

JAN 17 2014

A BILL FOR AN ACT

RELATING TO SUBSIDIES.

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

1 SECTION 1. Article VII, section 4, of the State
2 Constitution provides in part: "No grant of public money or
3 property shall be made except pursuant to standards provided by
4 law." Chapters 6E, 42F, 103F, 304A, and 383, Hawaii Revised
5 Statutes, implements this constitutional requirement by
6 establishing standards and criteria for the award of a grant, as
7 well as subsidy, to a private organization or individual.

8 No substantive difference exists between a "grant" and
9 "subsidy" in the Hawaii Revised Statutes and the state
10 constitution does not require the establishment of standards for
11 the grant of a "subsidy". Therefore, the legislature finds that
12 the term "subsidy" is not necessary.

13 The purpose of this Act is repeal references to "subsidy"
14 or "subsidies" as a type of funding award that may be made to a
15 private organization or individual for a public purpose.

16 SECTION 2. Section 6E-35, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:



1 "(c) To receive state funds, the State of Hawaii Museum of
2 Monarchy History shall:

3 (1) Be licensed or accredited, in accordance with federal,
4 state, or county statutes, rules, or ordinances, to
5 conduct the activities or provide the services for
6 which funds are appropriated;

7 (2) Comply with all applicable federal and state laws
8 prohibiting discrimination against any person on the
9 basis of race, color, national origin, religion,
10 creed, sex, age, sexual orientation, or disability;

11 (3) Agree not to use the funds for entertainment or
12 lobbying activities;

13 (4) Be incorporated under the laws of the State;

14 (5) Have bylaws or policies that describe the manner in
15 which the activities or services for which a grant [~~or~~
16 subsidy] is awarded shall be conducted or provided;

17 (6) Have been determined and designated to be a tax-exempt
18 organization by the Internal Revenue Service; and

19 (7) Have a governing board whose members shall have no
20 material conflict of interest and serve without
21 compensation."



1 SECTION 3. Section 42F-101, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending the definition of "recipient" to read:

4 "Recipient" means any organization or person receiving a
5 grant [~~or subsidy~~]."

6 2. By repealing the definition of "subsidy".

7 [~~"Subsidy" means an award of state funds by the
8 legislature, by an appropriation to a recipient specified in the
9 appropriation, to reduce the costs incurred by the organization
10 or individual in providing a service available to some or all
11 members of the public."~~]

12 SECTION 4. Section 42F-102, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§42F-102[+] **Applications for grants [~~and subsidies~~].**

15 Requests for grants [~~and subsidies~~] shall be submitted to the
16 appropriate standing committees of the legislature at the start
17 of each regular session of the legislature. Each request shall
18 state:

19 (1) The name of the requesting organization[+] or
20 individual;

21 (2) The public purpose for the grant [~~or subsidy~~];



- 1 (3) The services to be supported by the grant [~~or~~
- 2 ~~subsidy~~];
- 3 (4) The target group; and
- 4 (5) The cost of the grant [~~or subsidy~~] and the budget."

5 SECTION 5. Section 42F-103, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§42F-103 Standards for the award of grants [~~and~~**
8 **~~subsidies~~].** (a) Grants [~~and subsidies~~] shall be awarded only
9 to individuals who, and organizations that:

- 10 (1) Are licensed or accredited, in accordance with
- 11 federal, state, or county statutes, rules, or
- 12 ordinances, to conduct the activities or provide the
- 13 services for which a grant [~~or subsidy~~] is awarded;
- 14 (2) Comply with all applicable federal and state laws
- 15 prohibiting discrimination against any person on the
- 16 basis of race, color, national origin, religion,
- 17 creed, sex, age, sexual orientation, or disability;
- 18 (3) Agree not to use state funds for entertainment or
- 19 lobbying activities; and
- 20 (4) Allow the state agency to which funds for the grant
- 21 [~~or subsidy~~] were appropriated for expenditure,
- 22 legislative committees and their staff, and the



1 auditor full access to their records, reports, files,
2 and other related documents and information for
3 purposes of monitoring, measuring the effectiveness,
4 and ensuring the proper expenditure of the grant [~~or~~
5 ~~subsidy~~].

6 (b) In addition, a grant [~~or subsidy~~] may be made to an
7 organization only if the organization:

- 8 (1) Is incorporated under the laws of the State; and
9 (2) Has bylaws or policies that describe the manner in
10 which the activities or services for which a grant [~~or~~
11 ~~subsidy~~] is awarded shall be conducted or provided.

12 (c) Further, a grant [~~or subsidy~~] may be awarded to a
13 nonprofit organization only if the organization:

- 14 (1) Has been determined and designated to be a nonprofit
15 organization by the Internal Revenue Service; and
16 (2) Has a governing board whose members have no material
17 conflict of interest and serve without compensation.

