

A Bill for an Act Relating to Grants, Subsidies, and Purchases of Service.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 42-1, Hawaii Revised Statutes, is amended to read as follows:

“[[]§42-1[]] **Definitions.** As used in this chapter, unless the context otherwise requires:

[(1)] “Agency” means the judiciary, any department, office, board, foundation, commission, or other establishment of the state government, including the University of Hawaii.

[(2)] “Chief executive” means the chief justice in the case of the judiciary or the governor in the case of the State.

[(3)] “Director” means the administrative director of the courts in the case of the judiciary or the director of finance in the case of the State.

[(4)] “Grant” means an [appropriation] award of public funds to a recipient, generally on a one-time basis, based on merit or need, to stimulate and support activities of the recipient for a specified public purpose.

[(5)] “Nepotism” means appointing persons to positions on a basis of their blood or marital relationship to the appointing authority, rather than on merit or ability.

[(6)] “Perquisite” means a privilege furnished or a service rendered by an organization to an employee, officer, director, or member of that organization to reduce the individual’s personal expenses.

[(7)] “Provider” means any [person, association or corporation] organization contracted by the State to provide services under a purchase of service [contract.] agreement.

[(8)] “Purchase of service” means [the exchange by an agency of goods and services to be delivered by a provider to the general public or specified members of the general public for cash payments substantially equal in value to such goods and services; but not including] an appropriation of public funds for the provision of services by an organization to specific members of the general public on behalf of an agency to fulfill a public purpose. Payments for such services shall be substantially equal in value to the services provided; provided that the purchase of [service] services of a court-appointed attorney for an indigent[.], the professional services of individuals in private business or

professions, and services subject to the competitive bidding requirements of chapter 103 shall be excluded.

[(9)] “Recipient” means [a person, association or corporation] any organization receiving a grant or a subsidy.

[(10)] “Request” means a proposal for a grant, subsidy, or [proposal for a] purchase of service contract.

[(11)] “Subsidy” means an appropriation of public funds, to an expressly named recipient or expressly designated as a subsidy, made to alter the price or the cost of a particular good or service of the recipient [for the purpose of encouraging or discouraging the output or supply of these items.] to enable the recipient to provide services or goods to the general public or specified members of the general public at a lower price than would otherwise be charged by the recipient.”

SECTION 2. Section 42-2, Hawaii Revised Statutes, is amended to read as follows:

“[[] §42-2[]] **Qualifying standards for [applicants.] organizations.** [An applicant] Any organization applying for a grant, subsidy, or purchase of service agreement shall meet all of the following standards:

- (1) Be a profit organization incorporated under the laws of the State or a nonprofit organization determined to be exempt from the federal income tax by the Internal Revenue Service;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) Have bylaws or policies which describe the manner in which business is conducted[, including for nonprofit organizations,] and policies relating to nepotism and management of potential conflict of interest situations;
- (4) Have at least one year’s experience with the project or in the program area for which the request is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with [applicable] the requirements of federal, state, and county governments.”

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

“§42-3 **Conditions for grants, subsidies, or purchases of service agreement.** [Applicants] Organizations to whom a grant, [or] subsidy [has been made], or a purchase of service agreement has been awarded, shall agree to comply with the following conditions before receiving the grant, subsidy, or purchase of service agreement:

- (1) Employ or have under contract such persons as are qualified to engage in the activity to be funded in whole or in part by the State; provided that for nonprofit organizations, no two or more members of a family or kin of the first or second degree shall be employed or under contract by the organization unless specifically permitted in writing by the director of the expending agency for the appropriation; provided further [for nonprofit organizations without negotiated wage contracts, that the provider or recipient shall also agree that any salary or employee benefit increase shall be granted only upon the prior approval of the director of the expending agency or the grants, subsidies, or purchases of service agreement shall be subject to a decrease by an amount equal to the amount of increase not so approved;] that no salary or benefit increases granted by the organization shall be funded with public funds unless the increases are agreed to by the director of the expending agency in the contract with the organization;
- (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (3) Agree not to use [any] public funds for purposes of entertainment or perquisites;
- (4) Comply with such other requirements as the director may prescribe to ensure adherence by the provider or recipient with federal, state, and county laws; and
- (5) Allow the expending agency, the director, the committees of the legislative bodies and their staffs, and the legislative auditor full access to records, reports, files, and other related documents in order that the program, management, and fiscal practices of the providers or recipients may be monitored and evaluated to assure the proper and effective expenditure of public funds.”

