

A BILL FOR AN ACT

VETO OVERRIDE

RELATING TO THE PURCHASES OF HEALTH AND HUMAN SERVICES.

Act No. 69

Approved [Signature]

Dated: April 29, 2010

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

1 SECTION 1. The legislature finds that procurement laws
2 regarding request for proposal procedures for the purchase of
3 health and human services need to be clarified. Recently, the
4 request for proposal for the QUEST Expanded Access contract
5 allowed for-profit organizations intending to bid for health and
6 human services contracts to submit a "pre-tax" bid. The ability
7 to submit a "pre-tax" bid does not apply to not-for-profit
8 companies because not-for-profits are not subject to the
9 insurance premium tax which is mandated by Hawaii law.

10 In 2008, two for-profit companies bid for, and were
11 awarded, the QUEST Expanded Access Program contracts. In
12 addition, the administration and the department of human
13 services agreed to rebate the amount of the insurance premium
14 tax of 4.265 per cent to these companies, resulting in a higher
15 award amount than the companies had bid. It appears that the
16 state administration, during these difficult financial times,
17 will be "rebating" these companies approximately \$25,000,000 -



1 funds that the companies will be able to use to pay their taxes.
2 Concerned groups have argued that this is not proper, if not
3 illegal, because the legislature is the only branch of
4 government with the power to impose, waive, or rebate a tax by
5 exempting certain types of organizations.

6 Further, under the Hawaii procurement code, a proposed bid
7 should reflect the total amount to be expended by the State on a
8 contract, including all costs and any taxes that may be due and
9 payable. Accordingly, this bill is to ensure transparency in
10 the bidding process.

11 On December 18, 2008, in *Hawaii Insurers Council v. Lingle*,
12 120 Hawai'i 51, 201 P.3d 564 (2008), the Hawaii supreme court
13 held that only the legislature has the power to tax persons or
14 entities. The court further held that "[t]he executive branch
15 is left only with the power to administer and enforce the
16 state's tax laws, not to levy new taxes."

17 The purpose of this Act is to clarify certain award and
18 contract procedures through state procurement laws and the
19 request for proposal process for purchases of health and human
20 services under Chapter 103F, Hawaii Revised Statutes. It
21 further requires bidders to be properly licensed in the state to
22 conduct the business being sought by the request for proposals,



1 unless the business being sought is not required by the State to
2 be licensed.

3 SECTION 2. Chapter 103F, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§103F- Proposals and awards. (a) No contract
7 proposals shall be accepted from any applicant who lacks any
8 license necessary to conduct the business being sought by the
9 request for proposals.

10 (b) Proposals submitted under this chapter shall include
11 all costs, fees, and taxes, and any award or contract shall be
12 for the amount of the proposal. No award or contract shall
13 include any other payment, rebate, or direct or indirect
14 consideration that is not included in the proposal, such as
15 insurance premium or general excise tax rebates to or waivers
16 for an applicant or bidder."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 4. New statutory material is underscored.

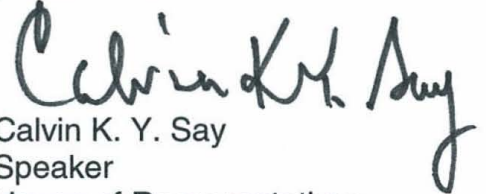
21 SECTION 5. This Act shall take effect upon its approval.



THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 29, 2010
Honolulu, Hawaii

We hereby certify that, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the House of Representatives of the State of Hawaii, on this date reconsidered House Bill No. 1642, HD 1, SD 2, CD 1, heretofore vetoed as contained in a Governor's Message dated April 22, 2010, and approved said bill by an affirmative vote of two-thirds of all members to which the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session 2010, is entitled.



Calvin K. Y. Say
Speaker
House of Representatives

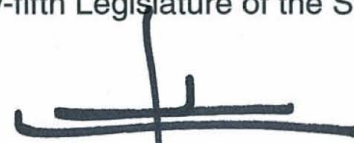


Patricia Mau-Shimizu
Chief Clerk
House of Representatives

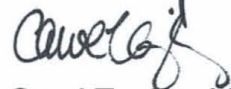
THE SENATE OF THE STATE OF HAWAII

Date: April 29, 2010
Honolulu, Hawaii

We hereby certify that, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Senate of the State of Hawaii, on this date reconsidered House Bill No. 1642, HD 1, SD 2, CD 1, heretofore vetoed as contained in a Governor's Message dated April 22, 2010, and approved said bill by an affirmative vote of two-thirds of all members to which the Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session 2010, is entitled.



Colleen Hanabusa
President of the Senate



Carol Taniguchi
Clerk of the Senate