

**"CHAPTER 37
BUDGET**

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Note

Pilot project for efficiency measures to be included with budget documents submitted to the legislature; report to 2017 legislature; auditor report (no later than March 1, 2017). L 2015, c 67.

Attorney General Opinions

Common law principle authorizing recipient government agencies to accept and use gifts in accordance with donor's terms, provided terms are not illegal, has been incorporated in chapter's provisions governing trust funds. Att. Gen. Op. 92-4.

"PART I. PREPARATION OF BUDGET--REPEALED

§§37-1 to 14 REPEALED. L 1970, c 185, §18.

"PART II. ALLOTMENT SYSTEM

Attorney General Opinions

Executive branch could exercise its authority under this part to reduce allotments for fiscal year in progress. Att. Gen. Op. 03-2.

§37-31 Intent and policy. It is declared to be the policy and intent of the legislature that the total appropriations made by it, or the total of any budget approved by it, for any department or establishment, shall be deemed to be the maximum amount authorized to meet the requirements of the department or establishment for the period of the appropriation, excepting as may otherwise be provided by law, and that the governor and the director of finance should be given the powers granted by sections 37-32 to 37-41 in order that savings may be effected by careful supervision throughout each appropriation period with due regard to changing conditions; and by promoting more economic and efficient management of state departments and establishments. [L Sp 1959 1st, c 12, pt of §3; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; Supp, §35-19; HRS §37-31]

Cross References

Expenditure controls, see Const. art. VII, §5.

" **§37-32 Quarterly allotment periods.** Except as provided in section 37-41.5, no officer, department or establishment shall expend or be allowed to expend during any fiscal year any sum for any purpose not specifically authorized by the legislature for expenditure during that particular fiscal year, and not made available pursuant to the allotment system provided for in sections 37-31 to 37-41. For the purposes of the allotment system, each fiscal year shall be divided into four quarterly allotment periods, beginning, respectively, on the first days of July, October, January, and April; provided that in any case where the quarterly allotment period is impracticable, the director of finance may prescribe a different period suited to the circumstances, not exceeding six months nor extending beyond the end of the fiscal year. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-20; HRS §37-32; am L 1993, c 364, §3; am L 1994, c 281, §§2, 12]

Attorney General Opinions

Referred to: Att. Gen. Op. 61-63.

" **§37-33 Funds to which allotment system applies.** Sections 37-31 to 37-42 relating to the allotment system shall apply to all appropriations (including standing, continuing, or annual appropriations and special funds) for all departments and establishments, but shall not apply to refund accounts nor to appropriations for the courts or the legislature nor to payment of unemployment compensation benefits. In the cases of capital improvements and in other cases where periodical allotments are impracticable, the director of finance may dispense therewith and prescribe such regulations as will insure proper application and encumbering of funds. Subject to section 37-40, emergency or contingent funds, revolving funds, and trust funds, shall be subject to such regulations as the director may prescribe for controlling the expenditures and encumbering the funds. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-21; HRS §37-33]

" **§37-34 Appropriations available for allotment; estimate of expenses.** (a) No appropriation to which the allotment system is applicable shall become available to any department or establishment for expenditure during any allotment period until the department or establishment submits an estimate to the director of finance, at whatever time prior to the beginning of the allotment period and in whatever form as the director may prescribe, of the amount required to carry on the work of the

department or establishment during that period and until the estimate is approved, increased, or decreased by the director and funds are allotted pursuant to section 37-35.

(b) Before appropriations for the University of Hawaii become available to the university, the university shall advise the governor and the director of finance of the amount necessary for payments for financing agreements under chapter 37D, the governor, with the assistance of the director of finance, as may be necessary, shall establish allotment ceilings for each source of funding of all of the appropriations of the University of Hawaii for each allotment period and shall advise the university of these determinations.

(c) Any other law to the contrary notwithstanding, general fund appropriations for the operating expenses of public health facilities shall be made available to the public health facilities for expenditure during any allotment period. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-22; HRS §37-34; am L 1986, c 320, §1; am L 1988, c 326, §3; am L 1989, c 327, §1 and c 370, §2; am L 1994, c 281, §§4, 5; am L 1995, c 11, §21; am L 1998, c 41, §2]

" **§37-34.5 Department of education; allotment and expenditure plan; updates.** The department of education shall submit an annual allotment and expenditure plan, including a separate description of all existing financing agreements of the department of education that require funding, together with a statement of the amount of funding required, and all proposed financing agreements of the department of education for the ensuing fiscal year, to the governor for each fiscal year. The governor may require the department of education to submit an update of the expenditure plan based on changing economic conditions. [L 1993, c 364, pt of §2; am L 1998, c 41, §3]

" **§§37-34.6, 34.7 REPEALED.** L 1994, c 281, §12(1).

" **§37-35 Estimated expenditures; approval.** The director of finance shall review all estimates submitted under section 37-34 and, having due regard for:

- (1) The probable further needs of the department or establishment for the remainder of the term for which the appropriation was made;
- (2) The terms and purposes of the appropriation, the progress of collection of revenues, and condition of the treasury; and

- (3) The probable receipts and total cash requirements for the ensuing quarter, shall approve, increase, or reduce the amount of the estimate;

provided that the director of finance shall approve the estimates submitted by the University of Hawaii when:

- (1) The sum of the estimates for each funding source does not exceed the applicable allotment ceilings established by the governor under section 37-34;
- (2) The progress of collection of revenues, the condition of the treasury, and the probable receipts and total cash requirements for the ensuing quarter permit; and
- (3) All other legal requirements are satisfied.

The director shall act promptly upon all estimates and notify each department or establishment of its allotment, and shall notify the comptroller. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-23; HRS §37-35; gen ch 1985; am L 1986, c 320, §2; am L 1989, c 370, §2; am L 1994, c 281, §§4, 6; am L 1995, c 11, §21]

" **§37-36 Modification.** (a) The director of finance may modify or amend any previous allotment upon notice to the department or establishment concerned; provided that:

- (1) For the University of Hawaii, the director of finance may modify or amend any previous allotment only upon application of or notice to the university, and upon public declaration, which shall be made ten days prior to the modification or amendment taking effect;
- (2) The modification or amendment shall be made only to avoid an illegal result or in anticipation of a revenue shortfall;
- (3) No deficit or undue reduction of funds to meet future needs of the department or establishment will result from the modification or amendment; and
- (4) No modification or amendment shall reduce an allotment below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.

(b) Prior to the implementation of any modification in allotment proposed by the director of finance pursuant to subsection (a), in which the sum of the modifications exceed 2.5 per cent of the total general fund appropriation made by the legislature in any fiscal year, the director shall notify the president of the senate, the speaker of the house of representatives, and the chairpersons of the senate committee on ways and means and the house of representatives committee on finance, respectively, of the director's intent. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-24; HRS §37-36; gen ch 1985; am L

1986, c 320, §3; am L 1989, c 370, §2; am L 1992, c 294, §8; am L 1994, c 281, §§4, 7; am L 1995, c 11, §21; am L 1996, c 285, §1]

" **§37-37 Reduction.** (a) Except as provided in subsection (b), when the director of finance determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the director shall, with the approval of the governor and after notice to the department or establishment concerned, reduce the amount allotted or to be allotted; provided that no reduction reduces any allotted amount below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.

(b) For the University of Hawaii, when the director of finance determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the director shall advise the governor of the situation, and the governor shall redetermine the allotment ceiling for the affected source or sources of funding pursuant to section 37-34, and shall advise the university and make a public declaration ten days prior to the effective date of the redetermination. The university, not more than twenty days after the governor's notification, shall submit revised estimates consistent with the governor's redetermination to the director of finance. Otherwise, the director of finance shall modify, amend, or reduce any allotment of the university to comply with the governor's redetermination; provided that no reduction shall reduce any allotted amount below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.

(c) Prior to the implementation of any reduction in allotment proposed by the director of finance or the governor pursuant to subsection (a) or (b), in which the sum of the reductions exceed 2.5 per cent of the total general fund appropriation made by the legislature in any fiscal year, the director of finance shall notify the president of the senate, the speaker of the house of representatives, and the chairpersons of the senate committee on ways and means and the house of representatives committee on finance, respectively, of

the director's intent. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-25; HRS §37-37; am L 1986, c 320, §4; am L 1989, c 370, §2; am L 1992, c 294, §9; am L 1994, c 281, §§4, 8; am L 1995, c 11, §21; am L 1996, c 285, §2]

" **§37-38 Allotment according to classification prescribed in appropriation.** Allotments shall be made according to the classifications of expenditures prescribed in the appropriation measure as enacted by the legislature, and the funds allotted for each classification of expenditure shall be used for no other classification of expenditure. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-26; HRS §37-38]

" **§37-39 Reduction of allotted amounts for objects and items.** The head of a department or establishment may, at any time during any allotment period, reduce the expenditure of money appropriated and allotted for that period for specific items and objects within the classification of expenditures prescribed in the appropriation measure and allotted to the department or establishment. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-27; HRS §37-39]

" **§37-40 Exceptions; trust funds.** Except as to administrative expenditures, and except as otherwise provided by law, expenditures from trust funds may be made by any department or establishment without appropriation or allotment; provided that no expenditure shall be made from and no obligation shall be incurred against any trust fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended.

Nothing in sections 37-31 to 37-41 shall require any trust fund established pursuant to law be reappropriated annually. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-28; HRS §37-40; am L Sp 1995, c 11, §8; am L 2010, c 187, §§2, 12; am L 2012, c 175, §1]

" **§37-41 Appropriations to revert to state treasury; exceptions.** Unless otherwise provided by section 37-41.5 or any other law, every appropriation or part thereof of any kind made subject to sections 37-31 to 37-40, remaining unexpended and unencumbered at the close of any fiscal year shall lapse and be returned to the general fund in the manner prescribed in section 40-66. [L Sp 1959 1st, c 12, pt of §3; Supp, §35-29; HRS §37-41; am L 1993, c 364, §4; am L 1994, c 281, §§3, 12]

" **§37-41.5 Department of education; carryover of funds.** (a)

The department of education may retain up to five per cent of any appropriation, except for appropriations to fund financing agreements entered into in accordance with chapter 37D, at the close of a fiscal year and the funds retained shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

- (1) A report to the director of finance ninety days after the close of each fiscal year, which shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds that will carry over to the next fiscal year; and
- (2) A copy of this report to the legislature, as well as a report identifying the carryover of funds on a school-by-school basis, at least twenty days prior to the convening of the next regular session of the legislature.

