
A BILL FOR AN ACT

RELATING TO STATE 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 (ARRA), envisioned by President Barack Obama as money
4 going "out the door immediately," will require expedited
5 procedures to allow the State to immediately take full advantage
6 of the funding for programs, services, and benefits authorized
7 by ARRA to bring the benefits of the federal stimulus plan to
8 the people of Hawaii at the earliest practicable time.

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 climate, as well as improving and expanding
14 benefits to the neediest individuals and families.

15 The purpose of this Act is to provide temporary exemptions
16 from current statutes relating to procurement, rulemaking, and
17 civil service employment to allow the State to expedite the



1 implementation or expansion of programs, services, and benefits
2 authorized by ARRA.

3 ARRA has specific accountability and transparency
4 provisions to prevent fraud, waste, and abuse, to ensure against
5 poor contracting or grant management, and to ensure the use of
6 competitive procedures. The federal government is provided
7 expansive investigatory and auditing powers to monitor, oversee,
8 and ensure that the ARRA funds are used for their intended
9 purposes and with the full review and vetting required by law.
10 Therefore, the goal of this Act is to strike the appropriate
11 balance between expedited procedures and necessary
12 accountability and transparency.

13 It is not the intent of the legislature to provide
14 permanent exemptions to the relevant statutes, and this Act
15 shall be applied only to expediting the expenditure of federal
16 funds authorized in ARRA, or to expending the matching state
17 funds, if any, required to access the federal funding in ARRA.

18 SECTION 2. (a) Contracts for goods, services,
19 construction, or health and human services using federal funds
20 authorized by ARRA and matching state funds, if any, shall be
21 subject to chapter 103D and chapter 103F, Hawaii Revised
22 Statutes, unless covered by any exemptions adopted by the



1 procurement policy board or the respective chief procurement
2 officers; provided that if the governor, mayor, or other chief
3 executive, as appropriate, who is to certify proper review and
4 use of funds under section 1511 of ARRA, finds that the federal
5 funding may lapse because of the required deadlines under ARRA,
6 the solicitation, award, and subsequent contract may be subject
7 to the requirements of subsection (b). Prior to initiating any
8 procedures under subsection (b), the governor, mayor, or other
9 chief executive, as appropriate, shall provide written notice to
10 the senate president, the speaker of the house of
11 representatives, and the general public on the electronic
12 procurement system identifying:

- 13 (1) The federal funding, and matching state funds, if
14 applicable;
- 15 (2) The target population or clients to be served;
- 16 (3) A description of the goods, services, health and human
17 services, or construction; and
- 18 (4) Facts, laws, regulations, and other information that
19 demonstrates the potential lapse of the federal
20 funding should expedited procedures not be used.



1 (b) Subject to subsection (a), contracts necessary to be
2 expedited due to potential lapse of available funds under ARRA
3 may be subject to the following alternative requirements:

4 (1) Procurements having a value of less than \$150,000 for
5 goods and services or health and human services, and
6 procurements having a value of less than \$250,000 for
7 construction, shall be made through an electronic
8 procurement system to obtain price quotations based on
9 specifications. Vendors, contractors, and service
10 providers that supply the goods, services,
11 construction, or health and human services shall be
12 solicited and considered to meet the minimum
13 requirements. Award shall be made to the lowest
14 responsive offer and responsible offeror. When an
15 award to the lowest responsive offer and responsible
16 offeror is not practicable, the award shall be made to
17 the offeror whose offer provides the best value to the
18 State. "Best value" means the most advantageous offer
19 determined by evaluating and comparing all relevant
20 criteria in addition to price so that the offer
21 meeting the overall combination that best serves the
22 State is selected. These criteria may include:



- 1 (A) The total cost of ownership;
- 2 (B) Performance history of the vendor, contractor, or
- 3 service provider;
- 4 (C) Quality of goods, services, construction, or
- 5 health and human services;
- 6 (D) Delivery; and
- 7 (E) Proposed technical performance.

