
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 SECTION 2. To the extent not covered by any exemptions
11 adopted by the procurement policy board or the respective chief
12 procurement officers, and any law to the contrary
13 notwithstanding, governmental bodies and state agencies
14 contracting for goods, services, construction, or health and
15 human services using federal funds authorized by the American
16 Recovery and Reinvestment Act of 2009, and matching state funds,
17 if any, required to access the federal funding in the American
18 Recovery and Reinvestment Act of 2009, may do so exempt from
19 chapter 103D and chapter 103F, Hawaii Revised Statutes, and
20 sections 103-8.5 and 103-53(a), Hawaii Revised Statutes, and
21 subject to the requirements of section 3.



1 SECTION 3. (a) Procurements of less than \$150,000 for
2 goods, services, or health and human services, and procurements
3 of less than \$250,000 for construction, shall be made through an
4 electronic procurement system to obtain price quotations based
5 on specifications and no less than three written quotes shall be
6 solicited. Only vendors that supply the goods, services,
7 construction, or health and human services shall be solicited
8 and considered to meet the minimum quotation requirements.
9 Considering the criteria, including quality, warranty, and
10 delivery, award shall be made to the lowest responsive and
11 responsible offeror. When award to the lowest responsive and
12 responsible offeror is not practicable, award shall be made to
13 the offeror whose quotation provides the best value to the
14 State. The purchasing agency shall include the written
15 determination for the selection in the procurement file.

16 (b) For procurements of \$150,000 or more for goods,
17 services, or health and human services, and procurements of
18 \$250,000 or more for construction, purchasing agencies, with the
19 approval of the head of the purchasing agency, shall issue a
20 request for interest to select a contractor or contractors. The
21 request for interest shall include the following:

22 (1) Identification and purpose of the federal funding;



- 1 (2) Target population or clients to be served;
- 2 (3) A description of the goods, services, health and human
3 services, or construction;
- 4 (4) The evaluation criteria and their relative weights,
5 including the relative importance of price, for
6 selecting a contractor or contractors;
- 7 (5) The format, if any, and procedure for submitting
8 responses to the request; and
- 9 (6) The deadline for submittal of written responses to the
10 request.

11 (c) The selection of a contractor or contractors shall be
12 based on the criteria established in the request for interest.
13 The relative priority to be applied to each evaluation factor
14 shall also be set out in the request for interest. Evaluation
15 factors not specified in the request for interest may not be
16 considered.

17 (d) The head of the purchasing agency shall designate a
18 committee consisting of a minimum of three persons with
19 sufficient and relevant education, training, and licenses or
20 credentials for each type of procurement. In designating the
21 members of the committee, the head of the purchasing agency



1 shall ensure the impartiality and independence of committee
2 members.

3 The committee shall review and evaluate all submissions,
4 including references, and considering the criteria established
5 in the request for interest, the committee shall determine the
6 lowest responsive and responsible offeror and provide that
7 information to the head of the purchasing agency. The head of
8 the purchasing agency shall award the contract or contracts
9 based upon the information provided by the committee.

10 (e) Upon award, information about the award shall be
11 posted on each respective governmental jurisdiction's website,
12 except information determined to be confidential under chapter
13 92F, Hawaii Revised Statutes.

14 (f) All offerors, upon the award of a contract, shall
15 comply with all governing entities doing business in the state,
16 including chapters 237, 383, 386, 392, and 393. To demonstrate
17 compliance, offerors shall be registered on the Hawaii
18 compliance express. The procurement officer shall verify
19 compliance for all contracts awarded. Any offeror making a
20 false affirmation or certification under this subsection shall
21 be suspended from further offerings or awards as authorized
22 under subsection (j).



1 (g) Except for awards of health and human services
2 contracts, a person aggrieved by an award of a contract pursuant
3 to this Act may protest a purchasing agency's failure to follow
4 procedures established by this Act. The protest shall be
5 submitted to the head of the purchasing agency, in writing,
6 within five working days after notice of the award. The head of
7 the purchasing agency, or a designee, may settle and resolve a
8 protest by one or more of the following means:

- 9 (1) Amending or canceling a request for interest;
10 (2) Terminating the contract that was awarded;
11 (3) Initiating a new process to award a contract;
12 (4) Declaring the contract void from the time of its
13 award; or
14 (5) Affirming the purchasing agency's contract award
15 decision.

16 In lieu of paragraphs (1) to (5), a protest may be resolved
17 by mutual agreement; provided that if the protest is not
18 resolved by mutual agreement, the head of the purchasing agency,
19 or a designee, shall issue a decision in writing within ten
20 working days of receipt of the protest. The decision shall
21 state the reasons for the action taken. A copy of the written
22 decision shall be mailed or otherwise furnished to the person



1 who initiated the protest, the person awarded the contract, and
2 to all other offerors not awarded the contract.