(b) Appropriations allocated to the schools shall remain within the budget of the school to which they were originally allocated; provided that the retention of an appropriation shall not be used by the department as a basis for reducing a school's future budget requirements. [L 1993, c 364, pt of §2; am L 1994, c 272, §22; am L Sp 1995, c 9, §6; am L 1998, c 41, §4; am L 2000, c 202, §1; am L 2004, c 51, §52]

" **§37-42 Allotment as limit of expenditures; liability for excessive expenditure.** No department or establishment shall expend or be allowed to expend any sum, or incur or be allowed to incur any obligation in excess of an allotment. No obligation incurred in excess of the balance of an allotment shall be binding against the State, but where the obligation is violative only for having been made in excess of an allotment, the director of finance may authorize payment thereof from unallotted funds. Any officer, employee, or member of any department or establishment, who makes or causes to be made any excessive expenditure or incurs or causes to be incurred any excessive obligation shall be deemed guilty of neglect of official duty and shall be subject to removal from office and shall be liable to the State for such sum as may have been expended or paid, and such sum, together with interest and costs, shall be recoverable in an action instituted by the attorney general.

Provided that any state department, with the prior consent of the governor and of the director, and subject to terms and

conditions insuring protection of the State as shall be imposed by the department, may cosponsor with another state department or with the county or any agency thereof, for the purpose of applying for federal funds or assistance for any project, after certification by the state comptroller that proper and sufficient allotment has been made by the governor to the other department or after receipt of resolution adopted by the county council that proper and sufficient sums for the project have been appropriated and encumbered. [L Sp 1959 1st, c 12, pt of §3; am L 1963, c 194, §1; Supp, §35-30; HRS §37-42]

Revision Note

"County council" substituted for "board of supervisors or city council".

" **§37-43 Capital improvement project allotment process.** The department of budget and finance shall carry out the capital improvement project allotment process, which shall consist of reviewing, prioritizing, and evaluating capital improvement project appropriation proposals submitted by state and county agencies to ensure conformity with statewide planning goals and objectives and executive priorities, and report its findings and recommendations and an estimate of the operational costs for each proposed capital improvement project to the governor in order that the proposals may be considered for possible inclusion in the executive capital improvement project budget that is to be presented to the legislature. The department shall also review, analyze, and report on state and county capital improvement project appropriation proposals that extend over wide geographical areas of the State and that have significant impacts upon economic development, land use, environmental quality, construction employment, and executive policy directions. [L 1988, c 352, §1; am L 2014, c 135, §2]

" **§37-44 REPEALED.** L 1996, c 40, §2.

Cross References

For present provision, see §40-89.

" **§37-45 REPEALED.** L 1996, c 40, §3.

Cross References

For present provision, see §40-90.

" **[§37-46] Transfers of non-general funds to the general funds.** (a) The director of finance shall submit written notification to the legislature within ten days of any transfer of non-general funds to the general fund.

(b) The director of finance shall prepare an annual report to be submitted to the legislature no later than twenty days prior to the convening of each regular session on such transfers for the preceding fiscal year. [L Sp 1995, c 15, pt of §2]

" **[§37-47] Reporting of non-general fund information.** No later than twenty days prior to the convening of each regular session, each department shall submit to the legislature a report for each non-general fund account which shall include but not be limited to, the following:

- (1) The name of the fund and a cite to the law authorizing the fund;
- (2) The intended purpose of the fund;
- (3) The current program activities which the fund supports;
- (4) The balance of the fund at the beginning of the current fiscal year;
- (5) The total amount of expenditures and other outlays from the fund account for the previous fiscal year;
- (6) The total amount of revenue deposited to the account for the previous fiscal year;
- (7) A detailed listing of all transfers from the fund;
- (8) The amount of moneys encumbered in the account as of the beginning of the fiscal year;
- (9) The amount of funds in the account which are required for the purposes of bond conveyance or other related bond obligations;
- (10) The amount of moneys in the account derived from bond proceeds; and
- (11) The amount of moneys of the fund held in certificates of deposit, escrow accounts or other investments. [L Sp 1995, c 15, pt of §2]

"PART III. BUDGETARY CONTROL OF SPECIAL FUNDS

Cross References

Establishing new accounts annually, see §40-89.
Special and revolving fund reviews, see §§23-11 and 23-12.

§37-51 Abolition of special funds; legislative purpose.

The purpose of this part is to place all special funds under legislative and executive budgetary control in the same manner as the general fund, with the exception of those funds subject to applicable federal laws or regulations and payments on principal and interest on revenue bonds. [L 1957, c 320, pt of §1; Supp, §35-14.5; HRS §37-51]

" **§37-52 Provisions applicable to special funds.** All special funds maintained by all departments, commissions, boards, agencies, and establishments of the State shall be governed by this chapter, provided that departments and establishments shall not be authorized to make expenditures out of any special fund in excess of the moneys available in the special fund. [L 1957, c 320, §2; Supp, §35-14.6; HRS §37-52]

" **§37-52.3 Criteria for the establishment and continuance of special funds.** Special funds shall be established only pursuant to an act of the legislature. The legislature, in establishing or reviewing a special fund to determine whether it should be continued, shall ensure that the special fund:

- (1) Serves a need, as demonstrated by:
 - (A) The purpose of the program to be supported by the fund;
 - (B) The scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and
 - (C) An explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- (2) Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries or a clear link between the program and the sources of revenue, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- (3) Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and

- (4) Demonstrates the capacity to be financially self-sustaining. [L 2002, c 178, pt of §2; am L 2013, c 130, §4]

" **§37-52.4 Criteria for the establishment and continuance of revolving funds.** Revolving funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a revolving fund to determine whether it should be continued, shall ensure that the revolving fund:

- (1) Serves a need, as demonstrated by:
 - (A) The purpose of the program to be supported by the fund;
 - (B) The scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and
 - (C) An explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- (2) Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries or a clear link between the program and the sources of revenue, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- (3) Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining. [L 2002, c 178, pt of §2; am L 2013, c 130, §5]

" **§37-52.5 Criteria for the establishment and continuance of administratively established accounts and funds.** (a) The judiciary and any department or agency that administratively establishes any new account or fund, within thirty working days of its establishment, shall transmit a report to the legislature. The report to the legislature shall include:

- (1) The justification for the establishment of the account or fund; and
 - (2) The sources of revenue for the fund.
- (b) The judiciary and each department or agency, at least twenty days prior to the convening of each regular session,

shall submit a report to the legislature. The report shall include:

- (1) A list of all administratively established accounts or funds; and
- (2) All revenues, expenditures, encumbrances, and ending balances of each account or fund. [L 2002, c 178, pt of §2; am L 2005, c 154, §1; am L 2016, c 166, §3]

" **§37-53 Transfer of special funds.** At any time during a fiscal year, notwithstanding any other law to the contrary, any department may, with the approval of the governor or the director of finance if so delegated by the governor, transfer from any special fund relating to such department to the general revenues of the State all or any portion of moneys determined to be in excess of fiscal year requirements for such special fund, except for special funds under the control of the department of transportation relating to highways, airports, transportation use, and harbors activities, special funds under the control of the Hawaii health systems corporation or subaccounts under the control of its regional system boards, and special funds of the University of Hawaii. At any time the department of transportation, with the approval of the governor or the director of finance if so delegated by the governor, may transfer from any special fund under the control of the department of transportation, or from any account within any such special fund, to the general revenues of the State or to any other special fund under the control of the department of transportation all or any portion of moneys determined to be in excess of requirements for the ensuing twelve months determined as prescribed by rules adopted pursuant to chapter 91; provided that no such transfer shall be made which would cause a violation of federal law or federal grant agreements. [L 1957, c 320, §5; am L Sp 1959 1st, c 13, §2; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; Supp, §35-14.7; HRS §37-53; am L 1989, c 309, §2; am L 1990, c 149, §1; am L 1995, c 211, §5; am L 1998, c 115, §8; am L 2007, c 290, §9]

" **§37-54 Deposit of state funds in treasury.** (a) All state funds shall be deposited in the state treasury except funds that belong to patients and wards to whom the State is responsible for the funds, funds provided by the United States Department of Agriculture for the special supplemental nutrition program for women, infants, and children, and as otherwise provided by law.

(b) For purposes of this section, "state funds" mean moneys that have come into the possession of a state officer or

employee who has responsibility on behalf of the State for the initial custody, accountability, and disposition of the moneys. [L 1957, c 320, §6; Supp, §35-14.8; HRS §37-54; am L 1981, c 168, §1; am L 1996, c 42, §1]

"[PART IV. THE EXECUTIVE BUDGET]

Note

Pilot project for efficiency measures to be included with budget documents submitted to the legislature; report to 2017 legislature; auditor report (no later than March 1, 2017). L 2015, c 67.

[§37-61] Short title. This part may be cited as "The Executive Budget Act". [L 1970, c 185, §1]

" **§37-62 Definitions.** Unless otherwise clear from the context, as used in this part:

"Agency" means any executive department, independent commission, board, agency, authority, bureau, office, or other establishment of the state government (except the legislature and the judiciary), or any quasi-public institution which is supported in whole or in part by state funds.

"Annual required contribution" means the State's required contribution to the employees' retirement system or Hawaii employer-union health benefits trust fund, as applicable, that is sufficient to cover:

- (1) The normal cost, which is the cost of other post-employment benefits attributable to the current year of service; and
- (2) An amortization payment, which is a catch-up payment for past service costs to fund the unfunded actuarial accrued liability over the next thirty years.

"Bond categories" means types of bonds and includes general obligation bonds, reimbursable general obligation bonds, and revenue bonds.

"Bond fund" means the fund used to account for the proceeds of bond issues and expenditures therefrom.

"Bond receipts" means the proceeds from the issuance of governmental bonds.

"Capital expenditures" means payments to contractors and payments for other items related to the construction of a capital improvement project.

"Capital investment costs" means costs, beyond the research and development phase, associated with capital improvements, including the acquisition and development of land, the design and construction of new facilities, and the making of renovations or additions to existing facilities. Capital investment costs for a program are the sum of the program's capital improvement project costs.

"Casual hire position" means an hourly-paid temporary position, the services of which are required intermittently.

"Certificate of participation" means any certificate evidencing a participation right or a proportionate interest in any financing agreement or the right to receive proportionate payments from the State or a state agency due under any financing agreement.

"Construction costs" means the costs involved in building and landscaping capital facilities, including any consultant or staff services required and built-in equipment.

"Cost categories" means the major types of costs and includes research and development, capital investment, and operating.