8 Written determination for the selection shall be
9 placed in the procurement file.

10 (2) For procurements having a value of \$150,000 or more
11 for goods, services, or health and human services, and
12 of \$250,000 or more for construction, purchasing
13 agencies, with the approval of the head of the
14 purchasing agency, may issue a solicitation to select
15 a contractor or contractors. The solicitation shall
16 include the following:

- 17 (A) Identification and purpose of the federal funding
- 18 and matching state funds, if applicable;
- 19 (B) Target population or clients to be served;
- 20 (C) A description of the goods, services, health and
- 21 human services, or construction;



- 1 (D) The evaluation criteria and their relative
2 weights, including the relative importance of
3 price, for selecting a contractor or contractors;
4 (E) The format, if any, and procedure for submitting
5 responses to the solicitation; and
6 (F) The deadline for submittal of written responses
7 to the solicitation.

8 The selection of a contractor or contractors shall be
9 based on the criteria established in the solicitation.
10 The relative priority to be applied to each evaluation
11 factor shall also be set out in the solicitation.
12 Evaluation factors not specified in the solicitation
13 may not be considered. The head of the purchasing
14 agency shall designate a committee consisting of at
15 least three governmental employees with sufficient and
16 relevant education, training, and licenses or
17 credentials for each type of procurement. In
18 designating the members of the committee, the head of
19 the purchasing agency shall ensure the impartiality
20 and independence of committee members. The committee
21 shall review and evaluate all submissions, including
22 references, and considering the criteria, the



1 committee shall determine the lowest responsive offer
2 and responsible offeror and provide that information
3 to the head of the purchasing agency. The head of the
4 purchasing agency shall award the contract or
5 contracts based upon the information provided by the
6 committee. Award shall be made to the lowest
7 responsive offer and responsible offeror. When an
8 award to the lowest responsive offer and responsible
9 offeror is not practicable, the award shall be made to
10 the offeror whose offer provides the best value to the
11 State. Written determination for the selection shall
12 be placed in the procurement file.

13 (3) Awards made pursuant to this Act shall be posted
14 electronically within five working days of the notice
15 of award to an Internet site designated by the chief
16 procurement officer.

17 (4) Notwithstanding any other law, regulation, or practice
18 to the contrary, for purposes of this subsection:

19 (A) Contracts shall be deemed effective as of the
20 notice of the award;

21 (B) The solicitation, offer, bid, or proposal and the
22 notice of award shall constitute the entire



1 contract and agreement between the government and
2 the contractor; and

3 (C) A subsequent written and executed contract
4 document is not required.

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

15 (A) Amending or canceling a request for interest;

16 (B) Terminating the contract that was awarded;

17 (C) Initiating a new process to award a contract;

18 (D) Declaring the contract null and void from the
19 time of its award; or

20 (E) Affirming the purchasing agency's contract award
21 decision.



1 If the protest is not resolved by mutual agreement,
2 the chief procurement officer, or a designee, shall
3 issue a decision in writing within ten working days of
4 receipt of the protest. The decision shall state the
5 reasons for the action taken. A copy of the written
6 decision shall be mailed or otherwise furnished to the
7 bidder, offeror, vendor, contractor, service provider,
8 or person who initiated the protest. The decision of
9 the chief procurement officer shall be final and
10 conclusive unless the bidder, offeror, vendor,
11 contractor, service provider, or person who is
12 aggrieved by an award of a contract submits a request
13 for review under section 103D-709(a), Hawaii Revised
14 Statutes, within five working days of the receipt of
15 the written decision. The request shall contain a
16 specific statement of the factual and legal grounds
17 upon which reconsideration is sought. Notwithstanding
18 any law or rule to the contrary, a decision shall be
19 rendered within ten working days from receipt of the
20 request for review and shall be deemed final and
21 conclusive. The procedures and remedies provided for
22 in this Act shall be the exclusive means available for



1 bidders, offerors, vendors, contractors, service
2 providers, and persons aggrieved in connection with
3 the award of a contract to resolve their concerns.
4 The filing of a protest or a request for review shall
5 not stay the award of any contract made under this
6 Act, unless so ordered by the chief procurement
7 officer.