3 (h) For awards of health and human services contracts, the
4 decision of the head of the purchasing agency shall be final and
5 conclusive unless a person who is aggrieved by an award of a
6 contract submits a request for reconsideration to the chief
7 procurement officer within five working days of the receipt of
8 the written decision. The request shall contain a specific
9 statement of the factual and legal grounds upon which
10 reconsideration is sought. A request for reconsideration may
11 only be made to correct a purchasing agency's failure to comply
12 with the procedures of this Act and any applicable rules adopted
13 to implement this Act. The chief procurement officer may uphold
14 or overturn the previous decision of the head of the purchasing
15 agency. A decision by the chief procurement officer shall be
16 rendered within ten working days from receipt of the request for
17 reconsideration and shall be deemed final and conclusive.

18 (i) The procedures and remedies provided for in
19 subsections (g) and (h) shall be the exclusive means available
20 to resolve the concerns of persons aggrieved in connection with
21 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.

3 (j) A bidder, offeror, contractor, or provider, as
4 applicable, who commits fraud or misrepresentation in the
5 procurement of contracts or commits abuse in the expenditure of
6 public moneys shall be subject to debarment or suspension under
7 section 103D-702, Hawaii Revised Statutes, if the contract or
8 procurement, but for this Act, would be subject to section 103-
9 8.5 or 103-53(a), or chapter 103D or 103F, Hawaii Revised
10 Statutes.

11 This subsection shall not be interpreted to absolve any
12 person from applicable criminal penalties.

13 For purposes of this subsection:

14 "Abuse in the expenditure of public moneys" means to:

- 15 (1) Fail to spend the public moneys on the contract; or
16 (2) Spend public moneys on the contract for a purpose
17 unrelated or tangentially related to the contract.

18 "Fraud" means providing incorrect, misleading, incomplete,
19 or materially untrue information.

20 SECTION 4. When rules are required to implement new or
21 expanded programs, services, or benefits authorized or funded by
22 the American Recovery and Reinvestment Act of 2009, the



1 responsible agency may issue interim rules by adoption and
2 filing with the lieutenant governor, and by posting the interim
3 rules on the lieutenant governor's website. Interim rules
4 adopted pursuant to this Act shall be exempt from the
5 requirements of chapter 91, Hawaii Revised Statutes, and shall
6 take effect upon filing with the lieutenant governor. The
7 interim rules shall be effective only through December 31, 2010.
8 For any new or expanded programs, services, or benefits that
9 have been implemented under interim rules to continue in effect
10 beyond December 31, 2010, the responsible agency shall adopt
11 rules in conformance with all the requirements of chapter 91,
12 Hawaii Revised Statutes.

13 SECTION 5. The expenditure ceiling placed on the use of
14 temporary assistance for needy families program funds in the
15 Supplemental Appropriations Act of 2008, and any other
16 expenditure limits placed on the use of temporary assistance for
17 needy families program funds, shall be increased by \$15,000,000
18 for the department of human services to use the funds provided
19 under the American Recovery and Reinvestment Act of 2009;
20 provided that of this federal fund appropriation for the
21 department of human services, there is appropriated federal
22 temporary assistance to needy families funds in the sum of



1 \$5,000,000 or so much thereof as may be necessary for fiscal
2 year 2008-2009 that shall be transferred to the child care
3 development fund.

4 PART II

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

8 (1) Six voting members:

9 (A) One member of the senate, to be appointed by the
10 president of the senate;

11 (B) One member of the house of representatives to be
12 appointed by the speaker of the house of
13 representatives; and

14 (C) Four members of the public, representing citizens
15 and local government, one each to be appointed by
16 the president of the senate, speaker of the house
17 of representatives, senate minority leader, and
18 house of representatives minority leader; and

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

20 (A) Each member of Hawaii's congressional delegation;
21 and

22 (B) The governor.



1 The voting members of the commission shall elect the
2 chairperson of the commission.

3 (b) Legislative staff offices as determined by the
4 president of the senate and the speaker of the house of
5 representatives shall provide administrative assistance to the
6 commission.

7 (c) In providing oversight of the distribution of any
8 federal economic stimulus program funds and the implementation
9 of program expenditures, the commission may:

- 10 (1) Evaluate the coordination of federal stimulus funded
11 programs within the State;
- 12 (2) Determine if criteria developed for setting priorities
13 are being followed;
- 14 (3) Determine the adequacy of public notice and
15 opportunity for public comment and input;
- 16 (4) Evaluate the transparency of the bidding and the
17 contracting process;
- 18 (5) Evaluate the integrity of the distribution and
19 expenditure of federal stimulus funded programs;
- 20 (6) Determine the extent to which duplication and waste is
21 prevented; and



1 (7) Undertake any other tasks or efforts to ensure the
2 integrity and fairness of the distribution and
3 expenditure of all funds and implementation of all
4 programs.

5 (d) Executive branch agencies shall provide information on
6 the receipt and expenditure of federal economic stimulus program
7 funds upon request of the commission.

8 (e) The commission may request specific audit services
9 from the state auditor.

10 (f) For the purposes of this section, "commission" means
11 the legislative federal economic stimulus program oversight
12 commission.

13 PART III

14 SECTION 7. This Act shall take effect on June 29, 2009,
15 and shall be repealed on June 30, 2012.



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. (SB21 HD1)

