
A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

1 PART I

2 SECTION 1. The legislature finds that the enactment of the
3 American Recovery and Reinvestment Act of 2009, Pub. L. No.
4 111-5, envisioned by President Obama as money going "out the
5 door immediately," will require expedited procedures to allow
6 the State to take full advantage of funding from the federal
7 stimulus plan to address, at the earliest practicable time, the
8 programs, services, and benefits needed by the people of Hawaii.

9 The legislature further finds that in these times of
10 economic turmoil, this Act would be instrumental in bringing, as
11 soon as possible, additional financial assistance and other
12 social services to Hawaii residents who have been affected by
13 the current economic circumstances as well as improving and
14 expanding benefits to the neediest individuals and families in
15 Hawaii.

16 The purpose of this Act is to provide temporary exemptions
17 from statutes relating to procurement and rulemaking to allow



1 the State to expedite the implementation or expansion of
2 programs, services, and benefits authorized by the American
3 Recovery and Reinvestment Act of 2009. It is not the intent of
4 the legislature to provide permanent exemptions to the relevant
5 statutes, and this Act shall be applied only to expedite the
6 expenditure of federal funds authorized in the American Recovery
7 and Reinvestment Act of 2009, or to expending the matching state
8 funds, if any, required to access the federal funding from the
9 American Recovery and Reinvestment Act of 2009.

10 The American Recovery and Reinvestment Act of 2009 has
11 specific accountability and transparency provisions to prevent
12 fraud, waste, and abuse, to ensure against poor contracting or
13 grant management, and to ensure the use of competitive
14 procedures. The federal government is provided expansive
15 investigatory and auditing powers to monitor, oversee, and
16 ensure that the American Recovery and Reinvestment Act of 2009
17 funds are used for their intended purposes and with the full
18 review and vetting required by law. Therefore, the goal of this
19 Act is to strike the appropriate balance between expedited
20 procedures and necessary accountability and transparency.

21 SECTION 2. To the extent not covered by any exemptions
22 adopted by the procurement policy board or the respective chief



1 procurement officers, and any law to the contrary
2 notwithstanding, governmental bodies, and state agencies
3 contracting for goods, services, construction, or health and
4 human services using federal funds authorized by the American
5 Recovery and Reinvestment Act of 2009, and matching state funds,
6 if any, required to access the federal funding in the American
7 Recovery and Reinvestment Act of 2009, may do so exempt from
8 chapter 103D and chapter 103F, Hawaii Revised Statutes, and
9 sections 103-8.5 and 103-53(a), Hawaii Revised Statutes, and
10 subject to the requirements of section 3.

11 The chief procurement officer of each respective entity
12 shall adopt and implement procedural requirements to carry out
13 the purposes this Act.

14 SECTION 3. (a) Procurements for goods, services,
15 construction, or health and human services shall be made through
16 an electronic procurement system to obtain price quotations
17 based on specifications; and registered vendors, contractors,
18 and service providers that supply the goods, services,
19 construction, or health and human services shall be solicited
20 and considered to meet the minimum requirements. For purposes
21 of this Act, "electronic procurement system" means a system that
22 incorporates, at minimum, electronic notification to registered



1 vendors, contractors, and service providers; electronic receipt
2 of responses; and electronic notification of awards.

3 (b) An award shall be made to the lowest responsive and
4 responsible offeror, using a fixed-price contract. For purposes
5 of this Act, "fixed-price contract" means a contract providing
6 for a firm price, or a price that may be adjusted only in
7 accordance with contract clauses providing for revision of the
8 contract price under stated circumstances.

9 (c) Prior to the issuance of the solicitation, the chief
10 procurement officer, or the chief procurement officer's
11 designee, shall determine in writing whether an award to the
12 lowest responsive and responsible offeror is not practicable or
13 not advantageous to the State.

14 (d) When an award to the lowest responsive and responsible
15 offeror is not practicable, an award shall be made to the
16 offeror whose offer provides the best value to the State. For
17 purposes of this Act, "best value" is defined as the most
18 advantageous offer determined by evaluating and comparing all
19 relevant evaluation criteria, in addition to price, so that the
20 offer meeting the overall combination that best serves the State
21 and is rated the highest, shall be selected. The quantitative
22 criteria may include, but shall not be limited to, the total



1 cost of ownership, performance history of the vendor,
2 contractor, and service provider, quality of goods, services,
3 construction, or health and human services, delivery, and
4 proposed technical performance.