18 (d) If a grant [~~or subsidy~~] is used by an organization for
19 the acquisition of land, when the organization discontinues the
20 activities or services on the land acquired for which the grant
21 [~~or subsidy~~] was awarded and disposes of the land in fee simple
22 or by lease, the organization shall negotiate with the expending



1 agency for a lump sum or installment repayment to the State of
 2 the amount of the grant [~~or subsidy~~] used for the acquisition of
 3 the land. This restriction shall be registered, recorded, and
 4 indexed in the bureau of conveyances or with the assistant
 5 registrar of the land court as an encumbrance on the property.
 6 Amounts received from the repayment of a grant [~~or subsidy~~]
 7 under this subsection shall be deposited into the general fund."

8 SECTION 6. Section 42F-104, Hawaii Revised Statutes, is
 9 amended to read as follows:

10 "[~~§~~42F-104] **Contracts for grants [~~and subsidies~~]**. An
 11 appropriation for a grant [~~or subsidy~~] shall be disbursed by a
 12 contract between the state agency designated the expending
 13 agency for the appropriation by the legislature, and the
 14 recipient of the grant [~~or subsidy~~]. The contract shall be
 15 effective as of the first day of the fiscal year for which the
 16 funds for the grant [~~or subsidy~~] are appropriated, provided that
 17 up to one-fourth of the total amount appropriated may be
 18 disbursed prior to the execution of the contract."

19 SECTION 7. Section 42F-105, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "[~~§~~42F-105] **Allotment.** Contracts to disburse and
 22 appropriations for grants [~~and subsidies~~] shall be subject to



1 the allotment system generally applicable to all appropriations
2 made by the legislature."

3 SECTION 8. Section 42F-106, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~42F-106] **Monitoring and evaluation.** Every grant
6 [~~or subsidy~~] shall be monitored by the expending agency to
7 ensure compliance with this chapter and the public purpose and
8 legislative intent of the grant [~~or subsidy~~]."

9 SECTION 9. Section 103D-102, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Notwithstanding subsection (a), this chapter shall
12 not apply to contracts by governmental bodies:

13 (1) Solicited or entered into before July 1, 1994, unless
14 the parties agree to its application to a contract
15 solicited or entered into prior to July 1, 1994;

16 (2) To disburse funds, irrespective of their source:

17 (A) For grants [~~or subsidies~~] as [~~these terms are~~]
18 defined in section 42F-101, made by the State in
19 accordance with standards provided by law as
20 required by article VII, section 4, of the state
21 constitution; or by the counties pursuant to
22 their respective charters or ordinances;



- 1 (B) To make payments to or on behalf of public
2 officers and employees for salaries, fringe
3 benefits, professional fees, or reimbursements;
- 4 (C) To satisfy obligations that the State is required
5 to pay by law, including paying fees, permanent
6 settlements, subsidies, or other claims, making
7 refunds, and returning funds held by the State as
8 trustee, custodian, or bailee;
- 9 (D) For entitlement programs, including public
10 assistance, unemployment, and workers'
11 compensation programs, established by state or
12 federal law;
- 13 (E) For dues and fees of organizations of which the
14 State or its officers and employees are members,
15 including the National Association of Governors,
16 the National Association of State and County
17 Governments, and the Multi-State Tax Commission;
- 18 (F) For deposit, investment, or safekeeping,
19 including expenses related to their deposit,
20 investment, or safekeeping;
- 21 (G) To governmental bodies of the State;



1 (H) As loans, under loan programs administered by a
2 governmental body; and

3 (I) For contracts awarded in accordance with chapter
4 103F;

5 (3) To procure goods, services, or construction from a
6 governmental body other than the University of Hawaii
7 bookstores, from the federal government, or from
8 another state or its political subdivision;

9 (4) To procure the following goods or services which are
10 available from multiple sources but for which
11 procurement by competitive means is either not
12 practicable or not advantageous to the State:

13 (A) Services of expert witnesses for potential and
14 actual litigation of legal matters involving the
15 State, its agencies, and its officers and
16 employees, including administrative quasi-
17 judicial proceedings;

18 (B) Works of art for museum or public display;

19 (C) Research and reference materials including books,
20 maps, periodicals, and pamphlets, which are
21 published in print, video, audio, magnetic, or
22 electronic form;



- 1 (D) Meats and foodstuffs for the Kalaupapa
2 settlement;
- 3 (E) Opponents for athletic contests;
- 4 (F) Utility services whose rates or prices are fixed
5 by regulatory processes or agencies;
- 6 (G) Performances, including entertainment, speeches,
7 and cultural and artistic presentations;
- 8 (H) Goods and services for commercial resale by the
9 State;
- 10 (I) Services of printers, rating agencies, support
11 facilities, fiscal and paying agents, and
12 registrars for the issuance and sale of the
13 State's or counties' bonds;
- 14 (J) Services of attorneys employed or retained to
15 advise, represent, or provide any other legal
16 service to the State or any of its agencies, on
17 matters arising under laws of another state or
18 foreign country, or in an action brought in
19 another state, federal, or foreign jurisdiction,
20 when substantially all legal services are
21 expected to be performed outside this State;
- 22 (K) Financing agreements under chapter 37D; and