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

20 SECTION 4. If rules are required to implement new or
21 expanded programs, services, or benefits authorized or funded by
22 ARRA, the responsible agency may issue interim rules by adoption



1 and filing with the lieutenant governor and posting the interim
2 rules on the lieutenant governor's website. Interim rules
3 adopted pursuant to this Act shall be exempt from the
4 requirements of chapter 91, Hawaii Revised Statutes, and shall
5 take effect upon filing with the lieutenant governor. The
6 interim rules shall be effective only through December 31, 2012.
7 To continue beyond December 31, 2012, with respect to any new or
8 expanded programs, services, or benefits that have been
9 implemented with interim rules, the responsible agency shall
10 adopt rules in conformance with all the requirements of chapter
11 91.

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

14 "(b) The civil service to which this chapter applies shall
15 comprise all positions in the [~~State~~] state now existing or
16 hereafter established and embrace all personal services
17 performed for the State, except the following:

18 (1) Commissioned and enlisted personnel of the Hawaii
19 national guard as such, and positions in the Hawaii
20 national guard that are required by state or federal
21 laws or regulations or orders of the national guard to



1 be filled from those commissioned or enlisted
2 personnel;

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

11 (3) Positions that must be filled without delay to comply
12 with a court order or decree if the director
13 determines that recruitment through normal recruitment
14 civil service procedures would result in delay or
15 noncompliance, such as the Felix-Cayetano consent
16 decree;

17 (4) Positions filled by the legislature or by either house
18 or any committee thereof;

19 (5) Employees in the office of the governor and office of
20 the lieutenant governor, and household employees at
21 Washington Place;

22 (6) Positions filled by popular vote;



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



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

15 (10) First deputy and deputy attorneys general, the
16 administrative services manager of the department of
17 attorney general, one secretary for the administrative
18 services manager, an administrator and any support
19 staff for the criminal and juvenile justice resources
20 coordination functions, and law clerks;

21 (11) (A) Teachers, principals, vice-principals, complex
22 area superintendents, deputy and assistant



- 1 superintendents, other certificated personnel,
2 not more than twenty noncertificated
3 administrative, professional, and technical
4 personnel not engaged in instructional work;
- 5 (B) Effective July 1, 2003, teaching assistants,
6 educational assistants, bilingual/bicultural
7 school-home assistants, school psychologists,
8 psychological examiners, speech pathologists,
9 athletic health care trainers, alternative school
10 work study assistants, alternative school
11 educational/supportive services specialists,
12 alternative school project coordinators, and
13 communications aides in the department of
14 education;
- 15 (C) The special assistant to the state librarian and
16 one secretary for the special assistant to the
17 state librarian; and
- 18 (D) Members of the faculty of the University of
19 Hawaii, including research workers, extension
20 agents, personnel engaged in instructional work
21 and administrative, professional, and technical
22 personnel of the university;



- 1 (12) Employees engaged in special, research, or
2 demonstration projects approved by the governor;
- 3 (13) Positions filled by inmates, kokuas, patients of state
4 institutions, persons with severe physical or mental
5 handicaps participating in the work experience
6 training programs, and students and positions filled
7 through federally funded programs that provide
8 temporary public service employment such as the
9 federal Comprehensive Employment and Training Act of
10 1973;
- 11 (14) A custodian or guide at Iolani Palace, the Royal
12 Mausoleum, and Hulihee Palace;
- 13 (15) Positions filled by persons employed on a fee,
14 contract, or piecework basis, who may lawfully perform
15 their duties concurrently with their private business
16 or profession or other private employment and whose
17 duties require only a portion of their time, if it is
18 impracticable to ascertain or anticipate the portion
19 of time to be devoted to the services of the State;
- 20 (16) Positions of first deputies or first assistants of
21 each department head appointed under or in the manner
22 provided in section 6, Article V, of the [State]