"Cost elements" means the major subdivisions of a cost category. The category "capital investment" includes plan, land acquisition, design, construction, and equipment and furnishing. The categories "research and development" and "operating" include personal services, current lease payments, other current expenses, equipment, and motor vehicles.

"Crosswalk" means a reconciliation of the program structure with the structure used for accounting and/or appropriations.

"Debt service" means interest and principal repayments on moneys borrowed.

"Departmental earnings" means the amounts collected by governmental agencies for services provided and products or property sold; rentals collected for use of public property; fees, fines, forfeitures, and penalties assessed; and other related types of charges.

"Design costs" means the costs related to the preparation of architectural drawings for capital improvements through its various stages from schematic to final construction drawings. It does not include costs associated with the identification of needs, determining alternative ways of meeting needs, and prescription of standards for capital improvements.

"Effectiveness measure" means the criterion for measuring the degree to which the objective sought is attained.

"Federal aid interstate" means funds received or reasonably anticipated to be received from the federal government for the purpose of constructing the interstate highway system in the State.

"Federal aid primary" means funds received or reasonably anticipated to be received from the federal government for the purpose of constructing primary roadways.

"Federal aid secondary" means funds received or reasonably anticipated to be received from the federal government for the purpose of constructing secondary roadways.

"Federal aid urban" means funds received or reasonably anticipated to be received from the federal government for the purpose of constructing roads in urban areas.

"Federal funds" means financial aid received or reasonably anticipated to be received from the federal government.

"Financing agreement" means any lease purchase agreement, installment sale agreement, loan agreement, line of credit, or any other agreement to finance the improvement, use, or acquisition of real or personal property that is or will be owned or operated by the State or any agency or to refinance any such previously executed financing agreement including certificates of participation relating thereto.

"Full cost" means the total cost of a program, system or capability, including research and development costs, capital investment costs, and operating costs.

"Full-time equivalent position" means a position, the occupant of which is employed for a normal workweek of at least forty hours or its equivalent.

"Funded ratio" means the ratio of net assets to net liabilities of the employees' retirement system or Hawaii employer-union health benefits trust fund, as applicable, as determined by actuarial valuation.

"Funding period" means the number of years in the future that will be required to fully fund the unfunded actuarial accrued liability of the employees' retirement system or Hawaii employer-union health benefits trust fund, as applicable, based upon actuarial assumptions and no assumed future actuarial gains or losses.

"General fund" means the fund used to account for all transactions which are not accounted for in another fund.

"General obligation bonds" means bonds, notes, or other instruments of indebtedness for the payment of the principal and interest of which the full faith and credit of the State are pledged.

"General obligation reimbursable bonds" means general obligation bonds issued for a public undertaking, improvement, or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political

subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

"Inter-departmental transfers" means funds which will be used by a program but will be appropriated to a different program.

"Land acquisition costs" means the costs of obtaining lands, including any consultant or staff services costs attributable to that acquisition.

"Lease payments" means payments made by the State or any agency under any financing agreement.

"Means of financing" means the various sources from which funds are available and includes the general fund, special fund, revolving fund, general obligation bonds, reimbursable general obligation bonds, revenue bonds, federal aid interstate highway fund, federal aid primary road fund, federal aid secondary road fund, federal aid urban fund, other federal funds, private contributions, county funds, trust funds, and other funds.

"Nonadd" means a program which is listed with an objective or a program grouping, but the cost of which is not to be included in the total cost of that objective or program grouping because it is included in some other objective or program group.

"Nontax revenue sources" means sources other than taxes from which revenues are produced and includes departmental earnings of various kinds, reimbursements of principal on general obligation bonds issued for state agencies and counties, federal receipts which are restricted in their use to specified purposes, and other federal receipts.

"Objective" means a statement of the end result, product, or condition desired, for the accomplishment of which a course of action is to be taken.

"Operating costs" means recurring costs of operating, supporting and maintaining authorized programs, including costs for personnel salaries and wages, employee fringe benefits, lease payments, supplies, materials, equipment, and motor vehicles.

"Permanent position" means a position, the existence of which has no time limitation.

"Phases of capital improvement project" means land acquisition, design, construction, and occupancy.

"Plan costs" means the costs related to preparation of general plan, functional plan, master plan, advance plan, preliminary plan, including feasibility studies.

"Planning" means that process by which government objectives are formulated; measures by which effectiveness in attaining the objectives are identified; alternatives by which

objectives may be attained are determined; the full cost, effectiveness and benefit implications of each alternative are determined; the assumptions, risks and uncertainties of the future are clarified; and cost and effectiveness and benefit tradeoffs of the alternatives are identified.

"Position" means a specific job, whether occupied or vacant, consisting of all duties and responsibilities assigned or delegated by competent authority, requiring the full- or part-time employment of one person.

"Position ceiling" means the maximum number of permanent and temporary full-time equivalent positions that an expending agency is authorized for a particular program.

"Program" means a combination of resources and activities designed to achieve an objective or objectives.

"Program size" means the magnitude of a program, such as the number of persons serviced by the program, the amount of a commodity, the time delays, the volume of service in relation to population or area, etc.

"Program size indicator" means a measure to indicate the magnitude of a program.

"Program structure" means a display of programs which are grouped in accordance with the objectives to be achieved, or the functions to be performed.

"Programming" means that process by which government's long-range program and financial plans are scheduled for implementation over a six-year period and which specifies what programs are to be implemented, how they are to be implemented, when they are to be implemented, and what the costs of such implementation are.

"Reimbursable general obligation bonds" means general obligation bonds issued for a public undertaking, improvement, or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

"Research and development costs" means costs primarily associated with the development of a new program, system or capability to the point where capital and/or operating costs are required to introduce the program, system or capability into operational use.

"Resource categories" means types of resources and includes tax revenues, departmental earnings, and federal receipts.

"Revenue bonds" means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system, or loan program and any loan made thereunder and secured as may be provided by law.

"Revolving fund" means a fund from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds.

"Special funds" means funds which are dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.

"Taxes" and "tax revenue sources" mean each specific kind of tax.

"Tax revenues" means the amounts collected from compulsory charges, in the form of taxes, levied by the State for the purpose of financing services performed for the common public benefit.

"Temporary position" means a position, the existence of which has a time limitation, or a position that is not otherwise a permanent position.

"Trust fund" means a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.

"Unfunded actuarial accrued liability" means the portion of the actuarial accrued liability, including the present value of benefits presently being paid to retirees, that exceeds the value of current assets.

"Vicing position" means a temporary position created to backfill for an incumbent who is on an extended period of authorized leave of absence. [L 1970, c 185, §2; am L 1972, c 72, §1; am L 1974, c 159, §3 and c 219, §1; am L 1978, c 117, §1; am L 1980, c 101, §1; am L 1996, c 119, §3; am L 2001, c 200, §2; am L 2015, c 146, §2, c 148, §3, and c 160, §4]

Note

Applicability of 2015 amendments. L 2015, c 146, §6, c 148, §6, and c 160, §11.

The definition of "federal receipts" changed to "federal funds". L 2015, c 148, §3.

" **[§37-63] Statement of policy.** It is the purpose of this part to establish a comprehensive system for state program and

financial management which furthers the capacity of the governor and the legislature to plan, program and finance the programs of the State. The system shall include procedures for:

- (1) The orderly establishment, continuing review and periodic revision of the state program and financial objectives and policies.
- (2) The development, coordination and review of long-range program and financial plans that will implement established state objectives and policies.
- (3) The preparation, coordination and analysis, and enactment of a budget organized to focus on state programs and their costs, that authorizes the implementation of the long-range plans in the succeeding budget period.
- (4) The evaluation of alternatives to existing objectives, policies, plans and procedures that offer potential for more efficient and effective use of state resources.
- (5) The regular appraisal and reporting of program performance. [L 1970, c 185, §3]

" **§37-64 Governing principles.** The system shall be governed by the following general principles:

- (1) Planning, programming, budgeting, evaluation, appraisal and reporting shall be by programs or groups of programs.
- (2) The state program structure shall be such as will enable meaningful decisions to be made by the governor and the legislature at all levels of the structure. At its lowest level, it shall display those programs which are the simplest units of activities, about which resource allocation decisions are to be made by the governor and the legislature.
- (3) A program which serves two or more objectives shall be placed in the program structure along with that objective which it primarily serves; where desirable, it shall also be placed with other objectives, but as a nonadd item.
- (4) The full cost, including research and development, capital and operating costs, shall be identified for all programs regardless of the means of financing; costs shall be displayed in the year of their anticipated expenditure, regardless of whether such costs have been authorized to be expended by prior appropriations acts or are authorized to be expended

by existing law or require new appropriations or authorizations.

- (5) Objectives shall be stated for every level of the state program structure.
- (6) The effectiveness of programs in attaining objectives shall be assessed.
- (7) Planning shall have a long-range view.
- (8) Systematic analysis in terms of problems, objectives, alternatives, costs, effectiveness, benefits, risks and uncertainties shall constitute the core of program planning. [L 1970, c 185, §4; am L 1974, c 219, §2]

" **[\$37-65] Responsibilities of the governor.** The governor shall direct the preparation and administration of state programs, program and financial plans, and budget. The governor shall evaluate the long-range program plans, requested budgets and alternatives to state objectives and programs; and formulate and recommend for consideration by the legislature the State's long-range plans, a proposed six-year state program and financial plan and a proposed state budget. [L 1970, c 185, §5; gen ch 1985]

" **[\$37-66] Responsibilities of the legislature.** The legislature shall:

- (1) Consider the long-range plans, including the proposed objectives and policies, the six-year state program and financial plan, and the budget and revenue proposals recommended by the governor and any alternatives thereto.
- (2) Adopt programs and the state budget, and appropriate moneys to implement the programs it deems appropriate.
- (3) Adopt such other legislation as necessary to implement state programs.
- (4) Review the implementation of the state budget and program accomplishments and execution of legislative policy direction. Implementation of the state budget and program management, execution, and performance shall be subject to post-audits by the auditor who shall report the auditor's findings and recommendations to the legislature as provided in chapter 23. [L 1970, c 185, §6; gen ch 1985]

" **[\$37-67] Responsibilities of the department of budget and finance.** The director of finance shall assist the governor in

the preparation, explanation and administration of the state long-range plans, the proposed six-year program and financial plan and the state budget. To this end, subject to this part, the director shall:

