
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, envisioned by President Barack Obama as money going "out
4 the door immediately," will require expedited procedures to
5 allow the State to immediately take full advantage of the
6 funding for programs, services, and benefits authorized by the
7 American Recovery and Reinvestment Act of 2009 to bring the
8 benefits of the federal stimulus plan to the people of Hawaii at
9 the 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 climate as well as improving and expanding
15 benefits to our already neediest individuals and families.

16 The purpose of this Act is to provide temporary exemptions
17 from current statutes relating to procurement, rule-making, and
18 employment, to allow the State to expedite the implementation or



1 expansion of programs, services, and benefits authorized by the
2 American Recovery and Reinvestment Act of 2009. It is not the
3 intent of the legislature to provide permanent exemptions to the
4 governing statutes, and this Act shall be applied only to
5 expediting the expenditure of federal funds authorized in the
6 American Recovery and Reinvestment Act of 2009, or to expending
7 the matching state funds, if any, required to access the federal
8 funding in the American Recovery and Reinvestment Act of 2009.

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

19 (1) Procurements of less than \$150,000 for goods and
20 services or health and human services, and
21 procurements of less than \$250,000 for construction,
22 shall be based on specifications, and no less than



1 three written quotes shall be solicited. Only vendors
2 that supply the goods, services, construction, or
3 health and human services shall be solicited and
4 considered to meet the minimum quotation requirements.
5 Considering the criteria, including but not limited to
6 quality, warranty, and delivery, an award shall be
7 made to the lowest responsive, responsible offeror.
8 When an award to the lowest responsive, responsible
9 offeror is not practicable, the award shall be made to
10 the offeror whose quotation provides the best value to
11 the State. Written determination for the selection
12 shall be placed in the procurement file.

13 (2) For procurements of \$150,000 or more for goods,
14 services, or health and human services, and of
15 \$250,000 or more for construction, purchasing
16 agencies, with the approval of the head of the
17 purchasing agency, may issue a request for interest to
18 select a contractor or contractors. The request for
19 interest shall include but not be limited to the
20 following:

21 (A) Identification and purpose of the federal
22 funding;



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

11 The selection of a contractor or contractors shall be based
12 on the criteria established in the request for interest.

13 The relative priority to be applied to each evaluation
14 factor shall also be set out in the request for interest.

15 Evaluation factors not specified in the request for
16 interest may not be considered.

17 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, the
5 committee shall determine the lowest responsive, responsible
6 offeror and provide that information to the head of the
7 purchasing agency. The head of the purchasing agency shall
8 award the contract or contracts based upon the information
9 provided by the committee.

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

- 20 (A) Amending or canceling a request for interest;
21 (B) Terminating the contract that was awarded;
22 (C) Initiating a new process to award a contract;



- 1 (D) Declaring the contract null and void from the
2 time of its award; or
- 3 (E) Affirming the purchasing agency's contract award
4 decision.

5 If the protest is not resolved by mutual agreement, the
6 head of the purchasing agency, or a designee, shall issue a
7 decision in writing within ten working days of receipt of the
8 protest. The decision shall state the reasons for the action
9 taken. A copy of the written decision shall be mailed or
10 otherwise furnished to the person who initiated the protest.
11 For awards of health and human services contracts, the decision
12 of the head of the purchasing agency shall be final and
13 conclusive unless a person who is aggrieved by an award of a
14 contract submits a request for reconsideration to the chief
15 procurement officer within five working days of the receipt of
16 the written decision. The request shall contain a specific
17 statement of the factual and legal grounds upon which
18 reconsideration is sought. A request for reconsideration may
19 only be made to correct a purchasing agency's failure to comply
20 with the procedures of this Act and any applicable rules adopted
21 to implement this Act. The chief procurement officer may uphold
22 or overturn the previous decision of the head of the purchasing



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

7 The fact that a protest or a request for reconsideration is
8 filed shall not stay the award of any contract made under this
9 Act.