1 (L) Any other goods or services which the policy
2 board determines by rules or the chief
3 procurement officer determines in writing is
4 available from multiple sources but for which
5 procurement by competitive means is either not
6 practicable or not advantageous to the State; and

7 (5) Which are specific procurements expressly exempt from
8 any or all of the requirements of this chapter by:

9 (A) References in state or federal law to provisions
10 of this chapter or a section of this chapter, or
11 references to a particular requirement of this
12 chapter; and

13 (B) Trade agreements, including the Uruguay Round
14 General Agreement on Tariffs and Trade (GATT)
15 which require certain non-construction and non-
16 software development procurements by the
17 comptroller to be conducted in accordance with
18 its terms."

19 SECTION 10. Section 103F-101, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) This chapter shall apply to all contracts made by
22 state agencies and may be used by county agencies to provide



1 health or human services to Hawaii's residents; provided that
2 this chapter shall not apply to:

- 3 (1) Contracts to award grants [~~or subsidies~~] of state
4 funds appropriated by the legislature to a specific
5 organization or individual;
- 6 (2) Transactions between or among government agencies,
7 including but not limited to agreements, contracts,
8 and grants;
- 9 (3) Transactions expressly exempt from the requirements of
10 this chapter; and
- 11 (4) Transactions that the chief procurement officer
12 determines are exempt under rules adopted by the
13 policy board."

14 SECTION 11. Section 304A-2351, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) Neither the trust established by the university
17 pursuant to subsection (a), nor any trustee thereof, shall be a
18 department, office, agency, board, commission, bureau,
19 instrumentality, committee, authority, or office of the State or
20 any of its political subdivisions, or otherwise deemed a public
21 or quasi-public entity, nor shall the initial funding of, or a
22 transfer to, the trust constitute a state grant [~~or subsidy~~].



1 The trust shall not be subject to laws or rules governing state
2 and other public or quasi-public entities, including but not
3 limited to chapters 23, 36, 37, 38, 40, 42F, 76, 78, 84, 89, 91,
4 92, 92F, 103, and 103D."

5 SECTION 12. Section 383-128, Hawaii Revised Statutes, is
6 amended by amending subsections (f) and (g) to read as follows:

7 "(f) For purposes of grants [~~and subsidies~~] awarded under
8 subsection (d), any organization requesting a grant [~~or subsidy~~]
9 shall:

10 (1) Be licensed and accredited, as applicable, under the
11 laws of the State;

12 (2) Have at least one year's experience with the project
13 or in the program area for which the request or
14 proposal is being made; except that the director may
15 grant an exception where the project or program area
16 deals with new industry training; and

17 (3) Be, employ, or have under contract persons who are
18 qualified to engage in the program or activity to be
19 funded by the State.

20 (g) Recipients of grants [~~or subsidies~~] shall be subject
21 to the following conditions:



- 1 (1) Any organization requesting a grant [~~or subsidy~~] shall
2 submit its request together with all the information
3 required by the director on an application form
4 provided by the department;
- 5 (2) The recipient of a grant [~~or subsidy~~] shall not use
6 public funds for purposes of entertainment or
7 perquisites;
- 8 (3) The recipient of a grant [~~or subsidy~~] shall comply
9 with applicable federal, state, and county laws;
- 10 (4) The recipient of a grant [~~or subsidy~~] shall comply
11 with any other requirements the director may
12 prescribe;
- 13 (5) The recipient of a grant [~~or subsidy~~] shall allow the
14 director, the legislative bodies, and the legislative
15 auditor full access to records, reports, files, and
16 other related documents so that the program,
17 management, and fiscal practices of the grant
18 recipient may be monitored and evaluated to assure the
19 proper and effective expenditure of public funds;
- 20 (6) Every grant [~~or subsidy~~] shall be monitored according
21 to rules established by the director to ensure
22 compliance with this section; and



1 (7) Any recipient of a grant [~~or subsidy~~] under this
2 section who withholds or omits any material fact or
3 deliberately misrepresents facts to the director or
4 who violates the terms of the recipient's contract
5 shall be in violation of this section and, in addition
6 to any other penalties provided by law, shall be
7 prohibited from applying for a grant [~~or subsidy~~]
8 under this section for a period of five years from the
9 date of termination."

10 SECTION 13. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect on July 1, 2014.

13

INTRODUCED BY: Arnold J. Igo



S.B. NO. 241

Report Title:

Subsidy; Deletion

Description:

Deletes references to "subsidy" in the chapters establishing standards and criteria for the award of grants to private organizations and individuals. Makes conforming deletions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