- (1) With the approval of the governor, develop procedures and prescribe rules and regulations to guide such state agencies as may be assigned by the director the task of formulating and preparing the initial proposals with respect to long-range plans, program and financial plans, program budget requests and program performance reports and to assure the availability of information needed for effective policy decision-making.
- (2) Assist such state agencies in the formulation of program objectives, preparation of program plans and program budget requests, and reporting of program performance.
- (3) Coordinate, analyze and revise as necessary the program objectives, long-range plans, program and financial plans, program budget requests and program performance reports initially proposed or prepared by such state agencies and develop the state comprehensive program and financial plan, budget and program performance report.
- (4) Administer its responsibilities under the program execution provisions of this part so that the policy decisions and budget determinations of the governor and the legislature are implemented to the fullest extent possible within the concepts of proper management.
- (5) Investigate continuously the administration of the various agencies for the purpose of advising the governor and recommending to the governor, the legislature and the committees of the legislature concerning the duties of the various positions in these agencies, the methods of the agency, the standards of efficiency therein, and changes which in the director's judgment will produce greater effectiveness of programs and economy in the conduct of government programs and assist in the preparation of program and financial plans, budget requests and program performance reports.
- (6) Provide the legislature and any member or committee of either house of the legislature with such documents and information as may be requested concerning the programs, budget, and fiscal and management operations of the State. [L 1970, c 185, §7; gen ch 1985]

" **§37-68 Responsibilities of agencies.** Under rules as may be prescribed by the director of finance with the approval of the governor:

- (1) Each agency assigned the task of developing programs and preparing program and financial plans, budgetary requests, and program performance reports shall develop the programs and prepare the plans, requests, and reports and submit the same to the director of finance at times, on forms, and in a manner as the director may prescribe. For informational purposes, the University of Hawaii shall submit its program and financial plans, budgetary requests, and program performance reports to the legislature at the same time the university submits them to the director of finance. Where new programs are being proposed, each agency shall demonstrate that the program:
 - (A) Is an appropriate function of state government; and, as applicable
 - (B) Can be implemented by the public sector as cost-effectively as the private sector while meeting the same plans, goals, objectives, standards, measures of effectiveness, wage, salary, conditions of employment, and employee benefit programs of the State;
- (2) Each agency administering state programs and each agency responsible for the formulation of programs and the preparation of program and financial plans, budgetary requests, and program performance reports, shall furnish the department of budget and finance all documents and information as the department may from time to time require. Each agency shall make available all documents and information, as may be requested, to the legislature and any member or committee of either house of the legislature;
- (3) The director of finance or any employee of the department of budget and finance, when duly authorized, for the purpose of securing information, shall have access to and may examine any books, documents, papers, or records of any agency;
- (4) Each agency submitting a capital improvement project proposal shall furnish the department of budget and finance with an estimate of operational costs for the proposed capital improvement project and all documents that support the estimate of operational costs. Each agency shall make available all documents and related

information, as may be requested, to the legislature and any member or committee of either house.

The director of finance shall provide a summary of this information in the multi-year program and financial plan and budget submitted to the legislature before the regular session of each odd-numbered year and the supplemental budget submitted to the legislature before the regular session of each even-numbered year; and

- (5) Each agency responsible for operating or maintaining a state-owned building, facility, or other improvement shall furnish the department of budget and finance with an estimate of the deferred maintenance costs for the building, facility, or other improvement.

The director of finance shall provide a summary of this information in the multi-year program and financial plan and budget submitted to the legislature before the regular session of each odd-numbered year and the supplemental budget submitted to the legislature before the regular session of each even-numbered year.

For the purposes of this paragraph, "deferred maintenance costs" means the costs to catch up on the repair and maintenance of the state-owned building, facility, or other improvement that has been delayed past the ordinarily scheduled repair and maintenance cycle. The department of budget and finance may further refine this definition in its instructions to the agencies furnishing the information. [L 1970, c 185, §8; am L 1994, c 263, §1; am L 1998, c 115, §9; am L 2014, c 135, §3; am L 2015, c 150, §2]

" **[§37-68.5] Position ceiling.** Whenever this part requires a position ceiling to be specified:

- (1) The number of permanent positions and temporary positions shall be separately identified; and
- (2) The position ceiling shall be expressed in units or fractions of full-time equivalent positions. [L 2015, c 160, §2]

Note

Applicability of section. L 2015, c 160, §11.

" **§37-69 The six-year program and financial plan.** (a) The governor shall prepare a state six-year program and financial plan encompassing all state programs. Not fewer than thirty days before the legislature convenes in every odd-numbered year, the governor shall submit to the legislature and to each member thereof the six-year program and financial plan. The program and financial plan shall be annually and continually updated and maintained. The program and financial plan, in general, shall contain:

- (1) The state program structure;
- (2) Statements of statewide objectives and program objectives;
- (3) Program plans that describe the programs recommended to implement the statewide and program objectives and the manner in which the recommended programs are proposed to be implemented over the next six fiscal years; and
- (4) A financial plan that shows the fiscal implications of the recommended programs for the next six fiscal years.

(b) The information contained in the program and financial plan shall be presented generally in the following manner:

- (1) Information shall be displayed by programs, or groups of programs.
- (2) Programs shall be appropriately crosswalked to expending agencies.
- (3) Data shall be appropriately summarized at each level of the program structure.
- (4) Program costs shall include all costs, including research and development, operating and capital, regardless of the means of financing except that the means of financing shall be expressly identified; all costs shall be displayed in the year of their anticipated expenditure, regardless of whether such costs have been authorized to be expended by prior appropriations acts or are authorized to be expended by existing law, or require new appropriations or authorizations.
- (5) Cost data shall be presented in units of thousands of dollars or less.
- (6) Comparative data for the last completed fiscal year and the fiscal year in progress shall be shown.

(c) The financial plan for the ensuing six fiscal years shall more specifically include:

- (1) Economic data for the State and the counties of the following kinds:

- (A) Population: Including historical, current, and projected population count; population distribution by age and sex; estimated increases and decreases, including increases and decreases by immigration;
 - (B) Employment: Including magnitude of labor force by age and sex; labor force participation rates; employment by age and sex; industry and occupational surpluses and shortages; effects of government programs on employment rate;
 - (C) Income: Including per capita and per family income; disposable income; income distribution;
 - (D) Wages and prices: Including wages by industry and occupational groups; prices for government procurement items; construction costs; cost of living index; price indices for components of personal consumption;
 - (E) Industry and business trends; and
 - (F) Effects of national economic and financial policies and conditions;
- (2) Brief statements disclosing the basis upon which the revenue estimates in the plan were made, including for each specific tax and nontax revenue source:
- (A) The previous projections for the last completed fiscal year and the fiscal year in progress;
 - (B) The variance between the projections and the actual or revised estimate, and the reasons for the variances;
 - (C) Tax or source base and rates;
 - (D) Yield projections of existing revenue sources and existing taxes at authorized rates;
 - (E) Assumptions made and methodology used in projections;
 - (F) Changes recommended; and
 - (G) Projected yields if changes are adopted; etc.;
- (3) At the lowest level on the state program structure, for each program:
- (A) The total actual program cost for the last completed fiscal year, the estimated cost for the fiscal year in progress, and the estimated cost for each of the next six fiscal years; research and development, operating, and capital costs shall be included and the means of financing shall be identified. The position ceiling and all lease payments shall be shown for the program, identified by their means of financing;

- (B) The program size indicators; the actual size attained in the last completed fiscal year, the estimated size for the fiscal year in progress, and the estimated size for each of the next six fiscal years; and
 - (C) The effectiveness measures; the actual level of effectiveness attained in the last completed fiscal year, the estimated level of effectiveness for the fiscal year in progress, and the estimated level for each of the next six fiscal years;
- (4) Appropriate displays of paragraph (3)(A) and (C), at every level of the state program structure above the lowest level, by the major groupings of programs encompassed within the level. The displays of paragraph (3)(A) shall appropriately identify the means of financing and position ceiling included in the level;
- (5) Financial summaries displaying the State's financial condition, actual for the last completed fiscal year, and estimated for the fiscal year in progress and each of the next six fiscal years, including:
- (A) A display of the programmed, total state expenditures, by cost categories, the total state resources anticipated from existing tax and nontax sources at existing rates, by resource categories, including the fund balance or deficit at the beginning of the fiscal year and bond receipts, and the resulting fund balance or deficit at the close of each fiscal year. Lease payments in each cost category shall be stated separately; and
 - (B) The changes proposed to the existing tax and nontax rates, sources or structure, and the estimated increases or reductions in revenues, the estimated cumulative increases or reductions, and the estimated fund balance or deficit in each of the next six fiscal years as a result of such proposed changes. Proposals for changes in the existing tax and nontax rates, sources or structure shall be made in every case where the proposed, total state expenditures exceed the total resources anticipated from existing tax and nontax sources at existing rates.

The financial summaries shall be prepared for the total state expenditures and resources and for the general fund and special fund portions thereof;

- (6) A summary of the balance of each special fund, actual for the last completed fiscal year and estimated for the fiscal year in progress and estimated for each of the next six fiscal years;
- (7) A summary of the State's total bond fund required to carry out the recommended programs and the kinds of bonds and amounts thereof through which the requirements were met in the last completed fiscal year, are to be met in the fiscal year in progress, and are proposed to be met in each of the next six fiscal years. The summary shall detail, for each fiscal year:
 - (A) Of the total bond fund requirements, the amount, by cost categories, requiring new bond issuance authorization and the kinds and amounts of bonds planned for issuance under the new authorizations;
 - (B) By bond categories, the total, cumulative balance of bonds authorized in prior years but unissued and the amount thereof proposed to be issued; and
 - (C) A recapitulation of the total bonds to be issued, including both new authorizations and prior authorizations, by bond categories;
- (8) Separately for general fund tax revenues, special fund tax revenues, general fund nontax revenues, and special fund nontax revenues:
 - (A) By kinds of taxes or sources, the amount of revenue from existing, authorized taxes or sources at existing rates received in the last completed fiscal year and estimated to be received in the fiscal year in progress and in each of the next six fiscal years;
 - (B) A summary of the proposed changes in the existing taxes or sources or rates, and the estimated increases or reductions in revenues in each of the next six fiscal years resulting from such changes; and
 - (C) The total estimated revenues with and without the proposed changes in each of the next six fiscal years;
- (9) A summary of the State's total payments due under financing agreements required to carry out the recommended programs and the kinds of financing agreements and amounts thereof through which the requirements were met in the last completed fiscal year, are to be met in the fiscal year in progress, and are proposed to be met in each of the next six

fiscal years. The summary shall detail, for each fiscal year:

- (A) Of the total financing agreement requirements, the amount, by cost categories, requiring new financing agreement authorizations and the kinds and amounts of financing agreements planned for execution and delivery under the new authorizations;
 - (B) By cost category, the cumulative balance of financing agreements authorized in prior years but not executed and delivered and the amount proposed to be executed and delivered; and
 - (C) A recapitulation of the total financing agreements to be executed and delivered, including both new authorizations and prior authorizations, by cost categories; and
- (10) A summary of the state government's pension liability and other post-employment benefit liability for which the most current information is available, including:
- (A) Unfunded actuarial accrued liability specified in the latest actuarial valuation report available in the pertinent fiscal year;
 - (B) Funded ratio specified in the latest actuarial valuation report available in the pertinent fiscal year;
 - (C) Funding period specified in the latest actuarial valuation report available in the pertinent fiscal year; and
 - (D) Annual required contribution for the pertinent fiscal year and the proportion of the annual required contribution budgeted to be paid in that fiscal year.
- (d) The program plans for the ensuing six fiscal years shall more specifically include:
- (1) At the lowest level on the state program structure, for each program:
 - (A) A statement of its objectives;
 - (B) Measures by which the effectiveness in attaining the objectives is to be assessed;
 - (C) The level of effectiveness planned for each of the ensuing six fiscal years;
 - (D) A brief description of the activities encompassed;
 - (E) The program size indicators;
 - (F) The program size planned for each of the next six fiscal years;

- (G) A narrative explanation of the plans for the program. It shall contain, and in general be limited to, the following:
 - (i) A description of the kinds of activities carried out or unusual technologies employed;
 - (ii) A statement of key policies pursued;
 - (iii) Identification of important program or organizational relationships involved;
 - (iv) A description of major external trends affecting the program;
 - (v) A discussion of significant discrepancies between previously planned cost, effectiveness, and program size levels and those actually achieved;
 - (vi) Comments on, and an interpretation of, cost, effectiveness, and program size data over the upcoming budget period, with special attention devoted to changes from the current budget period;
 - (vii) Comments on, and an interpretation of, cost, effectiveness, and program size data over the four years of the planning period and how they relate to the corresponding data for the budget period; and
 - (viii) A summary of the special analytic study, program evaluation, or other analytic report supporting a substantial change in the program where such a major program change recommendation has been made;
- (H) The full cost implications of the recommended programs, by cost categories and cost elements, actually experienced in the last completed fiscal year, estimated for the fiscal year in progress, and estimated for each of the next six fiscal years. The means of financing shall be identified for each cost category. The personal services cost element and the lease payments cost element shall be shown separately; the cost elements of other current expenses, equipment, and motor vehicles may be combined. The position ceiling for the program shall be appropriately identified by means of financing;
- (I) A recapitulation of subparagraph (H) for the last completed fiscal year, the fiscal year in progress and each of the next six fiscal years, by means of financing grouped under each cost

- category. The position ceiling for any program shall be appropriately identified;
- (J) An identification of the revenues generated in the last completed fiscal year and estimated to be generated in the fiscal year in progress and in each of the next six fiscal years, and the fund into which the revenues are deposited;
 - (K) Details of implementation of each capital improvement project included in the total program cost, including:
 - (i) A description of the project, location, and scope;
 - (ii) The initially estimated, currently estimated, and final cost of the project, by investment cost elements and by means of financing;
 - (iii) The amounts previously appropriated by the legislature for the project, by cost elements and by means of financing specified in the acts appropriating the sums, and an identification of the acts so appropriating;
 - (iv) The costs incurred in the last completed fiscal year and the estimated costs to be incurred in the fiscal year in progress and in each of the next six fiscal years, by cost elements and by means of financing; and
 - (v) A commencement and completion schedule, by month and year, of the various phases of the capital improvement project (i.e., land acquisition, design, construction, and occupancy) as originally intended, as currently estimated, and as actually experienced; and
 - (L) A crosswalk of the program expenditures, by cost categories and cost elements between the program and expending agencies for the next two fiscal years. The means of financing for the program costs to be expended by, and position ceiling for, each agency shall be specified; and
- (2) Appropriate displays at every level of the state program structure above the lowest level. The displays shall include:
- (A) A listing of all major groupings of programs included within the level, together with the objectives, measures of effectiveness, and planned levels of effectiveness for each of the

- ensuing six fiscal years for each of the major groupings of programs; and
- (B) A summary of the total cost of each cost category by the major groupings of programs encompassed within the level, actual for the last completed fiscal year and estimated for the fiscal year in progress and for each of the next six fiscal years. [L 1970, c 185, §9; am L 1972, c 72, §§2, 5; am L 1974, c 219, §3; am L 1991, c 125, §2; am L 1996, c 119, §4; am L 2015, c 146, §3 and c 160, §5]

Note

Applicability of 2015 amendments. L 2015, c 146, §6 and c 160, §11.

Attorney General Opinions

Details of current year's lapses need not be set forth in supplemental appropriations bill and budget. Att. Gen. Op. 83-4.

Although express words "balanced budget" are not included in state constitution or statutes relating to state budget, constitutional and statutory provisions do require a balanced budget by requiring a description of proposed expenditures and sources of revenue to pay for them. Att. Gen. Op. 97-1.

Using historical data to make estimates for a future fiscal period is an acceptable planning tool. Att. Gen. Op. 03-2.

" **§37-70 Program memoranda.** (a) Not later than the third Wednesday of January of each odd-numbered year, the governor shall submit to the legislature and to each member thereof, a program memorandum covering each of the major programs in the statewide program structure. Each program memorandum will include:

- (1) An overview of the program as a whole including a discussion of:
 - (A) Objectives.
 - (B) Component programs.
 - (C) Departments involved.
 - (D) Relationships to other agencies and jurisdictions.
 - (E) Major activities.
 - (F) Important external developments affecting the program.

- (G) Significant discrepancies between previously planned cost and effectiveness levels and those actually achieved.
- (H) Trends and comparisons in costs, effectiveness, or activity data over the budget and planning period.
- (2) A statement of the major program changes being recommended for the budget and planning period to include for each proposed change:
 - (A) A brief statement of the recommended change.
 - (B) The cost and program performance consequences of the change over the budget and planning period.
 - (C) A summary of the analytic rationale for the change.
- (3) A discussion of emerging conditions, trends and issues including:
 - (A) Actual or potential impact on the State and its programs.
 - (B) Possible alternatives for dealing with the specific problems occasioned by the emerging conditions, trends, and issues.
 - (C) Suggestions for a program of analyses to resolve the most urgent of the problems.
- (4) Appendices as needed to include appropriate issue papers, special analytic studies, other reports, and crucial source data.
 - (b) If it is deemed more desirable, the program memoranda and the six-year program and financial plan may be combined into a single document containing all the information required for each separate document. [L 1972, c 72, §4; am L 1974, c 219, §4]

Revision Note

Subsection (a) designation added.

" **§37-71 The budget.** (a) Not fewer than thirty days before the legislature convenes in every odd-numbered year, the governor shall submit to the legislature and to each member thereof a budget that shall contain the program and budget recommendations of the governor for the succeeding two fiscal years. The budget, in general, shall contain:

- (1) The state program structure;
- (2) Statements of statewide objectives;
- (3) The financial requirements for the next two fiscal years to carry out the recommended programs; and

- (4) A summary of state receipts and revenues in the last completed fiscal year, a revised estimate for the fiscal year in progress, and an estimate for the succeeding biennium.
- (b) The information contained in the budget shall be presented generally in the following manner:
 - (1) Information shall be displayed by programs or groups of programs.
 - (2) Program financial requirements shall be appropriately crosswalked between the programs and expending agencies.
 - (3) Data shall be appropriately summarized at each level of the program structure.
 - (4) Program costs shall include all costs, including research and development, operating and capital, regardless of the means of financing, except that the means of financing shall be expressly identified, and regardless of whether the expenditure of any sum was authorized by prior appropriations acts, is authorized by existing law, or requires new authorization, except that the amounts requiring new authorization shall be appropriately identified.
 - (5) Financial requirements shall be presented to the nearest dollar, omitting cents; and the summary of state receipts and revenues shall be presented to the nearest thousand dollars.
 - (6) The budget shall reflect the ensuing first two fiscal year program costs contained in the six-year program and financial plan.
- (c) The display of financial requirements for the ensuing two fiscal years shall more specifically include:
 - (1) At the lowest level on the state program structure, for each program:
 - (A) The total recommended expenditures, including research and development, capital and operating costs, by cost categories and cost elements for the ensuing biennium; the planned allocation of the total biennial request, by cost categories, and cost elements, between the two fiscal years of the biennium. The means of financing and position ceiling included in any cost category amount shall be appropriately identified;
 - (B) A summary showing means of financing the total recommended expenditures, those amounts requiring and those amounts not requiring legislative appropriation or authorization for spending in each fiscal year of the biennium;

- (C) A crosswalk of the total proposed biennial expenditures between the program and expending agencies. The means of financing, position ceiling, and the lease payments included in any cost amount, and the net amount requiring appropriation or authorization shall be appropriately identified for each expending agency; and
- (D) The proposed changes in the levels of expenditures, by cost categories, between the biennium in progress and the ensuing biennium, together with a brief explanation of the major reasons for each change. The reasons shall include, as appropriate, the following:
 - (i) Salary adjustments to existing positions of personnel;
 - (ii) The addition or deletion of positions to or from the position ceiling;
 - (iii) Changes in the number of persons being served or to be served by the program;
 - (iv) Changes in the program implementation schedule;
 - (v) Changes in the actual or planned level of program effectiveness;
 - (vi) Increases due to the establishment of a program not previously included in the State's program structure;
 - (vii) Decreases due to the phasing out of a program previously included in the State's program structure; and
 - (viii) Changes in the purchase price of goods or services[.]

As appropriate, references to the program and financial plan shall be noted for an explanation of the changes. Notwithstanding the provisions of subsection (b)(5), the proposed changes in the levels of expenditures may be shown to the nearest thousand dollars;

- (2) Appropriate summaries of paragraph (1)(A) and (C) immediately above at every level of the state program structure above the lowest level. The summaries shall be by the major groupings of programs encompassed within the level. The summaries of paragraph (1)(A) shall identify the means of financing, position ceiling, and lease payments included in any cost category amount; and

- (3) A summary listing of all capital improvement projects included in the proposed capital investment costs for the ensuing biennium. The listing shall be by programs at the lowest level of the state program structure and shall show for each project, by investment cost elements:
- (A) The cost of the project;
 - (B) The amount of funds previously appropriated and authorized by the legislature; and
 - (C) The amount of new appropriations and authorizations proposed in each of the two fiscal years of the ensuing biennium and in each of the succeeding four years. The amount of the new appropriations and authorizations proposed shall constitute the proposed new requests for the project in each of the fiscal bienniums.

