

SB 659

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 659

February 5, 2009

RELATING TO STATE FUNDS

COMMENTS

Senate Bill No. 659 amends Section 36-2.5, HRS, Full Disclosure of Entities Receiving State Awards, by: 1) assigning responsibility for collecting and posting information on the disclosure website to the Department of Accounting and General Services (DAGS) in collaboration with the Department of Budget and Finance (DB&F); and 2) deleting the requirement that information on state awards include the North American Industry Classification System code. Currently, DB&F is the lead agency responsible for maintaining the disclosure website but the statute allows DB&F to designate one or more state agencies to participate in its maintenance.

Section 36-2.5, HRS, requires a single searchable website that includes for each state award the following information:

- Name of entity receiving award;
- Amount of the award;
- Information on the award, including transaction type, funding agency, North American Industry Classification System code, program source, and award title descriptive of the purpose of each funding action;

- Full address of the entity receiving the award and primary location of performance under the award;
- A unique identifier of the entity receiving the award and of the parent entity (if the entity is owned by another entity); and
- Other relevant information as specified by lead agency.

The same detailed information is required to be provided for all subgrants and subcontracts related to the initial state award. The disclosure website is also to include the same information on subawards made by the counties from state funds.

Section 36-2.5, HRS, defines “state awards” as state financial assistance and expenditures that:

- Are grants, subgrants, loans, awards, cooperative agreements, other forms of financial assistance, contracts, subcontracts, purchase orders, task orders, and delivery orders;
- Do not include single transactions less than \$25,000; and
- Before October 1, 2009, do not include credit card transactions.

Exclusions and exceptions from disclosure requirements are as follows:

- Individual recipients of state public assistance;
- State employees;
- Tax-related awards pursuant to Title 14, HRS, which are subject to taxpayer disclosure provision under Title 14, HRS; and
- Classified information.

Additionally, Section 36-2.5, HRS, requires that the website have the following functionality:

- Allow searches by any of the identifying elements specified in the preceding section;
- Allow public to ascertain through a single search the total amount of funding awarded to an entity by state award that is a grant, subgrant, loan, awards cooperative agreement, or other form of financial assistance by fiscal year;
- Allow public to ascertain through a single search the total amount of funding awarded to an entity by state award that is a contract, subcontract, purchase order, task order, or delivery order by fiscal year;
- Allow downloading of data from the outcome of searches;
- Be updated not later than thirty days after the award of any state award requiring a posting; and
- Provide for separate searches for the state awards.

DB&F appreciates the intent of this bill to correct some of the implementation and operational issues related to Section 36-2.5, HRS; however, we believe there are other major issues that need to be addressed to ensure a cost-effective, workable disclosure website. The attached outline describes these issues in detail.

Attachment

kim4 - Elizabeth

From: Shirley.M.Kawamoto@hawaii.gov
Sent: Wednesday, February 04, 2009 4:34 PM
To: WAM Testimony
Cc: Gov.Policy@hawaii.gov; TanYan.Chen@hawaii.gov; DBFLeg.DIR@hawaii.gov; LeNora.N.Wee@hawaii.gov; Wanda.N.Kimura@hawaii.gov
Subject: SB0659_BUF_02-05-09_WAM
Attachments: SB0659_BUF_02-05-09_WAM.doc; SB0659_BUF_02-05-09_WAM_Attachment.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Final testimony:

**ACT 272, SLH 2007
IMPLEMENTATION AND OPERATIONAL ISSUES**

- Current State business processes for good and services procurement, purchase of service procurement, grants-in-aid funding, loan programs **do not** capture, or **even require** disclosure of, all of the information required to be reported under Act 272, SLH 2007, especially with regard to information on subcontractors, subgrantees and parent entities. Major modifications to the procurement process, grants-in-aid funding process and various loan programs will be necessary to require **up front disclosure** of subaward recipients and parent entities as well as the primary location of performance of work in initial bids and proposal responses, grant applications and loan applications.

[NOTE: Up front disclosure is necessary because it would greatly facilitate capturing this type of information (everything would be provided in the responding bid, etc.) and preclude any legal issues regarding post contracting disclosures and confidentiality. However, it should be noted that up front disclosure could adversely affect the bidding climate by requiring disclosure of previously closely held, proprietary business information.]

- Act 272, SLH 2007, terms and references, especially regarding the definition of “state awards,” are **not clearly defined** and **may not be consistent** with current State accounting, budgeting or procurement usage. The terms, “grants,” “loans,” “contracts” and “purchase orders” appear to follow current State usage, but the terms, “subgrants,” “awards,” “cooperative agreements,” “other forms of financial assistance,” “subcontracts,” “task orders” and “delivery orders” appear to need further clarification and/or definition. And there is no definition for a “parent entity.”

