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# A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

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

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

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

12           SECTION 2. (a) To the extent not covered by any  
13 exemptions adopted by the procurement policy board or the  
14 respective chief procurement officers, and any law to the  
15 contrary notwithstanding, including chapter 103D and chapter  
16 103F, Hawaii Revised Statutes, contracts for goods, services,  
17 construction, or health and human services using federal funds  
18 authorized by the American Recovery and Reinvestment Act of  
19 2009, and matching state funds, if any, required to access the  
20 federal funding in the American Recovery and Reinvestment Act of  
21 2009, may be subject to the following requirements:

- 1 (1) Procurements of less than \$150,000 for goods and  
2 services or health and human services, and  
3 procurements of less than \$250,000 for construction,  
4 shall be based on specifications and no less than  
5 three written quotes shall be solicited. Only vendors  
6 that supply the goods, services, construction, or  
7 health and human services shall be solicited and  
8 considered to meet the minimum quotation requirements.  
9 Considering the criteria, including but not limited to  
10 quality, warranty, and delivery, award shall be made  
11 to the lowest responsive and responsible offeror.  
12 When award to the lowest responsive and responsible  
13 offeror is not practicable, award shall be made to the  
14 offeror whose quotation provides the best value to the  
15 State. Written determination for the selection shall  
16 be placed in the procurement file; and
- 17 (2) For procurements of \$150,000 or more for goods,  
18 services, or health and human services, and of  
19 \$250,000 or more for construction, purchasing  
20 agencies, with the approval of the head of the  
21 purchasing agency, may issue a request for interest to  
22 select a contractor or contractors. The request for

- 1 interest shall include but not be limited to the  
2 following:
- 3 (A) Identification and purpose of the federal  
4 funding;
  - 5 (B) Target population or clients to be served;
  - 6 (C) A description of the goods, services, health and  
7 human services, or construction;
  - 8 (D) The evaluation criteria and their relative  
9 weights, including the relative important of  
10 price, for selecting a contractor or contractors;
  - 11 (E) The format, if any, and procedure for submitting  
12 responses to the request; and
  - 13 (F) The deadline for submittal of written responses  
14 to the request.

15 (b) The selection of a contractor or contractors shall be  
16 based on the criteria established in the request for interest.  
17 The relative priority to be applied to each evaluation factor  
18 shall also be set out in the request for interest. Evaluation  
19 factors not specified in the request for interest may not be  
20 considered.

21 (c) The head of the purchasing agency shall designate a  
22 committee consisting of a minimum of three persons with

1 sufficient and relevant education, training, and licenses or  
2 credentials for each type of procurement. In designating the  
3 members of the committee, the head of the purchasing agency  
4 shall ensure the impartiality and independence of committee  
5 members.

6 The committee shall review and evaluate all submissions,  
7 including references, and considering the criteria, the  
8 committee shall determine the lowest responsive and responsible  
9 offeror and provide that information to the head of the  
10 purchasing agency. The head of the purchasing agency shall  
11 award the contract or contracts based upon the information  
12 provided by the committee.

13 (d) Except for awards of health and human services  
14 contracts, a person aggrieved by an award of a contract pursuant  
15 to this Act may protest a purchasing agency's failure to follow  
16 procedures established by this Act. The protest shall be  
17 submitted to the head of the purchasing agency, in writing,  
18 within five working days after notice of award. The head of the  
19 purchasing agency, or a designee, may settle and resolve a  
20 protest by one or more of the following means:

21 (1) Amending or canceling a request for interest;

22 (2) Terminating the contract that was awarded;

- 1 (3) Initiating a new process to award a contract;
- 2 (4) Declaring the contract null and void from the time of
- 3 its award; or
- 4 (5) Affirming the purchasing agency's contract award
- 5 decision.

6 If the protest is not resolved by mutual agreement, the

7 head of the purchasing agency, or a designee, shall issue a

8 decision in writing within ten working days of receipt of the

9 protest. The decision shall state the reasons for the action

10 taken. A copy of the written decision shall be mailed or

11 otherwise furnished to the person who initiated the protest.

12 (e) For awards of health and human services contracts, the

13 decision of the head of the purchasing agency shall be final and

14 conclusive unless a person who is aggrieved by an award of a

15 contract submits a request for reconsideration to the chief

16 procurement officer within five working days of the receipt of

17 the written decision. The request shall contain a specific

18 statement of the factual and legal grounds upon which

19 reconsideration is sought. A request for reconsideration may

20 only be made to correct a purchasing agency's failure to comply

21 with the procedures of this Act and any applicable rules adopted

22 to implement this Act. The chief procurement officer may uphold

1 or overturn the previous decision of the head of the purchasing  
2 agency. A decision by the chief procurement officer shall be  
3 rendered within ten working days from receipt of the request for  
4 consideration and shall be deemed final and conclusive. The  
5 procedures and remedies provided for in this Act shall be the  
6 exclusive means available for persons aggrieved in connection  
7 with the award of a contract under this subsection to resolve  
8 their concerns.