In every instance, the means of financing shall be noted.

(d) The summaries of the state receipts and revenues shall more specifically include:

- (1) Financial summaries displaying the State's financial condition, to-wit:
- (A) A display of the proposed, total state expenditures, by cost categories, the total state resources anticipated from existing taxes and nontax sources at existing rates, by resource categories (including the available fund balances or deficits and anticipated bond receipts), and the fund balance or deficit resulting therefrom for the biennium in progress, for the ensuing biennium, and for each of the two fiscal years of the ensuing biennium; and
 - (B) The changes proposed to the existing tax and nontax rates, sources, or structure, and the estimated cumulative increases or reductions, and the estimated fund balance or deficit in the ensuing biennium and in each of the two fiscal years of the biennium as a result of such proposed changes. Proposals for changes in the existing tax and nontax rates, sources, or structure shall be made in every case where the proposed, total state expenditures exceed the total state resources anticipated from existing tax and nontax sources at existing rates.

Such financial summaries shall be prepared for the total state expenditures and resources and for the general fund and special fund portions thereof;

- (2) A summary of the balances of each special fund, actual for the last completed fiscal year and estimated for the fiscal year in progress and for each of the two fiscal years in the ensuing biennium;
- (3) A summary of the State's total bond fund required to carry out the recommended programs and the kinds of bonds and amounts thereof through which such requirements are to be met in the biennium in progress and in each of the two fiscal years in the ensuing biennium. The summary shall detail for the biennium in progress and for each of the two years of the ensuing biennium:
 - (A) Of the total requirements, the amount, by cost categories, requiring new bond issuance authorization and the kinds and amounts of bonds planned for issuance under such new authorization;
 - (B) By bond categories, the total, cumulative balance of bonds authorized in prior years but unissued and the amount thereof planned to be issued; and
 - (C) A recapitulation of the total bonds, both new authorizations and prior authorizations, by bond categories, proposed to be issued;
- (4) A tentative schedule by quarter and fiscal year of the amount of general obligation bonds and the amount of revenue bonds proposed to be issued in the ensuing fiscal biennium;
- (5) A schedule of projected debt service charges for general obligation bonds outstanding at the time of the submission of the budget and to be issued by the close of the budget biennium in progress and the close of the ensuing budget biennium. The projection shall be separately stated for:
 - (A) Bonds currently outstanding;
 - (B) Bonds to be issued during the remainder of the fiscal biennium in progress and during the ensuing fiscal biennium; and
 - (C) The total bonds currently outstanding and to be issued.

In each case, the projection shall be categorized into debt service to be paid directly from the general fund, debt service to be paid through reimbursements, and total debt service. The projection shall extend at least five years beyond the close of the ensuing fiscal biennium. An explanation shall be appended to the schedule, which shall include among other things, the amount of bonds to be issued during the fiscal

year in progress and in each of the two fiscal years of the ensuing biennium, the maturities of the bonds to be issued, the method of retirement, and the interest rate assumed in the projection;

- (6) A schedule of the current state funded debt, legal debt limit, and the legal debt margin, including the details thereof. In any budget which proposes appropriations for which the source of funding is general obligation bonds, the schedule shall include a declaration by the director of finance and computations showing that the total amount of principal and interest, estimated for such proposed appropriations and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance;
- (7) Separately for general fund tax revenues, special fund tax revenues, general fund nontax revenues, and special fund nontax revenues:
 - (A) By kinds of taxes or sources, the amount of revenue from existing, authorized taxes or sources at existing rates received in the last completed fiscal year and estimated to be received in the fiscal year in progress and in each of the two fiscal years in the ensuing biennium, with appropriate totals for the two bienniums;
 - (B) A summary of the proposed changes in the existing taxes or sources or rates, and the estimated increases or reductions in revenues in each of the two years in the ensuing fiscal biennium resulting from such changes; and
 - (C) The total estimated revenues with and without the proposed changes;
- (8) A summary of the State's total payments due under financing agreements required to carry out the recommended programs and the kinds of financing agreements and amounts thereof through which those requirements are to be met in the biennium in progress and in each of the two fiscal years in the ensuing biennium. The summary shall detail for the biennium in progress and for each of the two years of the ensuing biennium:
 - (A) Of the total financing agreement requirements, the amount, by cost categories, requiring new financing agreement authorizations and the kinds and amounts of financing agreements planned for

execution and delivery under the new authorizations;

- (B) By cost category, the cumulative balance of financing agreements authorized in prior years but not executed and delivered and the amount thereof proposed to be executed and delivered; and
 - (C) A recapitulation of the total financing agreements to be executed and delivered, including both new authorizations and prior authorizations, by cost categories; and
- (9) The same information required under section 37-69(c)(10) for the state government's pension and other post-employment benefits liabilities.
- (e) The proposed budget shall include:
- (1) A statement of the percentage differences between the current biennium recommendations and the previous biennium appropriations for education programs. The information shall be displayed by programs or groups of programs, with corresponding amounts and percentage differences. If any component of an education program is added or removed, the governor shall provide an estimate of how the addition or removal affects the current biennium recommendations;
 - (2) A statement of the difference between the total amount proposed for the current biennium and the total amount expended in the previous biennium for education programs per pupil; and
 - (3) Other financial statements, information, and data that in the opinion of the governor are necessary or desirable in order to make known in all practical detail the programs, program plans, and financial conditions of the State.

As used in this subsection, "education programs" include instructional, personnel, transportation, facilities, facilities repair and maintenance, and other programs deemed appropriate by the department of education.

(f) The proposed budget shall contain an item to be known as the "contingent fund", which sum, upon approval by the legislature, shall be available for allocation by the governor during the ensuing fiscal biennium to meet contingencies as they arise.

(g) If it is deemed more practical, the six-year program and financial plan and the budget may be combined into a single document containing all the information required for each separate document. [L 1970, c 185, §10; ren and am L 1972, c 72, pt of §§3, 6; am L 1974, c 219, §5; am L 1980, c 64, §1; am L Sp

1981 1st, c 3, §4; am L 1991, c 125, §3; am L 1993, c 364, §5; am L 1996, c 119, §5; am L 2015, c 146, §4 and c 160, §6]

Note

Applicability of 2015 amendments. L 2015, c 146, §6 and c 160, §11.

Attorney General Opinions

Current year's lapses not considered part of "total state resources". Details of current year's lapses need not be set forth in supplemental appropriations bill and budget. Att. Gen. Op. 83-4.

Although express words "balanced budget" are not included in state constitution or statutes relating to state budget, constitutional and statutory provisions do require a balanced budget by requiring a description of proposed expenditures and sources of revenue to pay for them. Att. Gen. Op. 97-1.

Improper for biennial budget for fiscal biennium to incorporate as revenues proposed restrictions for fiscal year unless those restrictions were reflected as reduced appropriations in budget adopted legislatively for the fiscal year. Appropriations for fiscal year that are restricted through allotment system are not "available resources" for purposes of budget preparation pursuant to this section. Att. Gen. Op. 03-2.

Restrictions imposed in one fiscal year cannot be counted as "available resources" for the next fiscal year. Att. Gen. Op. 03-2.

" **§37-72 Supplemental budget.** (a) Not fewer than thirty days before the legislature convenes in regular session in an even-numbered year, the governor may submit to the legislature a supplemental budget to amend any appropriation for the current fiscal biennium. The supplemental budget shall reflect the changes being proposed in the State's program and financial plan and shall be submitted as applicable, in the manner provided in section 37-71. In any supplemental budget that proposes appropriations for which the source of funding is general obligation bonds, the budget shall include the schedule, declaration, and computation specified in section 37-71(d)(6).

(b) In each regular session in an even-numbered year, the legislature may amend any appropriation act of the current fiscal biennium or prior fiscal periods. [L 1970, c 185, §11;

ren L 1972, c 72, §3; am L Sp 1981 1st, c 3, §5; am L 1991, c 125, §4]

Attorney General Opinions

Details of current year's lapses need not be set forth in supplemental appropriations bill and budget. Att. Gen. Op. 83-4.

" **§37-73 Legislative review.** The legislature shall consider the governor's proposed program and financial plan and budget; evaluate alternatives to the governor's recommendations; and adopt programs and determine the state budget. It may, from time to time, request the department of budget and finance and any agency to conduct such analysis of programs and finances as will assist in determining the State's program and financial plan and budget. [L 1970, c 185, §12; ren L 1972, c 72, §3]

" **§37-74 Program execution.** (a) Except as limited by policy decisions of the governor, appropriations by the legislature, and other provisions of law, the several agencies responsible for administering state programs shall administer their program assignments and shall be responsible for their proper management.

(b) The appropriations by the legislature for a biennium shall be allocated between the two fiscal years of the biennium in the manner provided in the budget or appropriations act and as further prescribed by the director of finance. The amounts allocated for each fiscal year shall be subject to the allotment system prescribed in chapter 37, part II. Each agency (except the courts), in estimating its quarterly requirements under chapter 37, part II, shall prepare a plan for the fiscal year for the operation of each of the programs it is responsible for administering. The operations plan shall be in a form and content as the department of budget and finance may prescribe. It shall be submitted, together with the estimated quarterly requirements, to the department of budget and finance on a date as the department may prescribe.

(c) The department of budget and finance shall:

(1) Review each operations plan to determine:

(A) That it is consistent with the policy decisions of the governor and appropriations by the legislature;

(B) That it reflects proper planning and efficient management methods; and

(C) That appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year;

provided that the department of budget and finance shall review the operations plan submitted by the University of Hawaii solely for consistency with the allotment ceilings established by the governor under section 37-34, appropriations by the legislature, the requirements of chapter 37D, and the status of revenues to support operations plans for all state programs;

(2) Approve the operations plan if satisfied that it meets the requirements under paragraph (1). Otherwise, the department of budget and finance shall require revision of the operations plan in whole or in part; and

(3) Modify or withhold the planned expenditures at any time during the appropriation period if the department of budget and finance finds that the expenditures are greater than those necessary to execute the programs at the level authorized by the governor and the legislature, or that state receipts and surpluses will be insufficient to meet the authorized expenditure levels; provided that the planned expenditures for the University of Hawaii may be modified or withheld only in accordance with sections 37-36 and 37-37.

