

JAN 22 2008

A BILL FOR AN ACT

RELATING TO STATE AND COUNTY CONTRACTS FOR SERVICES.

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

1 SECTION 1. In 2001, the legislature found that it was
2 important for the State and county governments to be authorized
3 to deliver services by the most efficient means possible. As a
4 result, the legislature empowered the State and county
5 governments to contract with non-government entities including
6 nonprofit organizations, mutual benefit societies, and private
7 sector contractors to provide services to the government.

8 In June 2007, the law that conferred broad contracting
9 authority upon the State and counties expired. This law was
10 part II of Act 90, Session Laws of Hawaii 2001. As a result,
11 there is now uncertainty regarding the authority of the State
12 and counties to contract with non-government entities to obtain
13 services that are critical for the efficient, cost effective,
14 and uninterrupted delivery of services by the state and county
15 governments.

16 Consequently, these contracts may be subject to legal
17 challenge, pursuant to *Konno v. County of Hawaii*, 85 Haw. 61
18 (1997). In order to avoid the risk of costly litigation and to

1 ensure that government services are provided to the residents of
2 the State, this bill seeks to amend the State's and the
3 counties' procurement and civil service laws to maintain the
4 current relationship between the State and the counties and
5 their respective contractors who provide vital services to the
6 government and the citizens of Hawaii. Included within this
7 bill are limited exemptions to the civil service law that will
8 allow the government to continue to contract with non-government
9 entities without causing a substantial burden on our existing
10 public sector civil servants.

11 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
12 by adding to part II a new section to be appropriately
13 designated and to read as follows:

14 **"§46-___ Contracted services not subject to this part.**
15 Services obtained by a county with a population of 500,000 or
16 more pursuant to contracts for services authorized by section
17 103-___ shall not be subject to and are exempt from the civil
18 service."

19 SECTION 3. Chapter 76, Hawaii Revised Statutes, is amended
20 by adding a new section to be appropriately designated and to
21 read as follows:

1 "§76-__ Contracted services not subject to civil service.
2 Services obtained by the State or the counties pursuant to
3 contracts for services authorized by section 103-__ shall not be
4 subject to and are exempt from the civil service to which this
5 chapter applies."

6 SECTION 4. Chapter 103, Hawaii Revised Statutes, is
7 amended by adding to part I a new section to be appropriately
8 designated and to read as follows:

9 "§103-__ State and county contracts for services;
10 exemptions from civil service. (a) Notwithstanding any other
11 law to the contrary, services that are customarily and
12 historically provided by civil servants may be obtained through
13 State or county contracts for services with private entities
14 entered into in accordance with chapter 103D or 103F, when the
15 circumstances and requirements set forth in subsection (b), (c),
16 (d), (e), (f), (g), or (h) are present and satisfied.

17 (b) The State or a county may enter into a contract to
18 obtain services from a private entity when the services needed
19 would otherwise be provided by one or more employees with
20 permanent appointments to civil service positions that have been
21 vacant for at least six successive months provided that:

1 (1) The respective department demonstrates to the
2 jurisdiction's human resources director that it has
3 expended legitimate efforts to fill the position;

4 (2) The jurisdiction's human resources director certifies
5 that the respective department has made legitimate
6 efforts to fill the position; and

7 (3) The duration of contracts entered into pursuant to
8 this subsection shall not exceed one year.

9 (c) The State or a county may enter into a contract to
10 obtain services from a private person when performance of the
11 needed services requires or involves:

12 (1) Special equipment, materials, or supplies that the
13 State or a county does not have and would not be cost
14 effective to purchase, rent, maintain, or store;

15 (2) Special knowledge, experience, training, or expertise
16 that State or county employees do not have and would
17 not be cost effective to obtain;

18 (3) Services necessary to maintain warranties under a pre-
19 existing equipment or goods contract;

20 (4) Access to proprietary information that the State or
21 county does not have and would not be cost effective
22 to obtain.

1 The director of the respective agency shall be responsible
2 for making all determinations of cost effectiveness necessary to
3 effect the provisions of this subsection.

4 (d) The State or a county may enter into a contract to
5 obtain services from a private entity when the services are
6 needed on an intermittent or irregular basis and the amount of
7 work involved could not occupy a full-time equivalent employee
8 with a permanent appointment to a civil service position of the
9 State or county agency engaging the contract.

