of the State that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
- (6) Programs for children four years of age and older that operate for no more than two consecutive calendar weeks in a three-month period;
- (7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part [VII of chapter 356D;] ___;
- (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
- (9) Child care programs for children five years of age and older conducted by counties pursuant to section 302A-408; provided that each county adopts rules for its programs;
- (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household; and
- (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption.”

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

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

- (1) To any individual who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesperson with reference to the real estate; provided that the term “owner” as used in this paragraph shall not include any individual engaged in the business of real estate development or brokerage or include an individual who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided further that the term individual “acting under power of attorney” as used in this paragraph shall not include

any individual engaged in the business of real estate development or brokerage or any individual who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;

- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any individual who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the individual is the custodian or caretaker;
- (4) To any person who manages, rents, or operates a hotel; or
- (5) To any provider agency owning, leasing, operating, or managing a homeless facility or any other program for the homeless authorized under part [VH] __ of chapter [356D:] 346.”

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

“(d) This chapter shall not apply to:

- (1) Any provider agencies or donors under part [VH] ____ of chapter [356D:] 346;
- (2) Any provider agency or donor method or act that complies with part [VH] __ of chapter [356D:] 346; or
- (3) Any cooperation or agreement authorized pursuant to rule under part [VH] __ of chapter [356D:] 346.”

SECTION 8. Section 514A-14.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not apply:

- (1) To apartments developed under chapter 201H, 346, or 356D;
- (2) To apartments in a mixed-use project developed under chapter 206E that has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment; and
- (3) To apartments designated in the declaration of condominium property regime for hotel, time share, transient vacation rental, or commercial use.”

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

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

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

“(a) This subpart shall not apply to:

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

- (2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent, or adoption; and
- (3) Condominium projects consisting of two or fewer units.”

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

“§521-7 Exclusions from application of chapter. Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services;
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii;
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;
- (5) Transient occupancy on a day-to-day basis in a hotel or motel;
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon that employment or by a pensioner of the owner or landlord or occupancy for a period of up to four years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease;
- (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner’s rights;
- (9) Occupancy in a homeless facility or any other program for the homeless authorized under part [VII] ___ of chapter [356D:] 346;
- (10) Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority pursuant to the federal low rent public housing program; or
- (11) Residence or occupancy in a transitional facility for abused family or household members.”

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

SECTION 13. The department of human services shall transfer four permanent full time positions (4.0 FTE) from the Hawaii public housing authority to its benefit, employment, and support services division to carry out the purposes of this Act. Any position that was exempt from chapter 76, Hawaii Revised Statutes, under section 356D-2, Hawaii Revised Statutes, may remain exempt under part ___ of chapter 346, Hawaii Revised Statutes.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regu-

lar duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

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

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

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

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

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

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

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

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

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

(Approved May 10, 2010.)