A BILL FOR AN ACT

RELATING TO SUBSIDIES.

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

- 1 SECTION 1. Article VII, section 4, of the state
- 2 constitution provides in part: "No grant of public money or
- 3 property shall be made except pursuant to standards provided by
- 4 law." Chapters 6E, 42F, 103F, 304A, and 383, Hawaii Revised
- 5 Statutes, implement this constitutional requirement by
- 6 establishing standards and criteria for the award of a grant, as
- 7 well as subsidy, to a private organization or individual.
- 8 No substantive difference exists between a "grant" and
- 9 "subsidy" in the Hawaii Revised Statutes and the state
- 10 constitution does not require the establishment of standards for
- 11 the grant of a "subsidy". Therefore, the legislature finds that
- 12 the term "subsidy" is not necessary.
- The purpose of this Act is repeal references to "subsidy"
- 14 or "subsidies" as a type of funding award that may be made to a
- 15 private organization or individual for a public purpose.
- 16 SECTION 2. Section 6E-2, Hawaii Revised Statutes, is
- 17 amended by amending the definition of "project" to read as
- 18 follows:



- ""Project" means any activity directly undertaken by the 1 2 State or its political subdivisions or supported in whole or in 3 part through appropriations, contracts, grants, [subsidies,] 4 loans, or other forms of funding assistance from the State or 5 its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for 6 7 use issued by the State or its political subdivisions." SECTION 3. Section 6E-35, Hawaii Revised Statutes, is 8 9 amended by amending subsection (c) to read as follows: 10 To receive state funds, the State of Hawaii Museum of 11 Monarchy History shall: 12 Be licensed or accredited, in accordance with federal, (1)13 state, or county statutes, rules, or ordinances, to 14 conduct the activities or provide the services for 15 which funds are appropriated; **16** Comply with all applicable federal and state laws (2) 17 prohibiting discrimination against any person on the 18 basis of race, color, national origin, religion, 19 creed, sex, age, sexual orientation, or disability; 20 (3) Agree not to use the funds for entertainment or lobbying activities; 21 22 (4)Be incorporated under the laws of the State;
 - SB2411 SD1 LRB 14-0988.doc

1	(5)	Have bylaws or policies that describe the manner in
2		which the activities or services for which a grant [or
3		subsidy] is awarded shall be conducted or provided;
4	(6)	Have been determined and designated to be a tax-exempt
5		organization by the Internal Revenue Service; and
6	(7)	Have a governing board whose members shall have no
7		material conflict of interest and serve without
8		compensation."
9	SECT	ION 4. Chapter 42F, Hawaii Revised Statutes, is
10	amended b	y amending its title to read as follows:
11		"CHAPTER 42F
12		GRANTS [AND SUBSIDIES]"
13	SECT	ION 5. Section 42F-101, Hawaii Revised Statutes, is
14	amended a	s follows:
15	1.	By amending the definition of "recipient" to read:
16	""Re	cipient" means any organization or person receiving a
17	grant [or	-subsidy]."
18	2.	By repealing the definition of "subsidy".
19	[" <u>"S</u>	ubsidy" means an award of state funds by the
20	legislatu	re, by an appropriation to a recipient specified in the
21	appropria	tion, to reduce the costs incurred by the organization

```
or individual in providing a service available to some or all
1
2
    members of the public."]
3.
         SECTION 6. Section 42F-102, Hawaii Revised Statutes, is
4
    amended to read as follows:
         "[{]$42F-102[}] Applications for grants [and subsidies].
5
6
    Requests for grants [and subsidies] shall be submitted to the
7
    appropriate standing committees of the legislature at the start
8
    of each regular session of the legislature. Each request shall
9
    state:
10
              The name of the requesting organization [\div] or
11
              individual;
12
              The public purpose for the grant [or subsidy];
         (2)
              The services to be supported by the grant [or
13
         (3)
14
              subsidy];
15
         (4)
             The target group; and
              The cost of the grant [or subsidy] and the budget."
16
         (5)
17
         SECTION 7. Section 42F-103, Hawaii Revised Statutes, is
18
    amended to read as follows:
19
         "$42F-103 Standards for the award of grants [and
20
    subsidies]. (a) Grants [and subsidies] shall be awarded only
```

to individuals who, and organizations that:

1	(1)	Are licensed or accredited, in accordance with
2		federal, state, or county statutes, rules, or
3		ordinances, to conduct the activities or provide the
4		services for which a grant [or subsidy] is awarded;
5	(2)	Comply with all applicable federal and state laws
6		prohibiting discrimination against any person on the
7		basis of race, color, national origin, religion,
8		creed, sex, age, sexual orientation, or disability;
9	(3)	Agree not to use state funds for entertainment or
10		lobbying activities; and
11	(4)	Allow the state agency to which funds for the grant
12		[or subsidy] were appropriated for expenditure,
13		legislative committees and their staff, and the
14		auditor full access to their records, reports, files
15		and other related documents and information for
16		purposes of monitoring, measuring the effectiveness,
17		and ensuring the proper expenditure of the grant [or
18		subsidy].

- (b) In addition, a grant [or subsidy] may be made to an organization only if the organization:
- 21 (1) Is incorporated under the laws of the State; and

1	(2)	Has bylaws or policies that describe the manner in
2		which the activities or services for which a grant [or
3		subsidy] is awarded shall be conducted or provided.

- 4 (c) Further, a grant [or subsidy] may be awarded to a
 5 nonprofit organization only if the organization:
- (1) Has been determined and designated to be a nonprofit
 organization by the Internal Revenue Service; and
- 8 (2) Has a governing board whose members have no material9 conflict of interest and serve without compensation.
 - (d) If a grant [or subsidy] is used by an organization for the acquisition of land, when the organization discontinues the activities or services on the land acquired for which the grant [or subsidy] was awarded and disposes of the land in fee simple or by lease, the organization shall negotiate with the expending agency for a lump sum or installment repayment to the State of the amount of the grant [or subsidy] used for the acquisition of the land. This restriction shall be registered, recorded, and indexed in the bureau of conveyances or with the assistant registrar of the land court as an encumbrance on the property. Amounts received from the repayment of a grant [or subsidy] under this subsection shall be deposited into the general fund."

16

S.B. NO. 2411 S.D. 1

- 1 SECTION 8. Section 42F-104, Hawaii Revised Statutes, is 2 amended to read as follows: 3 "[+]\$42F-104[+] Contracts for grants [and subsidies]. An appropriation for a grant [or subsidy] shall be disbursed by a 4 5 contract between the state agency designated the expending 6 agency for the appropriation by the legislature, and the 7 recipient of the grant [or subsidy]. The contract shall be effective as of the first day of the fiscal year for which the 8 9 funds for the grant [or subsidy] are appropriated[7]; provided **10** that up to one-fourth of the total amount appropriated may be 11 disbursed prior to the execution of the contract." 12 SECTION 9. Section 42F-105, Hawaii Revised Statutes, is 13 amended to read as follows: "[+]\$42F-105[+] Allotment. Contracts to disburse and 14

appropriations for grants [and subsidies] shall be subject to

the allotment system generally applicable to all appropriations

"[+]\$42F-106[+] Monitoring and evaluation. Every grant
[or subsidy] shall be monitored by the expending agency to

- 1 ensure compliance with this chapter and the public purpose and
- 2 legislative intent of the grant [or subsidy]."
- 3 SECTION 11. Section 46-15.1, Hawaii Revised Statutes, is
- 4 amended by amending subsection (c) to read as follows:
- 5 "(c) Any law to the contrary notwithstanding, any county
- 6 may:
- 7 (1) Authorize and issue bonds under chapter 47 and chapter
- **8** 49 to provide moneys to carry out the purposes of this
- 9 section or section 46-15.2, including the satisfaction
- of any guarantees made by the county pursuant to this
- 11 section;
- 12 (2) Appropriate moneys of the county to carry out the
- purposes of this section;
- 14 (3) Obtain insurance and quarantees from the State or the
- United States, or [subsidies] grants from either;
- 16 (4) Designate, after holding a public hearing on the
- matter and with the approval of the respective
- 18 council, any lands owned by it for the purposes of
- this section;
- 20 (5) Provide interim construction loans to partnerships of
- 21 which it is a partner and to developers whose projects
- qualify for federally assisted project mortgage

