

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. Title 5, Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE**

§ -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 of public funds to a 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 contracted by the State to provide services under a purchase of service contract.
- (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 the purchase of service of a court-appointed attorney for an indigent.
- (9) “Recipient” means a person, association or corporation 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 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.

§ -2 **Qualifying standards for applicants.** An applicant 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 non-profit 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, 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 in accordance with applicable requirements of federal, state, and county governments.

§ -3 Conditions for grants, subsidies or purchases of service agreement.

Applicants to whom a grant or subsidy has been made, or a purchase of service agreement 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 or the director of the expending agency for the appropriation; provided further for nonprofit organizations, 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 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;
- (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, or age;
- (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.

§ -4 Required review of requests. (a) Every request for a grant, subsidy or purchase of service agreement shall be reviewed as provided in this section.

(b) 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) 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) 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 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 to discuss the request with the agency and to comment on the analysis of the agency.

(e) 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.

§ -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. 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. 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 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) Measures by which the effectiveness of the grant, subsidy or purchase of service agreement is to be evaluated;
- (6) The analysis and justification for the recommended grant, subsidy or purchase of service agreement; and
- (7) 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 -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 ten days of its receipt of the request.

§ -6 Appropriations for grant, subsidy or purchase of service agreement. (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 by a separate bill; provided that all appropriations are based on a request reviewed in accordance with section -4(d) or -5(d).† 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 define the public purpose to be served by the appropriation. Funds shall be appropriated by “cost categories” and “cost elements” as defined in section 37-62.

(b) A grant or subsidy may be authorized for a period not to exceed two years and shall not be renewed unless the request for renewal is reviewed in accordance with section -4 and the legislature determines that there is a continuing need and public purpose to be served by the grant or subsidy.

(c) Funds for purchases of service may be appropriated to agencies without naming the specific providers.

§ -7 Allotment. (a) Appropriations for grant, subsidy or purchase of service agreement shall be subject to the allotment system generally applicable to all appropriations made by the legislature. The director shall adopt rules pursuant to chapter 91 to ensure the fair and uniform allotment of appropriations for grant, subsidy or purchase or †† service agreement.

(b) Allotments shall be by “cost categories” and “cost elements” as defined in section 37-62.

§ -8 Contracts. (a) Appropriations for 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 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.

(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

† Probably should read “-5(c)”.

†† Probably should read “of”.

appropriate agency in accordance with the rules adopted by the director pursuant to section -4(c).

§ -9 Monitoring and evaluation. (a) Every grant, subsidy or purchase of service agreement shall be monitored by the appropriate agency to ensure compliance with this chapter and the public purpose and legislative intent of the grant, subsidy or purchase of service agreement.

(b) Every grant, subsidy or purchase of service agreement shall be evaluated annually to determine its continued eligibility and whether the grant, subsidy or purchase of service agreement attained the intended results in the manner contemplated.

(c) The director shall develop procedures and adopt rules pursuant to chapter 91 to assist agencies in monitoring and evaluating grant, subsidy or purchase or service agreement.

§ -10 Continued eligibility. Any recipient or provider who withholds or omits any material facts or deliberately misrepresents such facts to an agency shall be in violation of this chapter. Any recipient or provider which has been found by an agency to have violated this chapter or the terms of its contract shall be prohibited from applying for any grant, subsidy or purchase of service agreement for a period of five years.

§ -11 Standards of political subdivisions. Each county shall establish standards for the grant of public money or property pursuant to Article VII, section 4, of the Constitution of the State of Hawaii.

§ -12 Applicability. 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.”

SECTION 2. The office of the legislative auditor shall monitor and evaluate the implementation of this Act and shall submit status reports on its findings to the regular legislative sessions of 1983 and 1984.

SECTION 3. Sections -4, -5, and -6, set forth in section 1 of this Act shall take effect on January 1, 1982. All other sections set forth in section 1 and all other portions of this Act shall take effect upon approval.

(Approved June 19, 1981.)