

A Bill for an Act Relating to Education.

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

SECTION 1. Section 40-58, Hawaii Revised Statutes, is amended to read as follows:

**“§40-58 In favor of assignees.** No assignment of moneys by a person to whom the State is directly indebted shall be effective unless the assignment is first approved by the comptroller[.] or, in the case of the University of Hawaii and the department of education, by their respective chief financial officers. The comptroller or the chief financial officers of the University of Hawaii and the department of education may prescribe the form for an assignment, and may approve the assignment within a reasonable time period if, in [the comptroller’s] their respective discretion, the rights or obligations of the State, the University of Hawaii, or the department of education under any contract or other undertaking or under any law, rule, or order by a competent authority will not be prejudiced thereby. Upon approval of the assignment, the comptroller or the respective chief financial officers of the University of Hawaii and the department of education shall draw a warrant payable to the assignee. Except as to contracts encumbered by the comptroller, the University of Hawaii, or the department of education, each expending agency, upon notification of the comptroller’s approval of an assignment, shall prepare a claim for payment in accordance with the terms of the assignment.”

SECTION 2. Section 103-39, Hawaii Revised Statutes, is amended to read as follows:

**“§103-39 Contract not binding unless appropriation available.** (a) No such contract shall be binding or of any force unless the comptroller of the State [or], the director of finance of the county, or the chief financial officers of the University of Hawaii and the department of education, as the case may be, indorses thereon [the comptroller’s or director’s] a certificate that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract; provided that this section shall not apply to any price-term, open-end, or requirements contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded.

Notwithstanding the requirement for certification set forth above, certification of a portion of the total funds required for a contract may be permitted in the following instances:

- (1) When an immediate call for tenders will result in significantly more favorable contract terms and conditions to the state or county agency than a call for tenders made at a later date; or
- (2) When an extension of the contract period beyond the period permitted by currently available funds will (i) significantly reduce the amounts of the periodic payments to be made by a state or county agency, or (ii) result in significantly more favorable contract terms and conditions to the state or county agency, or (iii) promote competition among qualified bidders and attract qualified bidders who otherwise may be precluded from bidding[.];

[Provided such] provided that certification for partial funding shall be permitted only if the comptroller of the State [or], the director of finance of a county, or the chief financial officers of the University of Hawaii and the department of education, as the case may be, certifies either that there exists substantial assurance that the necessary funds will be available for the payments set forth in the contract or that special fund revenues will be sufficient to cover the cost of the contract.

(b) In all cases of certification for partial funding, the contract and the certificate shall state that availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available.

In any contract involving not only local funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price involved in the contract as is payable out of local funds. As to such portion of the contract price as is expressed in the contract to be payable out of federal funds, [such] the contract shall be construed to be an agreement to pay [such] the portion to the contractor, only out of federal funds to be received from the federal government when the federal funds are so received, and shall not be construed as a general agreement to pay [such] the portion at all events out of any funds other than those which are received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the State or any county in contracting for any project involving financial aid from the federal government.”

SECTION 3. Act 371, Session Laws of Hawaii 1989, is amended by amending section 7 to read as follows:

“SECTION 7. Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, is amended by amending section 12 to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of June 30, 1994; provided that on repeal sections 40-1, 40-2, 40-4, 40-6, 40-81, and 103-23, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986[.]”, and sections 40-58 and 103-39, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1991.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved May 23, 1991.)