10 (e) The State or a county may enter into a contract to
11 obtain services from a private entity when refuse collection and
12 removal, janitorial, and groundskeeping or landscaping services
13 are needed for a State or county office space that is leased and
14 the landlord is unwilling or unable to provide such services, or
15 the amount of work to provide such services would not warrant a
16 full-time civil service position.

17 (f) The State or a county may enter into a contract to
18 obtain services from a private entity for capital investment
19 projects authorized by the legislature, a county council, an
20 appropriate executive agency or administrative office, or major
21 repair and maintenance projects.

1 (g) The State or county may enter into a contract to
2 obtain services from a private entity whenever such services are
3 necessary for the State or a county to comply with federal law.

4 (h) The State or a county may enter into a contract to
5 obtain services from a private entity whenever there is
6 legislative intent to appropriate funds for the purchase of such
7 services.

8 (i) In lieu of contracts entered into by the State
9 pursuant to this section, the director of human resources
10 development is authorized to create and transfer to a State
11 department or agency, as many permanent positions as the
12 department or agency is able to fund in order to provide the
13 services."

14 SECTION 5. Section 46-33, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§46-33 Exemption of certain county positions.** In any
17 county with a population of 500,000 or more, the civil service
18 to which this section refers is comprised of all positions in
19 the public service of such county, now existing or hereafter
20 established, and embraces all personal services performed for
21 such county, except the following:

- 1 (1) Positions of officers elected by public vote;
2 positions of heads of departments; position of the
3 clerk; position of the manager of the board of water
4 supply and position of the chief of police.
- 5 (2) Positions in the office of mayor, but such positions,
6 except those of the heads of the offices of
7 information and complaint and budget director, shall
8 be included in the position classification plan.
9 Employees of the municipal library and of the offices
10 of information and complaint and budget director,
11 other than the head of such offices, however, shall
12 not be exempted from civil service.
- 13 (3) Positions of deputies of the corporation counsel,
14 deputies of the prosecuting attorney, and law clerks.
- 15 (4) Positions of members of any board, commission, or
16 equivalent body.
- 17 (5) Positions filled by inmates, patients, or students in
18 city institutions or in the schools.
- 19 (6) Positions of district magistrates, jurors, and
20 witnesses.
- 21 (7) Personal services obtained by contract where the
22 director of civil service has certified that the

1 service is special or unique, is essential to the
2 public interest and that, because of circumstances
3 surrounding its fulfillment, personnel to perform such
4 service cannot be obtained through normal civil
5 service recruitment procedures. Any such contract may
6 be for any period not exceeding one year.

7 (8) Personal services of a temporary nature needed in the
8 public interest where the need for the same does not
9 exceed ninety days, but before any person may be
10 employed to render such temporary service the director
11 of civil service shall certify that the service is of
12 a temporary nature and that recruitment through normal
13 civil service recruitment procedures is not
14 practicable. The employment of any person for service
15 of a temporary nature may be extended for good cause
16 for an additional period not to exceed ninety days
17 upon similar certification by the director subject to
18 approval of the civil service commission.

19 (9) Personal services performed on a fee, contract or
20 piecework basis by persons who may lawfully perform
21 their duties concurrently with their private business
22 or profession or other private employment, if any, and

1 whose duties require only a portion of their time,
 2 where it is impracticable to ascertain or anticipate
 3 the portion of time devoted to the service of the city
 4 and such fact is certified to by the director of civil
 5 service.

6 (10) Positions of temporary election clerks in the office
 7 of the clerk employed during the election periods, but
 8 the positions filled by such employees shall be
 9 included in the position classification plan.

10 (11) Positions of one first deputy and private secretaries
 11 to heads of departments and their first deputies, but
 12 private secretarial positions shall be included in the
 13 position classification plan. The first deputy in the
 14 department of civil service, however, shall not be
 15 exempt from civil service.

16 (12) Personal services obtained through a contract or
 17 agreement for a grant, subsidy, or purchase of service
 18 made pursuant to chapter 42F or 103F."