1		insurance, or other similar programs of federal
2	•	assistance for persons of low and moderate income; and
3	(6)	Adopt rules pursuant to chapter 91 as are necessary to
4		carry out the purposes of this section."
5	SECT	ION 12. Section 103-53, Hawaii Revised Statutes, is
6	amended by	y amending subsection (e) to read as follows:
7	"(e)	This section shall not apply to:
8	(1)	Any procurement of less than \$25,000 or that is
9		considered a small purchase under section 103D-305 and
10		any state or county department contract of less than
11		\$25,000;
12	(2)	Emergency purchases for the procurement of goods,
13		services, or construction under section 103D-307,
14		disaster relief under chapter 127, or a civil defense
15		emergency under chapter 128;
16	(3)	Grants [and subsidies] disbursed by a state agency
17		pursuant to chapter 42F or in accordance with
18		standards provided by law as required by article VII,
19		section 4, of the state constitution, or made by the
20		counties pursuant to their respective charters or
21		ordinances;
22	(4)	Contracts or agreements between government agencies;

1	(5)	Cont	racts or agreements to disburse funds:
2		(A)	To make payments to or on behalf of public
3			officers and employees for salaries, fringe
4			benefits, professional fees, and reimbursements;
5		(B)	To satisfy obligations required to be paid by
6			law, including fees, judgments, settlements, and
7			other payments for resolving claims;
8		(C)	To make refunds or return funds held by the State
9		. "	or county as trustee, custodian, or bailee;
10		(D)	For entitlement programs, including public
11			assistance, unemployment, and workers'
12	•		compensation programs, established by state or
13			federal law;
14		(E)	For deposit, investment, or safekeeping,
15			including sums to pay expenses related to their
16			deposit investment, or safekeeping;
17		(F)	For loans under government-administered loan
18			programs; or
19		(G)	To make periodic, recurring payments for utility
20			services;
21	(6)	Rent	for the use or occupation of the premises and
22		faci	lities at Aloha Stadium, the convention center, or
	SB2411 SD	1 LRB	14-0988.doc

1		any c	other state or county large spectator events
2		facil	ity; and
3	(7)	Contr	acts or agreements of the Hawaii health systems
4		corpo	eration and its regional system boards."
5	SECT	ION 13	3. Section 103D-102, Hawaii Revised Statutes, is
6	amended b	y amer	ding subsection (b) to read as follows:
7	"(b)	Notw	vithstanding subsection (a), this chapter shall
8	not apply	to co	ontracts by governmental bodies:
9	(1)	Solid	cited or entered into before July 1, 1994, unless
10		the p	parties agree to its application to a contract
11		solic	cited or entered into prior to July 1, 1994;
12	(2)	To di	sburse funds, irrespective of their source:
13		(A)	For grants [or subsidies] as [those terms are]
14			defined in section 42F-101, made by the State in
15			accordance with standards provided by law as
16			required by article VII, section 4, of the state
17			constitution; or by the counties pursuant to
18			their respective charters or ordinances;
19		(B)	To make payments to or on behalf of public
20			officers and employees for salaries, fringe
21			benefits, professional fees, or reimbursements;

1 (C)	to satisfy obligations that the state is required
2	to pay by law, including paying fees, permanent
3	settlements, subsidies, or other claims, making
4	refunds, and returning funds held by the State as
5	trustee, custodian, or bailee;
6 (D)	For entitlement programs, including public
7	assistance, unemployment, and workers'
8	compensation programs, established by state or
9	federal law;
10 (E)	For dues and fees of organizations of which the
11	State or its officers and employees are members,
12	including the National Association of Governors,
13	the National Association of State and County
14	Governments, and the Multi-State Tax Commission;
15 (F)	For deposit, investment, or safekeeping,
16	including expenses related to their deposit,
17	investment, or safekeeping;
18 (G)	To governmental bodies of the State;
19 (H)	As loans, under loan programs administered by a
20	governmental body; and
21 (I)	For contracts awarded in accordance with chapter
22	103F;