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

“[[§42-4 []] **Required review of requests.** (a) Every agency anticipating the need to purchase services shall determine the services needed and shall solicit proposals for potential providers.

[(a)] (b) Every request for a grant, subsidy, or purchase of service agreement shall be reviewed as provided in this section.

[(b)] (c) Every request for a grant, subsidy, or purchase of service agreement shall be submitted to the director, who shall [then] transmit the request to the appropriate agency for review. The request shall be submitted on forms provided by the director and shall contain a statement of the objective of

the activity to be funded by the grant, subsidy, or purchase of service agreement, financial information regarding the provider or recipient, personnel position salaries, and such other information as the director shall require.

[(c)] (d) The director shall adopt rules, pursuant to chapter 91, defining conditions for grant, subsidy, or purchase of service agreement, the timetable for the submission of requests, the analysis required of requests, and in the case of purchases of service, the procedure for soliciting requests. The director may adopt such other rules as may be necessary to meet the requirements of this section.

[(d)] (e) The appropriate agency shall review each request to determine the efficiency and the effectiveness of the proposed grant, subsidy, or purchase of service [agreement] in achieving the objectives of the judiciary or the State. The review shall include an analysis of the request in terms of the objectives to be achieved, the alternatives by which to achieve the objectives, and the respective costs, benefits, and effectiveness of the alternatives. [Where] When personnel service costs are requested to be funded in whole or in part, the review shall determine the reasonableness of personnel classification and compensation plans. The agency shall invite the [applicant] organization to discuss the request with the agency and to comment on the analysis of the agency.

[(e)] (f) The agency shall prepare a statement of its findings and recommendations for each request. Every request recommended for approval shall be included in the budget submitted by the agency to the chief executive.

(g) Notwithstanding the solicitation of purchase of service proposals by an agency pursuant to subsection (a), if after the solicitation has been made, the agency is unable to identify potential providers who are willing, able, and qualified to satisfactorily provide the desired services, the agency may support proposed budgeted amounts to the extent practicable with information on the types of services solicited and the approximate costs of the various services."

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

"§42-5 Submission of requests to the legislature. (a) The chief executive shall review the findings and recommendations and the budget submission of the agency, revise the same as necessary, and submit to the legislature a statement of findings and recommendations on each request for a grant, subsidy, or purchase of service agreement. The chief executive shall include in the executive or judiciary budget submitted to the legislature all requests recommended for [fundings.] funding. Such requests shall be included in the appropriate program budget in an aggregate amount and shall be identified by agency activity and source of funding in a supplemental budget submittal. Where the agency has not been able to identify a qualified provider or recipient for an activity, the chief executive shall include a request for funding of such activities along with

information describing the specific activity to be funded and a list of possible providers or recipients. The chief executive shall summarize in a separate report all requests not recommended for funding and submit the report to the legislature, together with the statements of findings and recommendations[.] at the same time the executive or judiciary budget is submitted. A copy of the statement of findings and recommendations of the chief executive on each request for a grant, subsidy, or purchase of service agreement shall be furnished to the requestor.

(b) Every recommendation for a grant, subsidy, or purchase of service which the chief executive submits to the legislature for appropriation [of funds for a transfer shall include the applicant's request and] shall state:

- (1) The public purpose to be served;
- (2) The objective intended to be achieved;
- (3) The activity and service to be performed;
- (4) The target group to be affected;
- (5) The means of financing;
- [(5)] (6) Measures by which the effectiveness of the grant, subsidy, or purchase of service agreement is to be evaluated;
- [(6)] (7) The analysis and justification for the recommended grant, subsidy, or purchase of service agreement; and
- [(7)] (8) The intended uses of the funds, according to "cost categories" and "cost elements" as defined in section 37-62.

(c) A request not reviewed pursuant to section 42-4(d) may be submitted in writing to the appropriate standing committee of the legislature and shall state that the request has not been reviewed. The chairperson of the appropriate standing committee shall refer such a request to the appropriate agency for review. The agency shall submit a statement of its findings and recommendations to the legislative committee within fifteen days of its receipt of the request."