[NOTE: For example, clear definitions are required for “subgrants” and “subcontracts” to determine what type of business relationships need to be disclosed. Does accounting, legal, computer support or public relations services qualify as “subcontracts” or “subgrants,” or would it be considered general goods and services for the contractor or grantee? Would payments to individual health care provider payments under the Med/QUEST program need to be reported separately? Another example is the term “other forms of financial assistance.” Are reduced and/or preferential fees/rates, such as subsidized water rates and low cost leases, “other forms of financial assistance” that require disclosure. Further, it is unclear if the website is required to provide information on tax credits and/or deductions because the last clause of subsection (c) of the new codified section (on page 5, lines 5-9) makes reference to tax-related state awards.]

- Act 272, SLH 2007, appears to assume that the initial amount of a state award in terms of the successful bid is the same as actual expenditure. In some cases, such as the purchase of a truck, this is true but in many instances there are differences. Is the website required to track and disclose both initial award and actual

expenditure? And conversely, many price list purchases from a particular vendor fall well below the \$25,000 single transaction threshold, however, when aggregated statewide over a year these purchases amount to significant sums of money. Is the website required to track, aggregate and disclose such purchases (if not, vendors involved with these types of transactions may not show up at all)?

Further, although grants may be appropriated, the funds may not be released. Is the website supposed to disclose and track all grant appropriations or only those for which funds are released. [NOTE: This should not be an issue with other expenditures such as contracts because it is assumed that disclosure and tracking will only commence upon a contract award or a purchase order placement.]

- Act 272, SLH 2007, places the reporting burden and workload on award recipients and subrecipients as it makes provision in subsection (d) of the new codified section (on page 5, lines 16-18) for a reporting system under which the entity issuing a subgrant or subcontract is responsible for fulfilling the subaward reporting requirement. However, for web security and data accountability reasons, departments/agencies need to be responsible for this function. [Providing input access to thousands of contactors, vendors and grantees appears to be invitation to a security disaster and there is no assurance that they will voluntarily comply in a timely and correct manner.] Therefore, the **real and continuing** burden will fall on the departments and agencies that must input and maintain the various databases for the website. Recipient burden will more than likely **be minimal** and only involve providing the information required for disclosure via the initial bid response. The workloads of the respective departments and agencies will depend on the volume of state awards that they are responsible for (i.e., departments such as the Departments of Health and Human Services that have a lot of contracts, etc., will likely have heavy maintenance workloads).

Some county departments and agencies that administer grants and other programs which are funded by the State will have maintenance workloads. Will these county agencies comply without compensation for their efforts?

- Act 272, SLH 2007, requires use of the North American Industry Classification System (NAICS) but the State Procurement Office (SPO) currently uses the procurement standard National Institute of Government Purchasing (NIGP) coding system. The value of transitioning to NAICS is problematic because it is used by business and government to classify and measure economic activity in Canada, Mexico and the United States. The NAICS numbering system is a six-digit code. The first five digits are generally (although not always strictly) the same in all three countries. The last digit designates national industries. The first two digits designate the largest business sector, the third digit designates the subsector, the fourth digit designates the industry group, and the fifth digit designates particular industries.

Committee: Senate Ways and Means Committee
Hearing Date/Time: Thursday, February 5, 2009, 9:30 a.m.
Place: Room 211

Re: Testimony of Daniel Brackins in Support of SB 659, Relating to State Funds; Public Access and Disclosure of Monetary Awards

Comments

Dear Chair and Members of the Senate Ways and Means Committee:

It was once remarked by James Madison that:

A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

SB659 would realize this sentiment by creating a publicly accessible online database for grants and awards over \$25,000. It is essential for a people governing themselves to have access to this type of information. It is the government's role to work for the people, and thus this information is essential to help ensure that the government is transparent.

Ultimately we might hope to see the finances of the State of Hawaii as clear and intelligible as an accountant's books, so that every member of the legislature and every man of any mind in Hawaii should be able to comprehend them, to investigate abuses, and consequently to control them.

Best Regards,

Daniel Brackins

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

BARBARA A. ANNIS
Deputy Comptroller

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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
WAYS AND MEANS
ON
February 5, 2009

S.B. 659

RELATING TO STATE FUNDS

Chair Kim and members of the Committee, thank you for the opportunity to testify on S.B. 659. The Department of Accounting and General Services (DAGS) understands the intent of this bill. However DAGS has concerns that this bill's requirement that DAGS work with the Department of Budget and Finance to "collect and post on the website, the information (on each state award) that is required by this section" is an unfunded mandate. Furthermore, if funding were to be appropriated for this bill, DAGS and has concerns that this measure would adversely impact the priorities set forth in the Executive Biennium Budget Request for Fiscal Years 2009-2010.

Thank you for the opportunity to testify on this matter.