1 Hawaii Constitution; three additional deputies or
2 assistants either in charge of the highways, harbors,
3 and airports divisions or other functions within the
4 department of transportation as may be assigned by the
5 director of transportation, with the approval of the
6 governor; four additional deputies in the department
7 of health, each in charge of one of the following:
8 behavioral health, environmental health, hospitals,
9 and health resources administration, including other
10 functions within the department as may be assigned by
11 the director of health, with the approval of the
12 governor; an administrative assistant to the state
13 librarian; and an administrative assistant to the
14 superintendent of education;

15 (17) Positions specifically exempted from this part by any
16 other law; provided that all of the positions defined
17 by paragraph (9) shall be included in the position
18 classification plan;

19 (18) Positions in the state foster grandparent program and
20 positions for temporary employment of senior citizens
21 in occupations in which there is a severe personnel
22 shortage or in special projects;



- 1 (19) Household employees at the official residence of the
2 president of the University of Hawaii;
- 3 (20) Employees in the department of education engaged in
4 the supervision of students during meal periods in the
5 distribution, collection, and counting of meal
6 tickets, and in the cleaning of classrooms after
7 school hours on a less than half-time basis;
- 8 (21) Employees hired under the tenant hire program of the
9 Hawaii public housing authority; provided that not
10 more than twenty-six per cent of the authority's work
11 force in any housing project maintained or operated by
12 the authority shall be hired under the tenant hire
13 program;
- 14 (22) Positions of the federally funded expanded food and
15 nutrition program of the University of Hawaii that
16 require the hiring of nutrition program assistants who
17 live in the areas they serve;
- 18 (23) Positions filled by severely handicapped persons who
19 are certified by the state vocational rehabilitation
20 office that they are able to perform safely the duties
21 of the positions;

- 1 (24) One public high school student to be selected by the
2 Hawaii state student council as a nonvoting member on
3 the board of education as authorized by the [State]
4 Hawaii Constitution;
- 5 (25) Sheriff, first deputy sheriff, and second deputy
6 sheriff;
- 7 (26) A gender and other fairness coordinator hired by the
8 judiciary; [~~and~~]
- 9 (27) Positions in the Hawaii national guard youth challenge
10 academy [~~-~~]; and
- 11 (28) Positions or contracts for services with private
12 persons or entities for services lasting no more than
13 two years where the director of human resources
14 development has certified that the service is
15 necessary for the efficient and timely implementation
16 of programs authorized or funded by the federal
17 American Recovery and Reinvestment Act of 2009, and
18 provided that federal and matching state funds under
19 the Act are encumbered no later than September 30,
20 2010.

21 The director shall determine the applicability of this
22 section to specific positions.



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

3 SECTION 6. The expenditure ceiling placed on the use of
4 temporary assistance for needy families funds in the General
5 Appropriations Act of 2009, and any other expenditure limits
6 placed on the use of temporary assistance for needy families
7 funds, shall be raised or waived to the extent necessary for the
8 department to use the funds provided under the American Recovery
9 and Reinvestment Act of 2009, up to the amount actually provided
10 to the State.

11 SECTION 7. This Act shall take effect upon its approval
12 and shall be repealed on December 31, 2012; provided that
13 section 76-16(b), Hawaii Revised Statutes, is reenacted in the
14 form in which it read on the day before the effective date of
15 this Act.



Report Title:

Procurement, employment, and ARRA funds

Description:

Creates temporary exemptions in procurement, rulemaking, and civil service employment statutes for programs, services, and benefits using funds allocated to the State by the American Recovery and Reinvestment Act of 2009. (HB1184 HD2)