1	(3)	To p	rocure goods, services, or construction from a
2		gove	rnmental body other than the University of Hawaii
3		book	stores, from the federal government, or from
4		anot	her state or its political subdivision;
5	(4)	То р	rocure the following goods or services which are
6		avai	lable from multiple sources but for which
7		proc	urement by competitive means is either not
8		prac	ticable or not advantageous to the State:
9		(A)	Services of expert witnesses for potential and
10			actual litigation of legal matters involving the
11			State, its agencies, and its officers and
12			employees, including administrative quasi-
13			judicial proceedings;
14		(B)	Works of art for museum or public display;
15		(C)	Research and reference materials including books
16			maps, periodicals, and pamphlets, which are
17			published in print, video, audio, magnetic, or
18			electronic form;
19		(D)	Meats and foodstuffs for the Kalaupapa
20			settlement;
21		(E)	Opponents for athletic contests;

S.B. NO. 2411 S.D. 1

Ţ	(F)	ottlity services whose rates or prices are lixed
2		by regulatory processes or agencies;
3	(G)	Performances, including entertainment, speeches
4		and cultural and artistic presentations;
5	(H)	Goods and services for commercial resale by the
6		State;
7	(I)	Services of printers, rating agencies, support
8		facilities, fiscal and paying agents, and
9		registrars for the issuance and sale of the
10		State's or counties' bonds;
11	(J)	Services of attorneys employed or retained to
12		advise, represent, or provide any other legal
13		service to the State or any of its agencies, on
14		matters arising under laws of another state or
15		foreign country, or in an action brought in
16		another state, federal, or foreign jurisdiction
17		when substantially all legal services are
18		expected to be performed outside this State;
19	(K)	Financing agreements under chapter 37D; and
20	(L)	Any other goods or services which the policy
21		board determines by rules or the chief
22		procurement officer determines in writing is

1	available from multiple sources but for which
2	procurement by competitive means is either not
3	practicable or not advantageous to the State; and
4	(5) Which are specific procurements expressly exempt from
5	any or all of the requirements of this chapter by:
6	(A) References in state or federal law to provisions
7	of this chapter or a section of this chapter, or
8	references to a particular requirement of this
9	chapter; and
10	(B) Trade agreements, including the Uruguay Round
11	General Agreement on Tariffs and Trade (GATT)
12	which require certain non-construction and non-
13	software development procurements by the
14	comptroller to be conducted in accordance with
15	its terms."
16	SECTION 14. Section 103F-101, Hawaii Revised Statutes, is
17	amended by amending subsection (a) to read as follows:
18	"(a) This chapter shall apply to all contracts made by
19	state agencies and may be used by county agencies to provide
20	health or human services to Hawaii's residents; provided that
21	this chapter shall not apply to:

1	(1)	Contracts to award grants [or-subsidies] of state
2		funds appropriated by the legislature to a specific
3		organization or individual;
4	(2)	Transactions between or among government agencies,
5		including but not limited to agreements, contracts,
6		and grants;
7	(3)	Transactions expressly exempt from the requirements of
8		this chapter; and
9	(4)	Transactions that the chief procurement officer
10		determines are exempt under rules adopted by the
11		policy board."
12	SECT	ION 15. Section 103F-409, Hawaii Revised Statutes, is
13	amended b	y amending subsection (b) to read as follows:
14	"(b)	A standard contract form for health and human
15	services,	including purchases $[\tau]$ and grants, $[and subsidies,]$
16	shall be	provided to governmental bodies by the attorney general
17	that may	be utilized, at the option of the head of the
18	purchasin	g agency, without requiring prior approval as to form
19	by the at	torney general so long as no substantive changes are
20	made to t	he form and the contents are appropriate."
21	SECT	ION 16. Section 261-6, Hawaii Revised Statutes, is
22	amended b	y amending subsection (g) to read as follows:

```
1
               The Hawaii wing, civil air patrol shall comply with
2
    chapter 42F in its application for grants [and subsidies];
3
    execute an annual contract with the department of transportation
4
    by the third day of July; and submit to the department of
    transportation an annual expenditure plan to ensure the
5
6
    disbursement of funds by the tenth day of July, October,
    January, and April of each fiscal year."
7
8
         SECTION 17. Section 302D-28, Hawaii Revised Statutes, is
9
    amended by amending subsection (d) to read as follows:
10
         "(d)
               Charter schools shall be eligible for all federal
11
    financial support to the same extent as all other public
12
    schools. The department shall provide all authorizers with all
13
    state-level federal grant proposals submitted by the department
14
    that include charter schools as potential recipients and timely
15
    reports on state-level federal grants received for which charter
16
    schools may apply or are entitled to receive. Federal funds
17
    received by the department for charter schools shall be
18
    transferred to authorizers for distribution to the charter
19
    schools they authorize in accordance with the federal
20
    requirements. If administrative services related to federal
21
    grants [and subsidies] are provided to the charter school by the
22
    department, the charter school shall reimburse the department
```