19 SECTION 6. Section 76-16, Hawaii Revised Statutes, is
 20 amended by amending subsection (b) to read as follows:

21 "(b) The civil service to which this chapter applies shall
 22 comprise all positions in the State now existing or hereafter

1 established and embrace all personal services performed for the
2 State, except the following:

3 (1) Commissioned and enlisted personnel of the Hawaii
4 national guard as such, and positions in the Hawaii
5 national guard that are required by state or federal
6 laws or regulations or orders of the national guard to
7 be filled from those commissioned or enlisted
8 personnel;

9 (2) Positions filled by persons employed by contract where
10 the director of human resources development has
11 certified that the service is special or unique or is
12 essential to the public interest and that, because of
13 circumstances surrounding its fulfillment, personnel
14 to perform the service cannot be obtained through
15 normal civil service recruitment procedures. Any such
16 contract may be for any period not exceeding one year;

17 (3) Positions that must be filled without delay to comply
18 with a court order or decree if the director
19 determines that recruitment through normal recruitment
20 civil service procedures would result in delay or
21 noncompliance, such as the Felix-Cayetano consent
22 decree;

- 1 (4) Positions filled by the legislature or by either house
2 or any committee thereof;
- 3 (5) Employees in the office of the governor and office of
4 the lieutenant governor, and household employees at
5 Washington Place;
- 6 (6) Positions filled by popular vote;
- 7 (7) Department heads, officers, and members of any board,
8 commission, or other state agency whose appointments
9 are made by the governor or are required by law to be
10 confirmed by the senate;
- 11 (8) Judges, referees, receivers, masters, jurors, notaries
12 public, land court examiners, court commissioners, and
13 attorneys appointed by a state court for a special
14 temporary service;
- 15 (9) One bailiff for the chief justice of the supreme court
16 who shall have the powers and duties of a court
17 officer and bailiff under section 606-14; one
18 secretary or clerk for each justice of the supreme
19 court, each judge of the intermediate appellate court,
20 and each judge of the circuit court; one secretary for
21 the judicial council; one deputy administrative
22 director of the courts; three law clerks for the chief

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1 justice of the supreme court, two law clerks for each
2 associate justice of the supreme court and each judge
3 of the intermediate appellate court, one law clerk for
4 each judge of the circuit court, two additional law
5 clerks for the civil administrative judge of the
6 circuit court of the first circuit, two additional law
7 clerks for the criminal administrative judge of the
8 circuit court of the first circuit, one additional law
9 clerk for the senior judge of the family court of the
10 first circuit, two additional law clerks for the civil
11 motions judge of the circuit court of the first
12 circuit, two additional law clerks for the criminal
13 motions judge of the circuit court of the first
14 circuit, and two law clerks for the administrative
15 judge of the district court of the first circuit; and
16 one private secretary for the administrative director
17 of the courts, the deputy administrative director of
18 the courts, each department head, each deputy or first
19 assistant, and each additional deputy, or assistant
20 deputy or assistant defined in paragraph (16);

21 (10) First deputy and deputy attorneys general, the
22 administrative services manager of the department of

1 attorney general, one secretary for the administrative
2 services manager, an administrator and any support
3 staff for the criminal and juvenile justice resources
4 coordination functions, and law clerks;

5 (11) (A) Teachers, principals, vice-principals, complex
6 area superintendents, deputy and assistant
7 superintendents, other certificated personnel,
8 not more than twenty noncertificated
9 administrative, professional and technical
10 personnel not engaged in instructional work;

11 (B) Effective July 1, 2003, teaching assistants,
12 educational assistants, bilingual/bicultural
13 school-home assistants, school psychologists,
14 psychological examiners, speech pathologists,
15 athletic health care trainers, alternative school
16 work study assistants, alternative school
17 educational/supportive services specialists,
18 alternative school project coordinators, and
19 communications aides in the department of
20 education;

1 (C) The special assistant to the state librarian and
2 one secretary for the special assistant to the
3 state librarian; and

4 (D) Members of the faculty of the University of
5 Hawaii, including research workers, extension
6 agents, personnel engaged in instructional work
7 and administrative, professional, and technical
8 personnel of the university;

9 (12) Employees engaged in special, research, or
10 demonstration projects approved by the governor;

11 (13) Positions filled by inmates, kokuas, patients of state
12 institutions, persons with sever physical or mental
13 handicaps participating in the work experience
14 training programs, and students and positions filled
15 through federally funded programs that provide
16 temporary public service employment such as the
17 federal Comprehensive Employment and Training Act of
18 1973;

19 (14) A custodian or guide at Iolani Palace, the Royal
20 Mausoleum, and Hulihee Palace;

21 (15) Positions filled by persons employed on a fee,
22 contract, or piecework basis, who may lawfully perform