9 (f) The fact that a protest or a request for  
10 reconsideration is filed shall not stay the award of any  
11 contract made under this Act.

12 SECTION 3. Sections 103-8.5, 103-53(a), 103-55, and  
13 103-55.5, Hawaii Revised Statutes, shall not apply to contracts  
14 for goods, services, construction, or health and human services  
15 using federal funds authorized by the American Recovery and  
16 Reinvestment Act of 2009, and matching state funds required to  
17 access the federal funding in the American Recovery and  
18 Reinvestment Act of 2009; provided that tax clearances from the  
19 director of taxation and the Internal Revenue Service shall be  
20 received prior to final payment certifying that all tax returns  
21 due have been filed, and all taxes, interest, and penalties  
22 levied against the contractor or accrued under title 14 of the

1 Hawaii Revised Statutes, that are administered by the department  
2 of taxation and under the Internal Revenue Code have been paid.

3 SECTION 4. When rules are required to implement new or  
4 expanded programs, services, or benefits authorized or funded by  
5 the American Recovery and Reinvestment Act of 2009, the  
6 responsible agency may issue interim rules by adoption and  
7 filing with the lieutenant governor, and posting the interim  
8 rules on the lieutenant governor's website. Interim rules  
9 adopted pursuant to this Act shall be exempt from the  
10 requirements of chapter 91, Hawaii Revised Statutes, and shall  
11 take effect upon filing with the lieutenant governor. The  
12 interim rules shall be effective only through December 31, 2010.  
13 For any new or expanded programs, services, or benefits that  
14 have been implemented under interim rules to continue in effect  
15 beyond December 31, 2010, the responsible agency shall adopt  
16 rules in conformance with all the requirements of chapter 91,  
17 Hawaii Revised Statutes.

18 SECTION 5. Section 76-16, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) The civil service to which this chapter applies shall  
21 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

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

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

12 (B) Effective July 1, 2003, teaching assistants,  
13 educational assistants, bilingual/bicultural  
14 school-home assistants, school psychologists,  
15 psychological examiners, speech pathologists,  
16 athletic health care trainers, alternative school  
17 work study assistants, alternative school  
18 educational/supportive services specialists,  
19 alternative school project coordinators, and  
20 communications aides in the department of  
21 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 severe 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 service 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, each in charge of one of the following:  
16 behavioral health, environmental health, hospitals,  
17 and health resources administration, including other  
18 functions within the department as may be assigned by  
19 the director of health, with the approval of the  
20 governor; an administrative assistant to the state  
21 librarian; and an administrative assistant to the  
22 superintendent 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;

- 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 assistants 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 positions;
- 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) Positions or contracts for services with private  
20 persons or entities for services lasting no more than  
21 two years, where the director of human resources  
22 development has certified that the service is



1           necessary to the efficient and timely implementation  
2           of programs authorized or funded by the federal  
3           American Recovery and Reinvestment Act of 2009, and  
4           provided that the federal and state matching funds  
5           under the Act are encumbered no later than September  
6           30, 2010.

7           The director shall determine the applicability of this  
8           section to specific positions.

9           Nothing in this section shall be deemed to affect the civil  
10          service status of any incumbent as it existed on July 1, 1955."

11          SECTION 6. The expenditure ceiling placed on the use of  
12          temporary assistance for needy families program funds in the  
13          Supplemental Appropriations Act of 2008, and any other  
14          expenditure limits placed on the use of temporary assistance for  
15          needy families program funds, shall be raised or waived to the  
16          extent necessary for the department of human services to utilize  
17          the funds provided under the American Recovery and Reinvestment  
18          Act of 2009, up to the amount actually provided to the State in  
19          Fiscal Year 2009.

20          SECTION 7. This Act shall take effect upon its approval  
21          and shall be repealed on December 31, 2010, except that section  
22          6 shall be repealed on December 31, 2012.

**Report Title:**

American Recovery and Reinvestment Act of 2009; Expedite  
Implementation

**Description:**

Creates temporary exemptions in procurement, rule making, and  
public employment statutes for programs, services, and benefits  
using funds allocated to the State by the American Recovery and  
Reinvestment Act of 2009. (SD1 PROPOSED)