- 1 for the actual costs of the administrative services in an amount
- 2 that shall not exceed six per cent of the charter school's
- 3 federal grants [and subsidies].
- 4 Any charter school shall be eligible to receive any
- 5 supplemental federal grant or award for which any other public
- 6 school may submit a proposal, or any supplemental federal grants
- 7 limited to charter schools; provided that if department
- 8 administrative services, including funds management, budgetary,
- 9 fiscal accounting, or other related services, are provided with
- 10 respect to these supplemental grants, the charter school shall
- 11 reimburse the department for the actual costs of the
- 12 administrative services in an amount that shall not exceed six
- 13 per cent of the supplemental grant for which the services are
- **14** used.
- 15 All additional funds generated by the governing boards,
- 16 that are not from a supplemental grant, shall be held separate
- 17 from allotted funds and may be expended at the discretion of the
- 18 governing boards."
- 19 SECTION 18. Section 304A-2351, Hawaii Revised Statutes, is
- 20 amended by amending subsection (c) to read as follows:
- 21 "(c) Neither the trust established by the university
- 22 pursuant to subsection (a), nor any trustee thereof, shall be a



S.B. NO. 2411 S.D. 1

- 1 department, office, agency, board, commission, bureau,
- 2 instrumentality, committee, authority, or office of the State or
- 3 any of its political subdivisions, or otherwise deemed a public
- 4 or quasi-public entity, nor shall the initial funding of, or a
- 5 transfer to, the trust constitute a state grant [or subsidy].
- 6 The trust shall not be subject to laws or rules governing state
- 7 and other public or quasi-public entities, including but not
- 8 limited to chapters 23, 36, 37, -38, 40, 42F, 76, 78, 84, 89, 91,
- 9 92, 92F, 103, and 103D."
- 10 SECTION 19. Section 321-442, Hawaii Revised Statutes, is
- 11 amended by amending subsection (a) to read as follows:
- "(a) In addition to any other power or duty prescribed by
- 13 law or in this part, the director, through the department, may
- 14 maintain an emergency response stockpile to prepare for or
- 15 respond to a CBRNE event. The director may undertake all lawful
- 16 activities necessary to carry out this part, including but not
- 17 limited to adopting rules pursuant to chapter 91, disbursing
- 18 funds for grants [or subsidies] pursuant to chapter 42F, and
- 19 procuring goods or services pursuant to chapter 103D or 103F."
- 20 SECTION 20. Section 383-128, Hawaii Revised Statutes, is
- 21 amended by amending subsections (f) and (g) to read as follows:

1	" (f)	For purposes of grants [and subsidies] awarded under
2	subsectio	n (d), any organization requesting a grant [or subsidy]
3	shall:	
4	(1)	Be licensed and accredited, as applicable, under the
5		laws of the State;
6	(2)	Have at least one year's experience with the project
7		or in the program area for which the request or
8		proposal is being made; except that the director may
9		grant an exception where the project or program area
10		deals with new industry training; and
11	(3)	Be, employ, or have under contract persons who are
12		qualified to engage in the program or activity to be
13		funded by the State.
14	(g)	Recipients of grants [or subsidies] shall be subject
15	to the fo	llowing conditions:
16	(1)	Any organization requesting a grant [or subsidy] shall
17		submit its request together with all the information
18		required by the director on an application form
19		provided by the department;
20	(2)	The recipient of a grant [or subsidy] shall not use
21		public funds for purposes of entertainment or
22		perquisites;