5 (e) If only one responsive and responsible offeror submits
6 an acceptable offer, award may be made to the single offeror,
7 provided the chief procurement officer, or the chief procurement
8 officer's designee, determines in writing that the price
9 submitted is fair and reasonable. If no offers are received,
10 direct negotiations may be conducted, provided the chief
11 procurement officer, or the chief procurement officer's
12 designee, determines in writing, the need for the goods,
13 services, construction, or health and human services.

14 (f) The chief procurement officer, or the chief
15 procurement officer's designee, shall designate an evaluation
16 committee consisting of a minimum of three governmental
17 employees with sufficient and relevant qualifications related to
18 the procurement. In designating the members of the evaluation
19 committee, the chief procurement officer or designee shall
20 ensure the impartiality and independence of committee members.

21 The chief procurement officer, or the chief procurement
22 officer's designee, shall award the contract or contracts based



1 upon the information provided by the evaluation committee.

2 Written determination for the selection shall be placed in the
3 procurement file.

4 (g) Construction contracts shall include security for bid,
5 payment, and performance bonds when the estimated contract
6 amount is \$50,000 or more, and conforms to the requirements of
7 sections 103D-323 and 103D-324, Hawaii Revised Statutes.

8 (h) Any actual or prospective vendor, contractor, or
9 service provider aggrieved by an award of a contract pursuant to
10 this Act may protest a purchasing agency's failure to follow
11 procedures established by this Act. The protest shall be
12 submitted to the chief procurement officer, or the chief
13 procurement officer's designee, in writing, within five working
14 days after posting of the notice of award. The chief
15 procurement officer, or the chief procurement officer's
16 designee, may settle and resolve a protest by one or more of the
17 following means:

- 18 (1) Amending or canceling the solicitation;
- 19 (2) Terminating the contract that was awarded;
- 20 (3) Declaring the contract null and void from the time of
- 21 its award; or



1 (4) Affirming the purchasing agency's contract award
2 decision.

3 If the protest is not resolved by mutual agreement, the chief
4 procurement officer or designee shall issue a decision in
5 writing within ten working days of receipt of the protest. The
6 decision shall state the reasons for the action taken. A copy
7 of the written decision shall be mailed or otherwise furnished
8 to the vendor, contractor, or service provider who initiated the
9 protest, the person awarded the contract, and to all other non-
10 selected offerors.

11 The decision of the chief procurement officer or designee
12 shall be final and conclusive. The procedures and remedies
13 provided for in this Act shall be the exclusive means available
14 for vendors, contractors, or service providers aggrieved in
15 connection with the award of a contract under this Act. The
16 fact that a protest is filed shall not stay the award of any
17 contract made under this Act, unless so ordered by the chief
18 procurement officer.

19 (i) The procedures and remedies provided for in
20 subsections (g) and (h) shall be the exclusive means available
21 to resolve the concerns of persons aggrieved in connection with
22 the award of a contract under this Act. The fact that a protest



1 or a request for reconsideration is filed shall not stay the
2 award of any contract made under this Act, unless so ordered by
3 the chief procurement officer.

4 (j) All offerors, upon award of contract, shall comply
5 with all laws governing entities doing business in the State,
6 including chapters 237, 383, 386, 392, and 393, Hawaii Revised
7 Statutes. To demonstrate compliance, offerors shall be
8 registered on the Hawaii compliance express. The procurement
9 officer shall verify compliance for all contracts awarded. Any
10 offeror making a false affirmation or certification under this
11 subsection shall be suspended from further offerings or awards.

12 (k) Upon award, award information shall be posted on each
13 respective governmental jurisdiction's website, except
14 information determined to be confidential under chapter 92F,
15 Hawaii Revised Statutes.

16 (l) The chief procurement officers may be more restrictive
17 in their jurisdiction procedures, and impose any other
18 requirement, as applicable, to ensure compliance with this Act.

19 (m) Nothing in this Act, any rules adopted thereunder, or
20 any other authority shall be construed to exempt a bidder,
21 offeror, contractor, or provider, as applicable, from any action
22 that would otherwise be a cause for debarment or suspension



1 under section 103D-702, Hawaii Revised Statutes, if the contract
2 or procurement, but for this Act, would be subject to section
3 103-8.5 or 103-53(a), or chapter 103D or 103F, Hawaii Revised
4 Statutes.