SECTION 6. Subsection 42-6(a), Hawaii Revised Statutes, is amended as follows:

"(a) Funds for each grant, subsidy, or purchase of service agreement that are not included in the budget submitted by the chief executive to the legislature may be [appropriated] requested by a separate bill; provided that all appropriations are based on a request reviewed in accordance with section 42- 4[(d)] or 42-5(c). The bill shall specify whether a grant, subsidy, or purchase of service is being made, name the recipient [in the case of a grant or subsidy, and] or provider, as the case may be, define the public purpose to be served by the appropriation[.] and, in the case of a purchase of service, state the budget program which is to be supplemented by the service. Funds shall be appropriated by "cost categories" and "cost elements" as defined in section 37-62."

SECTION 7. Section 42-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Appropriations for [grant, subsidy or purchase] grants, subsidies, or purchases of service [agreement] shall be subject to the allotment system generally applicable to all appropriations made by the legislature. The director [shall] may adopt rules pursuant to chapter 91 [to ensure the fair and uniform allotment of appropriations for grant, subsidy or purchase of service agreement.] for the modification or reduction of allotments of appropriations for grants and subsidies in the event of an anticipated revenue shortfall.”

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

“[[]§42-8[]] **Contracts.** (a) [Appropriations] An appropriation for a grant, subsidy, or purchase of service [agreement] shall not be released unless a contract is entered into between the appropriate agency and the recipient or provider. [The director shall develop contract forms for grants, subsidies, and purchases of service.] The agency shall determine [the], in consultation with and subject to the review and approval of the attorney general in the case of the State and the administrative director of the courts in the case of the judiciary, the specific contract form to be used for each grant, subsidy, or purchase of service agreement and shall execute each contract not later than sixty days from the effective date of the appropriation or as soon as practicable thereafter. If the contract is not executed within the sixty days, the agency shall inform the recipient or provider as to when the contract is expected to be executed.

(b) Each contract shall [specify that the State shall not be held liable for any claims or damages resulting from the acts of the recipient or provider. Each recipient or provider shall require signed waivers from the participants in the recipient’s or provider’s program holding the State harmless from liability.] expressly state that the recipient or provider is an independent contractor and provide that the recipient or provider shall indemnify and hold harmless the State, the appropriate contracting agency, and the involved officers, employees, and agents from and against all claims, damages, or costs arising out of or in connection with the acts or omissions of the recipient or provider.

(c) All contracts shall be reviewed by the administrative director of the courts in the case of the judiciary and the attorney general in the case of the State for conformance with the public purpose and legislative intent [of the grant, subsidy or purchase of service agreement.

(d) Every contract with a provider shall be based on a request solicited by the appropriate agency in accordance with the rules adopted by the director pursuant to section 42-4(c).”

SECTION 9. Section 42-12, Hawaii Revised Statutes, is amended to read as follows:

“§42-12 Applicability[.] and interpretation. (a) This chapter shall be construed to be consistent with existing statutory law; provided that, in the case of a conflict, provisions contained in this chapter shall prevail.

(b) The qualifying standards and conditions relating to the receipt of funds contained in this chapter shall not apply to funds that are passed from one governmental agency to another governmental agency[;], including county agencies; provided that, if the receiving agency in turn contracts with a recipient or provider, then the qualifying standards and conditions and other provisions of this chapter shall apply to the recipient or provider[. It shall be the responsibility of the contractor to] and the contract. The receiving agency shall ensure compliance by the recipient or provider.

(c) Notwithstanding the submission of purchase of service proposals and the identification of a potential provider pursuant to sections 42-4 and 42-5, if after an appropriation has been made for a purchase of service the identified potential providers become ineligible to be providers under section 42-2, 42-3, or 42-10 or become unwilling, unable, or unqualified to satisfactorily provide the desired services, the agency may expend the appropriated funds to provide the desired services through available means, including the purchase of services from providers not previously identified.

(d) This chapter shall be liberally construed to not hinder or impede the application, receipt, and use of federal-aid funds that may become available to the State. If federal-aid funds not already anticipated to be received and included in appropriations become available, each agency administering programs that could qualify for the available federal-aid funds, pursuant to chapter 29, may apply for, receive, and expend the federal-aid funds in accordance with the terms and conditions specified in the applicable federal statutes, regulations, or financial assistance award documents.”

SECTION 10. Chapter 42, Hawaii Revised Statutes, is amended by adding a new section to read:

“§42- Funding of grants or purchases of service. The legislature, if it deems necessary, may provide funding for an organization requesting a grant under a purchase of service agreement; provided that the grant being funded as a purchase of service shall meet purchase of service requirements as defined in section 41-1(8).”

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 12. This Act shall take effect upon its approval.

(Approved May 26, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.