1	(3)	The recipient of a grant [or subsidy] shall comply
2		with applicable federal, state, and county laws;
3	(4)	The recipient of a grant [or subsidy] shall comply
4		with any other requirements the director may
5		prescribe;
6	(5)	The recipient of a grant [or subsidy] shall allow the
7		director, the legislative bodies, and the legislative
8		auditor full access to records, reports, files, and
9		other related documents so that the program,
10		management, and fiscal practices of the grant
11		recipient may be monitored and evaluated to assure the
12		proper and effective expenditure of public funds;
13	(6)	Every grant [or subsidy] shall be monitored according
14		to rules established by the director to ensure
15		compliance with this section; and
16	(7)	Any recipient of a grant [or subsidy] under this
17		section who withholds or omits any material fact or
18		deliberately misrepresents facts to the director or
19		who violates the terms of the recipient's contract
20	•	shall be in violation of this section and, in addition

to any other penalties provided by law, shall be

prohibited from applying for a grant [or subsidy]

21

S.B. NO. 2411 S.D. 1

1		under this section for a period of five years from the
2		date of termination."
3	SECTI	ION 21. Section 352D-6, Hawaii Revised Statutes, is
4	amended to	read as follows:
5	"§352	2D-6 Organizational structure. The office of youth
6	services s	shall be composed of such divisions and sections as are
7	deemed ned	cessary by the director to:
8	(1)	Provide diagnostic evaluation, treatment, and
9		rehabilitation services for all youths referred to
10		services provided by the office or placed in the
11		office's custody by the family court;
12	(2)	Provide supervision and counseling services for youth
13		in shelter or correctional facilities under the
14	÷	office's jurisdiction, including community-based
15		facilities;
16	(3)	Provide educational, vocational-educational, and other
17		programs to effectively occupy the time of the youth
18		placed in a facility under the office's jurisdiction
19		which promote the development of self-esteem and
20		useful skills to prepare youths in becoming productive
21		members of the community;

1	(4)	Provide continuous program planning, development, and
2		coordination of youth services, including the
3		coordination with other government and private social
4	,	service agencies that work with youths to ensure that
5		a full-range of programs is available and that such
6		programs are consistent with the policy of this
7		chapter and are not unnecessarily duplicative or
8		conflicting;

- (5) Provide prevention services to include a comprehensive
 intake/assessment and information/referral system
 throughout the State which shall access services to
 youth and their families;
- (6) Provide a case management system based on the individual needs of youth which shall provide for indepth client assessment, appropriate service planning, and client advocacy;
- (7) Provide for the implementation of chapter 352, youth correctional facilities and other needed correctional services, including ensuring that these facilities and services meet the present and future needs of youth under the jurisdiction of the youth correctional facilities;

•	(0)	racificate the development of and, when appropriate,
2		provide for training programs for persons offering
3		services to youth at risk;
4	(9)	Provide for technical assistance and consultation to
5		providers and potential providers;
6	(10)	Seek, apply for, and encourage the use of all federal
7		funds for youth services and facilitate the
8		coordination of federal, state, and local policies
9		concerning services for youth;
10	(11)	Prepare and submit an annual report to the governor
11		and the legislature. This report shall include, but
12	•	not be limited to, a review of the status of youth
13		services within the State, recommendations for
14		priorities for the development and coordination of
15		youth services; and
16	(12)	Monitor, evaluate, and audit all grants[, subsidies,]
17		under chapter 42F, and purchase of services under
18		chapter $[42D]$ $\underline{103F}$ which relate to the office of youth
19		services."
20	SECT	ION 22. Statutory material to be repealed is bracketed
21	and stric	ken. New statutory material is underscored.

- 1 SECTION 23. This Act shall take effect on July 1, 2014;
- 2 provided that the amendment made to section 46-15.1(c), Hawaii
- 3 Revised Statutes, by section 11 of this Act shall not be
- 4 repealed when section 46-15.1 is reenacted on June 30, 2015,
- 5 pursuant to section 3 of Act 141, Session Laws of Hawaii 2009.

Report Title:

Subsidy; Deletion

Description:

Deletes references to "subsidy" in the chapters establishing standards and criteria for the award of grants to private organizations and individuals. Makes conforming amendments. (SD1)

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