(d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:

(1) Authorized transfers or changes, when made, shall be reported to the legislature;

(2) Except with respect to appropriations to fund financing agreements under chapter 37D, the University of Hawaii may transfer appropriated funds and positions for the operating cost category among programs, among cost elements in a program, and between quarters, as applicable; except with respect to appropriations to fund financing agreements under chapter 37D, the department of education may transfer appropriated funds and positions for the operating cost category among programs and among cost elements in a program, and between quarters, as applicable; and the Hawaii health systems corporation and its regional system boards may transfer special fund appropriations among regional system hospital facilities as applicable and as mutually agreed to by the corporation and the respective regional system board;

provided that the Hawaii health systems corporation and the regional system boards shall maintain the integrity and services of each individual regional system and shall not transfer appropriations out of any regional system that would result in a reduction of services offered by the regional system, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and

- (3) The university and the department of education shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer.

(e) For the purpose of this subsection, "unanticipated federal moneys" means financial aid from the federal government that is not appropriated in the budget or supplemental budget act. After June 30, 2017, unanticipated federal moneys may be expended when and in the manner authorized by proviso in the budget or supplemental budget act and shall be deemed an appropriation for the purpose of article VII, section 5, of the Constitution of the State of Hawaii.

[(f)] Effective July 1, 2017, no funds shall be expended to fill a permanent or temporary position for the lowest level of a program if the filling of that position causes the position ceiling for that level of the program to be exceeded; provided that this subsection shall not apply to a:

- (1) Position established by the University of Hawaii or the Hawaii health systems corporation;
- (2) Position that is entirely federally funded;
- (3) Position necessary for compliance, without undue delay, with a court order or decree if the director of human resources development determines that recruitment through normal civil service procedures would result in delay or noncompliance;
- (4) Position approved by the governor for a special, research, or demonstration project of an agency;
- (5) Position approved by the governor to perform an emergency management function under the department of defense pursuant to the authority of section 127A-12(b)(9);
- (6) Casual hire position;
- (7) Vicing position;

- (8) Position established by an agency pursuant to express statutory authorization to establish the position; and
- (9) Position established by an agency for a program or project funded by an appropriation in an act other than a general or supplemental appropriations act. [L 1970, c 185, §13; ren L 1972, c 72, §3; am L 1974, c 219, §6; am L 1986, c 320, §5; am L 1989, c 370, §2; am L 1994, c 281, §§4, 9; am L 1995, c 11, §21, c 161, §7, and c 211, §6; am L 1996, c 262, §5; am L 1998, c 41, §5 and c 115, §10; am L 2004, c 51, §53; am L 2007, c 290, §10; am L 2015, c 148, §4 and c 160, §7]

Note

Applicability of 2015 amendments. L 2015, c 148, §6 and c 160, §11.

Cross References

Special and revolving fund reviews, see §§23-11 and 23-12.

" **§37-75 Variance report.** Not fewer than thirty days prior to the convening of each regular session of the legislature, the governor shall submit to the legislature and to each member thereof a report on program performance for the last completed fiscal year and the fiscal year in progress. In format, the report generally shall follow the fiscal requirements portion of the executive budget or budgets. The report shall include:

- (1) At the lowest level of the program structure, for each program contained in the budget finally approved by the legislature for the last completed fiscal year and the fiscal year in progress:
 - (A) A comparison, by the operating and research and development cost categories, of the budgeted expenditures and the actual expenditures for the last completed fiscal year and the budgeted expenditures and the estimated expenditures for the fiscal year in progress;
 - (B) A comparison, for the operating and research and development cost categories, of the budgeted expenditures and position ceiling and the actual expenditures and positions filled in the last completed fiscal year and a comparison of the budgeted expenditures and the position ceiling for the fiscal year in progress and the actual expenditures and number of positions filled in

the first three months of the fiscal year in progress and the estimated expenditures and number of positions expected to be filled in the remaining months of the fiscal year in progress;

- (C) The program size indicators and a comparison of the program size anticipated and the size actually realized in the last completed fiscal year and the program size anticipated and the size estimated for the fiscal year in progress;
- (D) The effectiveness measures and a comparison of the level of effectiveness anticipated and the level actually attained in the last completed fiscal year and the level of effectiveness anticipated and the level estimated for the fiscal year in progress; and
- (E) A narrative explanation of the significant differences for the last completed fiscal year in each of the comparisons made in subparagraphs (A), (B), (C), and (D), including an explanation of the basis upon which the original estimates were made and the reasons why the estimates proved accurate or inaccurate, and a statement of what the actual experience portends for the future of the program in terms of costs, size, and effectiveness;

provided that expenditure amounts in the comparisons shall be shown to the nearest thousand dollars;

- (2) Appropriate summaries at each level of the state program structure for each major grouping of programs encompassed therein, showing:
 - (A) A comparison of the total budgeted expenditure and the total actual expenditure for the last completed fiscal year and the total budgeted expenditure and the total estimated expenditure for the fiscal year in progress; provided that the expenditure amounts shall be shown to the nearest thousand dollars;
 - (B) The effectiveness measures and a comparison of the level of effectiveness anticipated and the level actually attained in the last completed fiscal year and the level of effectiveness anticipated and the level estimated for the fiscal year in progress; and
 - (C) A narrative explanation summarizing the major reasons for the differences in the comparisons made for the last completed fiscal year in subparagraphs (A) and (B); and

- (3) A narrative explanation of the significant variations in capital improvement costs; provided that capital improvement project variances shall be referenced to the six-year program and financial plan, which shall contain the information specified in section 37-69(d)(1)(K). [L 1970, c 185, §14; ren L 1972, c 72, §3; am L 1974, c 219, §7; am L 1979, c 69, §1; am L 1991, c 125, §5; am L 2015, c 160, §8]

Note

Applicability of 2015 amendment. L 2015, c 160, §11.

" **§37-76 Publication.** The state six-year program and financial plan, the budget and the variance report shall be printed with a reasonable number of copies for public distribution. [L 1970, c 185, §15; ren L 1972, c 72, §3; am L 1974, c 219, §8]

" **§37-77 Claims for legislative relief.** All claims for refunds, reimbursements, or other payments, authorization for which is sought from the legislature, shall, as a condition to their being considered by the legislature, be filed with the attorney general together with all data and documents in support thereof within six years from the date on which the claim for payment matured. In the absence of a showing of sufficient reason therefor, failure to comply with this paragraph shall be deemed sufficient cause for refusal of the legislature to consider the claims.

The attorney general shall, immediately upon receipt thereof, refer any claim and data so received by the attorney general to the agency concerned or the comptroller, and the agency to which the reference is made or the comptroller shall immediately investigate the claim, secure all available data and documents bearing thereon, and refer the same back to the attorney general with its recommendations thereon. The attorney general shall review the claim and make a recommendation as to the disposition of the claim.

The attorney general shall, within five days after the opening of the session, transmit to the legislature the claims which are then recommended for approval in an appropriate legislative bill form, together with an explanation for each claim. Additional recommendations for approval may be transmitted later in the session. All claims for which there is a recommendation of denial shall also be reported to the

legislature with an explanation. The data and documents submitted by claimants shall be available for inspection by the legislature.

The attorney general shall consult with the governor prior to entering into any settlement agreement for awards exceeding \$75,000 that are subject to legislative approval. [L 1970, c 185, §16; ren L 1972, c 72, §3; am L 1973, c 178, §1; am L 1981, c 143, §1; gen ch 1985; am L 1990, c 81, §1; am L 1999, c 111, §§6, 7]

Revision Note

L 1999, c 111, §7 is codified to this section pursuant to §23G-15.

" **[\$37-77.5 Claims against the State; remedial measures.]**

(a) The attorney general shall develop and implement a procedure, no later than October 1, 1999, for advising its client agencies on how to avoid future claims, by requesting client agencies to take corrective action to eliminate or mitigate those factors identified by the attorney general as contributing to the State's negligence. Based upon this advice, the client agencies shall develop new policies or modify existing practices to avoid repetition of similar claims.

(b) The attorney general shall submit a report to the speaker of the house of representatives, the president of the senate, and the chairs of the house and senate judiciary committees no later than twenty days prior to the convening of each regular legislative session describing the claims and the attendant circumstances therein and containing the advice for corrective action rendered to the agency. The report shall also contain the remedial measures which the attorney general shall take or recommended that the legislature take if an agency fails to take corrective action within a reasonable period of time. The report shall be deemed a confidential and privileged communication to the legislature and shall not be disclosed pursuant to sections 92F-13 and 92F-19(b). [L 1999, c 111, §5]

" **§37-78 Schedule of implementation.** The governor shall submit to the legislature:

- (1) At the regular session of 1975, and every odd-numbered year's session thereafter, the program memoranda described in section 37-70.
- (2) At the regular session of 1975, and every odd-numbered year's session thereafter, the governor's proposed

state budget and six-year program and financial plan.
[L 1970, c 185, §17; ren L 1972, c 72, §3; am L 1974,
c 219, §9; gen ch 1985]

"PART V. GENERAL FUND EXPENDITURE CEILING

§§37-91 to 94 [OLD] REPEALED. L 1984, c 183, §4.

§37-91 Definitions. As used in sections 37-92 to 37-94:

"Expenditure ceiling" means the maximum general fund appropriations allowed in any year. The expenditure ceiling shall be determined by considering the fiscal year 1978-1979 general fund appropriations as the expenditure ceiling. The expenditure ceiling for succeeding fiscal years shall be computed by adjusting the immediate prior fiscal year expenditure ceiling by the applicable state growth. When revisions are made to the total state personal income, the expenditure ceiling shall be recalculated on the basis of the latest available data, going back to fiscal year 1978-1979.

"General fund" means the fund used to account for all transactions which are not accounted for in another fund, but excluding federal funds received by that fund.

"State growth" means the estimated rate of growth of the State's economy and shall be established by averaging the annual percentage change in total state personal income for the three calendar years immediately preceding the fiscal year for which appropriations from the state general fund are to be made. When revisions are made to total state personal income, state growth shall be recalculated on the basis of the latest available data.

"Total state personal income" means the total state personal income as defined by the state personal income series published by the United States Department of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis, or its successor, for each year for which such income has been determined and published, including all revisions to the series. For the current and next succeeding calendar year for which such income has not been determined or published, it shall mean the total state personal income for such year as estimated by the council on revenues. [L Sp 1986, c 1, pt of §1; am L 1987, c 136, §2]

Attorney General Opinions

"Expenditure ceiling" distinguished from appropriation ceiling. Att. Gen. Op. 85-17.