1 their duties concurrently with their private business
2 or profession or other private employment and whose
3 duties require only a portion of their time, if it is
4 impracticable to ascertain or anticipate the portion
5 of time to be devoted to the services of the State;
6 (16) Positions of first deputies or first assistants of
7 each department head appointed under or in the manner
8 provided in section 6, Article V, of the State
9 Constitution; three additional deputies or assistants
10 either in charge of the highways, harbors, and
11 airports divisions or other functions within the
12 department of transportation as may be assigned by the
13 director of transportation, with the approval of the
14 governor; four additional deputies in the department
15 of health, environmental health, hospitals, and health
16 resources administration, including other functions
17 within the department as may be assigned by the
18 director of health, with the approval of the governor;
19 an administrative assistant to the state librarian;
20 and an administrative assistant to the superintendent
21 of education;

- 1 (17) Positions specifically exempted from this part by any
2 other law; provided that all of the positions defined
3 by paragraph (9) shall be included in the position
4 classification plan;
- 5 (18) Positions in the state foster grandparent program and
6 positions for temporary employment of senior citizens
7 in occupations in which there is a severe personnel
8 shortage or in special projects;
- 9 (19) Household employees at the official residence of the
10 president of the University of Hawaii;
- 11 (20) Employees in the department of education engaged in
12 the supervision of students during meal periods in the
13 distribution, collection, and counting of meal
14 tickets, and in the cleaning of classrooms after
15 school hours on a less than half-time basis;
- 16 (21) Employees hired under the tenant hire program of the
17 Hawaii public housing authority; provided that not
18 more than twenty-six per cent of the authority's work
19 force in any housing project maintained or operated by
20 the authority shall be hired under the tenant hire
21 program;

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- 1 (22) Positions of the federally funded expanded food and
2 nutrition program of the University of Hawaii that
3 require the hiring of nutrition program assistance who
4 live in the areas they serve;
- 5 (23) Positions filled by severely handicapped persons who
6 are certified by the state vocational rehabilitation
7 office that they are able to perform safely the duties
8 of the position;
- 9 (24) One public high school student to be selected by the
10 Hawaii state student council as a nonvoting member on
11 the board of education as authorized by the State
12 Constitution;
- 13 (25) Sheriff, first deputy sheriff, and second deputy
14 sheriff;
- 15 (26) A gender and other fairness coordinator hired by the
16 judiciary; [~~and~~]
- 17 (27) Positions in the Hawaii national guard youth challenge
18 academy[-]; and
- 19 (28) Personal services obtained through a contract or
20 agreement for a grant, subsidy, or purchase of service
21 made pursuant to chapter 42F or 103F."

1 SECTION 7. Section 76-77, Hawaii Revised Statutes is
2 amended to read as follows:

3 "**§76-77 Civil service and exemptions.** The civil service
4 to which this part applies comprises all positions in the public
5 service of each county, now existing or hereafter established,
6 and embraces all personal services performed for each county,
7 except the following:

- 8 (1) Positions in the office of the mayor; provided that
9 the positions shall be included in the classification
10 systems;
- 11 (2) Positions of officers elected by public vote,
12 positions of heads of departments, and positions of
13 one first deputy or first assistant of heads of
14 departments;
- 15 (3) Positions of deputy county attorneys, deputy
16 corporation counsel, deputy prosecuting attorneys, and
17 law clerks;
- 18 (4) Positions of members of any board, commission, or
19 agency;
- 20 (5) Positions filled by students; positions filled through
21 federally funded programs which provide temporary
22 public service employment such as the federal

1 Comprehensive Employment and Training Act of 1973; and
2 employees engaged in special research or demonstration
3 projects approved by the mayor, for which projects
4 federal funds are available;

5 (6) Positions of district judges, jurors, and witnesses;

6 (7) Positions filled by persons employed by contract where
7 the personnel director has certified that the service
8 is special or unique, is essential to the public
9 interest, and that because of the circumstances
10 surrounding its fulfillment, personnel to perform the
11 service cannot be recruited through normal civil
12 service procedures; provided that no contract pursuant
13 to this paragraph shall be for any period exceeding
14 one year;

15 (8) Positions of a temporary nature needed in the public
16 interest where the need does not exceed ninety days;
17 provided that before any person may be employed to
18 render temporary service pursuant to this paragraph,
19 the director shall certify that the service is of a
20 temporary nature and that recruitment through normal
21 civil service recruitment procedures is not
22 practicable; and provided further that the employment