5 This subsection shall not be interpreted to absolve any
6 person from applicable criminal penalties.

7 SECTION 4. The state procurement office shall adopt rules
8 to implement the procurement procedures applicable to this Act.
9 Any responsible agency shall also adopt rules whenever required
10 to implement new or expanded programs, services, or benefits
11 authorized or funded by the American Recovery and Reinvestment
12 Act of 2009. Any such rules may be issued as interim rules by
13 adoption and filing with the lieutenant governor, and by posting
14 the interim rules on the lieutenant governor's website. Interim
15 rules adopted pursuant to this Act shall be exempt from the
16 requirements of chapter 91, Hawaii Revised Statutes, and shall
17 take effect upon filing with the lieutenant governor. All
18 interim rules adopted pursuant to this section shall be
19 effective only through December 31, 2010. For any new or
20 expanded programs, services, or benefits that have been
21 implemented under interim rules to continue in effect beyond
22 December 31, 2010, the responsible agency shall adopt rules in



1 conformance with all the requirements of chapter 91, Hawaii
2 Revised Statutes.

3 SECTION 5. There is appropriated out of the federal
4 temporary assistance for needy families funds provided to the
5 State under the American Recovery and Reinvestment Act of 2009
6 the sum of \$15,000,000, or so much thereof as may be necessary
7 for fiscal year 2008-2009 to be used for the temporary
8 assistance for needy families program; provided that the sum
9 appropriated shall be in addition to the appropriation of
10 temporary assistance for needy family funds in the General
11 Appropriations Act of 2009, and any other appropriations of
12 temporary assistance for needy families funds for fiscal year
13 2008-2009.

14 The sum appropriated shall be expended by the department of
15 human services.

16 PART II

17 SECTION 6. (a) There is established a legislative federal
18 economic stimulus program oversight commission, to be comprised
19 of eleven members, as follows:

20 (1) Six voting members:

21 (A) One member of the senate, to be appointed by the
22 president of the senate;



1 (B) One member of the house of representatives to be
2 appointed by the speaker of the house of
3 representatives; and

4 (C) Four members of the public, representing citizens
5 and local government, one each to be appointed by
6 the president of the senate, speaker of the house
7 of representatives, senate minority leader, and
8 house of representatives minority leader; and

9 (2) Five non-voting members, one each appointed by:

10 (A) Each member of Hawaii's congressional delegation;
11 and

12 (B) The governor.

13 The voting members of the commission shall elect the
14 chairperson of the commission.

15 (b) Legislative staff offices as determined by the
16 president of the senate and the speaker of the house of
17 representatives shall provide administrative assistance to the
18 commission.

19 (c) In providing oversight of the distribution of any
20 federal economic stimulus program funds and the implementation
21 of program expenditures, the commission may:



- 1 (1) Evaluate the coordination of federal stimulus funded
- 2 programs within the State;
- 3 (2) Determine if criteria developed for setting priorities
- 4 are being followed;
- 5 (3) Determine the adequacy of public notice and
- 6 opportunity for public comment and input;
- 7 (4) Evaluate the transparency of the bidding and the
- 8 contracting process;
- 9 (5) Evaluate the integrity of the distribution and
- 10 expenditure of federal stimulus funded programs;
- 11 (6) Determine the extent to which duplication and waste is
- 12 prevented; and
- 13 (7) Undertake any other tasks or efforts to ensure the
- 14 integrity and fairness of the distribution and
- 15 expenditure of all funds and implementation of all
- 16 programs.
- 17 (d) Executive branch agencies shall provide information on
- 18 the receipt and expenditure of federal economic stimulus program
- 19 funds upon request of the commission.
- 20 (e) The commission may request specific audit services
- 21 from the state auditor.



1 (f) For the purposes of this section, "commission" means
2 the legislative federal economic stimulus program oversight
3 commission.

4 PART III

5 SECTION 7. This Act shall take effect on June 29, 2009,
6 and shall be repealed on June 30, 2011.

S.B. NO. 21
S.D. 1
H.D. 1
C.D. 1

Report Title:

American Recovery and Reinvestment Act of 2009; Expedite
Implementation; Oversight Commission

Description:

Creates temporary exemptions in procurement and rule making
statutes for programs, services, and benefits using funds
allocated to the State by the American Recovery and Reinvestment
Act of 2009; creates an oversight commission to ensure
transparency and accountability. Eff. 6/29/09. Sunset
6/30/2011. (CD1)