" **§37-92 Proposed general fund appropriations; executive branch; judicial branch.** (a) The governor shall submit a plan of proposed appropriations for the State to the legislature which shall accompany the state budget in odd-numbered years and the supplemental budget in even-numbered years. The plan of proposed appropriations shall include the executive budget, proposed grants to private entities, and any specific appropriation measures to be proposed by the executive branch, and estimates of the aggregate proposed appropriations of the judicial and legislative branches of government. In any year in which the plan of proposed appropriations from the general fund exceeds the expenditure ceiling, the governor shall set forth the dollar amount, the rate by which the expenditure ceiling would be exceeded, and the reasons for proposing appropriations in excess of those allowed under the expenditure ceiling.

(b) The proposed appropriations from the general fund for each year of the biennium or each supplementary budget fiscal year for the executive and judicial branches shall not be increased over the appropriations from the general fund for the preceding fiscal year for each branch, respectively, by more than the state growth, except as provided in this section. For purposes of this subsection, the appropriations from the general fund for the executive and judicial branches shall not include any appropriations representing amounts authorized by the legislature under section 37-93(b).

(c) The governor shall submit a plan of proposed appropriations for the executive branch to the legislature which shall accompany the state budget in odd-numbered years and the supplemental budget in even-numbered years. The plan of proposed appropriations shall include the executive budget, proposed grants to private entities, and any specific appropriation measures to be proposed by the executive branch.

(d) The budget documents presented by the governor to the legislature shall include a statement or summary showing (1) the total state personal income for each of the four calendar years immediately preceding the fiscal year for which appropriations from the state general fund are to be made, (2) the appropriations from the general fund for the previous fiscal year, (3) the appropriations from the general fund for the fiscal year in progress, and (4) the general fund expenditure ceiling for the fiscal year in progress and for the ensuing fiscal year or, when necessary, for each fiscal year of the ensuing biennium.

(e) The governor shall also include a statement or summary showing (1) recommended appropriations from the general fund for the executive branch for the ensuing fiscal year or fiscal biennium, (2) actual appropriations from the general fund for

the executive branch plus any recommended appropriations from the general fund for the executive branch for the fiscal year in progress, (3) the appropriations from the general fund for the executive branch for the previous fiscal year, and (4) the general fund appropriation ceiling for the executive branch as established by subsection (b) for the fiscal year in progress and for the ensuing fiscal year or, when necessary, for each fiscal year of the ensuing biennium.

(f) The chief justice shall submit a plan of proposed appropriations of the judicial branch to the legislature which shall accompany the judiciary biennial budget in odd-numbered years and the supplemental budget in even-numbered years. The plan of proposed appropriations shall include the judiciary budget, proposed grants to private entities, and any specific appropriation measures to be proposed by the judicial branch.

(g) The budget documents presented by the chief justice to the legislature shall include a statement or summary showing (1) recommended appropriations from the general fund for the judicial branch for the ensuing fiscal year or fiscal biennium, (2) actual appropriations from the general fund for the judicial branch plus any recommended appropriations from the general fund for the judicial branch for the fiscal year in progress, (3) the appropriations from the general fund for the judicial branch for the previous fiscal year, and (4) the general fund appropriation ceiling for the judicial branch as established by subsection (b) for the fiscal year in progress and for the ensuing fiscal year or, when necessary, for each fiscal year of the ensuing biennium.

(h) The governor or the chief justice may propose appropriations from the general fund for the executive or judicial branches, respectively, in excess of those allowed by subsection (b) if the governor or the chief justice sets forth the dollar amount and the percentage change in excess of the appropriations allowed by subsection (b), and the reasons for proposing appropriations in excess of those allowed by subsection (b). [L Sp 1986, c 1, pt of §1; am L 1987, c 136, §3]

Attorney General Opinions

"Expenditure ceiling" distinguished from appropriation ceiling. Att. Gen. Op. 85-17.

" **§37-93 Legislature.** (a) The legislature shall not make appropriations from the general fund for each fiscal year of the biennium or each supplementary budget fiscal year which will exceed the expenditure ceiling for that fiscal year.

(b) Notwithstanding the prohibition in subsection (a), the legislature may make appropriations from the general fund in excess of those allowed by subsection (a) by:

- (1) A two-thirds vote of the members to which each house of the legislature is entitled;
- (2) Setting forth the dollar amount and the rate by which the appropriations allowed by the change in the state growth will be exceeded; and
- (3) Setting forth the reasons for exceeding the appropriations allowed by the percentage change in the state growth;

in each act which will cause appropriations from the state general fund to exceed those allowed by the change in state growth.

(c) When revisions in the state personal income series made by the United States Department of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis, or its successor, result in the recalculation of expenditure ceilings which then are found to be less than appropriation levels, the excess appropriations shall not be deemed invalid and shall remain as authorized in their respective legislative sessions. [L Sp 1986, c 1, pt of §1; am L 1987, c 136, §4]

Attorney General Opinions

Subsection (b) applicable only if aggregate executive, judicial, and legislative appropriations exceed expenditure ceiling. Att. Gen. Op. 85-17.

Discussion of requirements that would have to be met if the Legislature were to make appropriations in excess of the general fund expenditure ceiling. Att. Gen. Op. 89-2.

" **§37-94 Director of finance; duties.** A preliminary estimate of the state growth and expenditure ceiling shall be determined by the director of finance as of August 15 of each year. The final estimate of the state growth and expenditure ceiling to be used by the legislature to make appropriations from the general fund in each year shall be determined by the director of finance as of November 15 of each year. Upon the determination of both the preliminary estimate and the final estimate of the state growth and expenditure ceiling, the director shall inform the governor, chief justice, and the legislature, and shall give, twice in successive weeks, statewide public notice of the state growth and expenditure ceiling and the maximum dollar amount that may be appropriated

from the general fund. [L Sp 1986, c 1, pt of §1; am L 1987, c 136, §5; am L 1998, c 2, §9; am L 2000, c 33, §1]

"[PART VI. COUNCIL ON REVENUES]

§37-111 Council on revenues. (a) There shall be a council on revenues which shall prepare revenue estimates of the state government for the fiscal year in progress and for each of the ensuing fiscal years of the six-year state program and financial plan. The council shall report the estimates and revisions thereto to the governor and the legislature each June 1, September 10, January 10, and March 15. The council shall revise and update such estimates if it determines that such revisions are necessary or upon request of the governor or the legislature.

(b) The council on revenues shall consist of seven members. Three members shall be appointed by the governor to serve for four-year terms. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms. Two members each shall be appointed by the president of the senate and the speaker of the house of representatives to serve for an unlimited number of two-year terms. The members shall appoint from their own membership the person who shall serve as chairperson of the council. Any vacancy shall be filled by the respective appointing authority. Members shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(c) The council shall meet as often as necessary to perform its duties. Section 92-3 shall not apply to meetings of the council where confidential tax information is discussed.

(d) The council shall be in the department of taxation for administrative purposes. The departments of budget and finance and taxation shall provide the council with such staff assistance and technical support as it may require and all departments and agencies of the executive branch shall furnish the council with such information as deemed necessary by the council to prepare revenue estimates. [L 1980, c 278, pt of §1; am L 1985, c 62, §2; gen ch 1993]

" **[§37-112] Use of estimates.** (a) The estimates prepared by the council shall be considered by the governor in preparing

the budget, recommending appropriations and revenue measures, projecting revenues and controlling expenditures. The legislature shall consider these estimates in appropriating funds and enacting revenue measures. The governor and legislature shall use the latest council estimate as the base estimate against which their revenue estimates shall be compared.

(b) All estimates submitted by the council shall be made public. If the legislature in appropriating funds, or if the governor in preparing the budget uses a revenue estimate which differs from the estimate prepared by the council, then the governor or the legislature shall make that fact public together with reasons for using the differing revenue estimates. [L 1980, c 278, pt of §1]

Revision Note

Subsection (a) designation added.

" **§37-113 REPEALED.** L 1984, c 183, §4.

" **§37-113.1 Council on revenues; estimate of total personal income.** The council shall prepare an estimate of the total state personal income for the calendar year in progress and, when necessary, for the next succeeding calendar year for which such income has not been determined or published and shall report the estimate and any revision thereto to the director of finance, the governor, the chief justice, and the legislature each August 5 and November 5. [L 1987, c 136, §1; am L 1988, c 124, §1; am L 2000, c 33, §2]

"[PART VII.] ROUTINE REPAIR AND MAINTENANCE

Cross References

Judiciary-owned buildings and facilities; routine repair and maintenance annual reports, see §601-2.

[§37-121] Routine repair and maintenance; definitions. As used in this part:

"Routine repair and maintenance" means repair and maintenance performed on a scheduled repair and maintenance cycle.

"State-owned building, facility, or other improvement" means a building, facility, or other improvement owned and managed by a state executive agency. The term shall not include a state-owned building, facility, or other improvement that is leased by a state executive agency to a person. [L 2016, c 233, pt of §2]

" **[§37-122] Routine repair and maintenance funding needs; report to legislature.** (a) Each state executive agency that manages a state-owned building, facility, or other improvement shall submit to the legislature an annual report on the funds and positions deemed necessary by the agency to perform routine repair and maintenance on the state-owned building, facility, or other improvement during the fiscal year covered by the report. The annual report shall cover the fiscal year that commences following the submittal of the report and break down the funds and positions deemed necessary for routine repair and maintenance by means of financing and cost element.

(b) The annual report shall also include a comparison, for each of the prior two fiscal years, of the:

- (1) Routine repair and maintenance funds and positions deemed necessary by the state executive agency, as identified in the relevant prior reports;
- (2) Actual appropriations and positions authorized for routine repair and maintenance; and
- (3) Actual expenditures and positions filled for the routine repair and maintenance.

(c) The annual reports shall be submitted to the legislature through the department of budget and finance with each executive budget or supplemental budget, as applicable.

(d) The governor shall identify the state executive agencies that are responsible for managing a state-owned building, facility, or other improvement and, consequently, required to submit the annual report to the legislature. The governor shall require the identified state agencies to submit the reports to the department of budget and finance:

- (1) In a uniform format; and
- (2) By a deadline intended to give the department of budget and finance sufficient time to compile the reports to the legislature pursuant to subsection (c).

The department of budget and finance shall not be required to ensure the accuracy of the information in the reports. [L 2016, c 233, pt of §2]