10 SECTION 3. Sections 103-8.5, 103-53(a), 103-55, and
11 103-55.5, Hawaii Revised Statutes, shall not apply to contracts
12 for goods, services, construction, or health and human services
13 using federal funds authorized by the American Recovery and
14 Reinvestment Act of 2009, and matching state funds required to
15 access the federal funding in the American Recovery and
16 Reinvestment Act of 2009; provided that tax clearances from the
17 director of taxation and the Internal Revenue Service shall be
18 received prior to final payment certifying that all tax returns
19 due have been filed, and all taxes, interest, and penalties
20 levied against the contractor or accrued under title 14 of the
21 Hawaii Revised Statutes, that are administered by the department
22 of taxation and under the Internal Revenue Code have been paid.



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

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

17 "(b) The civil service to which this chapter applies shall
18 comprise all positions in the State now existing or hereafter
19 established and embrace all personal services performed for the
20 State, except the following:

21 (1) Commissioned and enlisted personnel of the Hawaii
22 national guard as such, and positions in the Hawaii



1 national guard that are required by state or federal
2 laws or regulations or orders of the national guard to
3 be filled from those commissioned or enlisted
4 personnel;

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

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

19 (4) Positions filled by the legislature or by either house
20 or any committee thereof;



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



1 of the intermediate appellate court, one law clerk for
2 each judge of the circuit court, two additional law
3 clerks for the civil administrative judge of the
4 circuit court of the first circuit, two additional law
5 clerks for the criminal administrative judge of the
6 circuit court of the first circuit, one additional law
7 clerk for the senior judge of the family court of the
8 first circuit, two additional law clerks for the civil
9 motions judge of the circuit court of the first
10 circuit, two additional law clerks for the criminal
11 motions judge of the circuit court of the first
12 circuit, and two law clerks for the administrative
13 judge of the district court of the first circuit; and
14 one private secretary for the administrative director
15 of the courts, the deputy administrative director of
16 the courts, each department head, each deputy or first
17 assistant, and each additional deputy, or assistant
18 deputy or assistant defined in paragraph (16);
19 (10) First deputy and deputy attorneys general, the
20 administrative services manager of the department of
21 attorney general, one secretary for the administrative
22 services manager, an administrator and any support



1 staff for the criminal and juvenile justice resources
2 coordination functions, and law clerks;

3 (11) (A) Teachers, principals, vice-principals, complex
4 area superintendents, deputy and assistant
5 superintendents, other certificated personnel,
6 not more than twenty noncertificated

7 administrative, professional, and technical
8 personnel not engaged in instructional work;

9 (B) Effective July 1, 2003, teaching assistants,
10 educational assistants, bilingual/bicultural
11 school-home assistants, school psychologists,
12 psychological examiners, speech pathologists,
13 athletic health care trainers, alternative school
14 work study assistants, alternative school
15 educational/supportive services specialists,
16 alternative school project coordinators, and
17 communications aides in the department of
18 education;

19 (C) The special assistant to the state librarian and
20 one secretary for the special assistant to the
21 state librarian; and



- 1 (D) Members of the faculty of the University of
2 Hawaii, including research workers, extension
3 agents, personnel engaged in instructional work
4 and administrative, professional, and technical
5 personnel of the university;
- 6 (12) Employees engaged in special, research, or
7 demonstration projects approved by the governor;
- 8 (13) Positions filled by inmates, kokuas, patients of state
9 institutions, persons with severe physical or mental
10 handicaps participating in the work experience
11 training programs, and students and positions filled
12 through federally funded programs that provide
13 temporary public service employment such as the
14 federal Comprehensive Employment and Training Act of
15 1973;
- 16 (14) A custodian or guide at Iolani Palace, the Royal
17 Mausoleum, and Hulihee Palace;
- 18 (15) Positions filled by persons employed on a fee,
19 contract, or piecework basis, who may lawfully perform
20 their duties concurrently with their private business
21 or profession or other private employment and whose
22 duties require only a portion of their time, if it is



1 impracticable to ascertain or anticipate the portion
2 of time to be devoted to the services of the State;