1 of any person pursuant to this paragraph may be
2 extended for good cause for an additional period not
3 to exceed ninety days upon similar certification by
4 the director;

5 (9) Positions of temporary election clerks in the office
6 of the county clerk employed during election periods;

7 (10) Positions specifically exempted from this part by any
8 other state statutes;

9 (11) Positions of one private secretary for each department
10 head; provided that the positions shall be included in
11 the classification systems;

12 (12) Positions filled by persons employed on a fee,
13 contract, or piecework basis who may lawfully perform
14 their duties concurrently with their private business
15 or profession or other private employment, if any, and
16 whose duties require only a portion of their time,
17 where it is impracticable to ascertain or anticipate
18 the portion of time devoted to the service of the
19 county and that fact is certified by the director;

20 (13) Positions filled by persons with a severe disability
21 who are certified by the state vocational

1 rehabilitation office as able to safely perform the
2 duties of the positions;

3 (14) Positions of the housing and community development
4 office or department of each county; provided that
5 this exemption shall not preclude each county from
6 establishing these positions as civil service
7 positions;

8 (15) The following positions in the office of the
9 prosecuting attorney: private secretary to the
10 prosecuting attorney, secretary to the first deputy
11 prosecuting attorney, and administrative or executive
12 assistants to the prosecuting attorney; provided that
13 the positions shall be included in the classification
14 systems; [~~and~~]

15 (16) Positions or contracts for personal services with
16 private persons or entities for services lasting no
17 more than one year and at a cost of no more than
18 \$750,000[-]; and

19 (17) Personal services obtained through a contract or
20 agreement for a grant, subsidy, or purchase of service
21 made pursuant to chapter 42F or 103F."


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1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY:



BY REQUEST

Report Title:

Procurement; State and County Contracts

Description:

Authorizes the procurement of contracts for services by the State and counties and exempts the contracts from chapter 76, Hawaii Revised Statutes.

JUSTIFICATION SHEET

DEPARTMENT: Human Resources Development

TITLE: A BILL FOR AN ACT RELATING TO STATE AND COUNTY CONTRACTS FOR SERVICES.

PURPOSE: The purpose of this bill is to reinstate the authority of the State and the counties to contract with non-governmental contractors for services under specific circumstances.

MEANS: Add a new section to chapter 46, chapter 76, and chapter 103, Hawaii Revised Statutes, and amend sections 46-33, 76-16(b), and 76-77, Hawaii Revised Statutes.

JUSTIFICATION: In 2001, the Legislature found that it was important for the state and county governments to be authorized to deliver services by the most efficient means possible. As a result, the Legislature empowered the state and county governments to contract with non-government entities to provide services to the government. This contracting authority allowed the state and county governments to inject substantial resources into local businesses.

In June 2007, the law that conferred broad authority upon the State and the counties to contract expired. This law was part II of Act 90, Session Laws of Hawaii 2001. As a result, there is now uncertainty regarding the authority of the State and the counties to contract with Hawaii businesses, nonprofit organizations, and mutual benefit societies to obtain services that are critical for the efficient, cost effective, and uninterrupted delivery of services by the state and county governments.

Consequently, the contracts between the state or county governments and these entities are now subject to legal challenge. The basis for this legal challenge was a

prior Hawaii Supreme Court decision in *Konno v. County of Hawaii*, 85 Haw. 61 (1997), in which the court declared that a contract between the government and a non-government entity was void because the services had historically and customarily been provided by civil servants and because there was no exception in the civil service laws to allow for the contract between the government and outside entities.

In order to avoid the risk of costly litigation and to ensure that Hawaii is not harmed by the expiration of Act 90, this bill seeks to amend the State's and the counties' procurement and civil service laws to maintain the current relationship between the State and the counties and their respective contractors who provide vital services to the government and the citizens of Hawaii. Included within this bill are limited exemptions to the civil service law that will allow the government to continue to contract with non-government entities without causing a substantial burden on our existing public sector civil servants.

Impact on the public: More efficient governmental operation. Eliminate imminent disruptive impact upon the provision of governmental services.

Impact on the department and other agencies: More efficient governmental operation. Eliminate imminent disruptive impact upon the provision of governmental services.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES:

Judiciary, University of Hawaii, Department of Education, Department of Human Resources Development, City and County of Honolulu, County of Maui, County of Hawaii, and County of Kauai.

EFFECTIVE DATE:

Upon approval.