3 (16) Positions of first deputies or first assistants of
4 each department head appointed under or in the manner
5 provided in section 6, Article V, of the State
6 Constitution; three additional deputies or assistants
7 either in charge of the highways, harbors, and
8 airports divisions or other functions within the
9 department of transportation as may be assigned by the
10 director of transportation, with the approval of the
11 governor; four additional deputies in the department
12 of health, each in charge of one of the following:
13 behavioral health, environmental health, hospitals,
14 and health resources administration, including other
15 functions within the department as may be assigned by
16 the director of health, with the approval of the
17 governor; an administrative assistant to the state
18 librarian; and an administrative assistant to the
19 superintendent of education;

20 (17) Positions specifically exempted from this part by any
21 other law; provided that all of the positions defined



1 by paragraph (9) shall be included in the position
2 classification plan;

3 (18) Positions in the state foster grandparent program and
4 positions for temporary employment of senior citizens
5 in occupations in which there is a severe personnel
6 shortage or in special projects;

7 (19) Household employees at the official residence of the
8 president of the University of Hawaii;

9 (20) Employees in the department of education engaged in
10 the supervision of students during meal periods in the
11 distribution, collection, and counting of meal
12 tickets, and in the cleaning of classrooms after
13 school hours on a less than half-time basis;

14 (21) Employees hired under the tenant hire program of the
15 Hawaii public housing authority; provided that not
16 more than twenty-six per cent of the authority's work
17 force in any housing project maintained or operated by
18 the authority shall be hired under the tenant hire
19 program;

20 (22) Positions of the federally funded expanded food and
21 nutrition program of the University of Hawaii that



1 require the hiring of nutrition program assistants who
2 live in the areas they serve;

3 (23) Positions filled by severely handicapped persons who
4 are certified by the state vocational rehabilitation
5 office that they are able to perform safely the duties
6 of the positions;

7 (24) One public high school student to be selected by the
8 Hawaii state student council as a nonvoting member on
9 the board of education as authorized by the State
10 Constitution;

11 (25) Sheriff, first deputy sheriff, and second deputy
12 sheriff;

13 (26) A gender and other fairness coordinator hired by the
14 judiciary; [~~and~~]

15 (27) Positions in the Hawaii national guard youth challenge
16 academy[-]; and

17 (28) Positions or contracts for services with private
18 persons or entities for services lasting no more than
19 two years where the director of human resources
20 development has certified that the service is
21 necessary to the efficient and timely implementation
22 of programs authorized or funded by the federal



1 American Recovery and Reinvestment Act of 2009, and
2 provided that the federal and matching funds under the
3 Act are encumbered no later than September 30, 2010.

4 The director shall determine the applicability of this
5 section to specific positions.

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

8 SECTION 6. There is appropriated out of the federal
9 temporary assistance for needy families (TANF) funds provided to
10 the State under the American Recovery and Reinvestment Act of
11 2009 the sum of \$100,000,000 or so much thereof as may be
12 necessary for fiscal year 2009-2010 for the purposes authorized
13 by the American Recovery and Reinvestment Act of 2009.

14 The sum appropriated shall be expended by the department of
15 human services for the purposes authorized by that Act for the
16 temporary assistance for needy families program; provided that
17 the expenditure ceiling placed on the use of temporary
18 assistance for needy families funds in the General
19 Appropriations Act of 2009, and any other expenditure limits
20 placed on the use of temporary assistance for needy families
21 funds, shall be raised or waived to the extent necessary for the
22 department to use the funds provided under the American Recovery



1 and Reinvestment Act of 2009, up to the amount actually provided
2 to the State.

3 SECTION 7. This Act shall take effect upon its approval
4 and shall be repealed on December 31, 2010, except that section
5 6 shall be repealed on December 31, 2012.



Report Title:

Procurement, employment, and ARRA funds

Description:

Creates temporary exemptions in procurement, rule-making, and employment statutes for programs, services, and benefits using funds allocated to the State by the American Recovery and Reinvestment Act of 2009. (HB1184 HD1)

