

A Bill for an Act Relating to the State Foundation on Culture and the Arts.

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

SECTION 1. Chapter 9, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART II. FOUNDATION GRANT PROGRAM

§9- Qualifying standards for foundation grant applications. An applicant for a foundation grant shall meet the following standards:

- (1) If the applicant is an organization:
 - (A) Be a for-profit organization incorporated under the laws of the State or a nonprofit organization exempt from the federal income tax by the Internal Revenue Service;
 - (B) In the case of a tax exempt nonprofit organization, the organization shall have a governing board whose members have no material conflict of interest and serve without compensation;
 - (C) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflict of interest situations; and
 - (D) Have at least one year's experience with the project or in the program or activity area for which the request for grant is being made; provided that the foundation may grant an exception where the requesting or proposing organization has demonstrated the necessary experience in the program area.
- (2) If the applicant is an individual, the applicant must be determined by the foundation to be:
 - (A) Professionally recognized in the field of culture and the arts or history and the humanities; and
 - (B) Qualified to carry out the activity or program proposed for delivery to the general public or specified members of the general public.

(3) **9- Conditions for foundation grants.** Applicants to whom a grant has been awarded shall agree to comply with the following conditions before receiving the grant:

- (1) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded 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 foundation;
- (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 public funds for purposes of entertainment or perquisites;
- (4) Comply with other requirements as the foundation may prescribe to ensure adherence to federal, state, and county laws by the grant recipient; and

- (5) Allow the foundation, the legislative bodies, and the legislative auditor full access to records, reports, files, and other related documents so that the program, management, and fiscal practices of the grant recipient may be monitored and evaluated to assure the proper and effective expenditure of public funds.

§9- Required review of requests for foundation grants. (a) Every request for a foundation grant shall be reviewed in accordance with this section.

(b) Every request for a foundation grant shall be submitted to the foundation on an application form provided by the foundation. Each application shall contain:

- (1) A statement of the purpose of the activity or program to be funded by the grant;
- (2) A written description of the activity or program;
- (3) Financial information regarding the activity or program;
- (4) If the applicant is an organization, personnel position salaries; and
- (5) Any other information the foundation requires.

(c) The foundation shall review each request to determine the efficiency and the effectiveness of the proposed activity or program in achieving the objectives of the foundation and its legislative mandate. The review shall be based upon an analysis of the request in terms of the objectives to be achieved, the need in the community for the particular activity or program, the quality of the proposed program or activity, the ability of the applicant to carry out the proposed program or activity, the benefits to be provided by the request in comparison to the estimated costs, and the extent to which the proposed program and activity meet the priorities established by the foundation.

(d) The foundation shall make a final decision on each request.

(e) The foundation shall inform each foundation grant applicant of the disposition of the application's request.

(f) The appeal process in the foundation's rules adopted pursuant to section 9-2 shall be available for any applicant.

§9- Allotment. Appropriations for foundation grants to be made under this chapter shall be subject to the allotment system generally applicable to all appropriations made by the legislature.

§9- Contracts. (a) The foundation shall not release the public funds approved for a foundation grant unless a contract is entered into between the foundation and the recipient of the grant. The foundation shall develop and determine, in consultation with and subject to the review and approval of the attorney general, the specific contract form to be used.

(b) Payment of funds shall be made within sixty days after a contract is executed. Contracts shall be executed in accordance with the foundation's rules adopted pursuant to section 9-2 and no later than ninety days after receipt of a foundation-approved revised service proposal or foundation-approved certification that there have been no programmatic or budgetary changes to the application.

(c) All contracts shall be reviewed by the attorney general for conformance with this part.

§9- Monitoring and evaluation. (a) Every foundation grant contract shall be monitored by the foundation to ensure compliance with this part.

(b) Every foundation grant contract shall be evaluated annually to determine whether the grant attained the intended results in the manner contemplated.

(c) The foundation shall develop procedures and adopt rules under chapter 91 for monitoring and evaluating grant contracts.

§9- Continued eligibility. Any recipient of a foundation grant who withholds or omits any material fact or deliberately misrepresents facts to the foundation shall be in violation of this part. In addition to any other penalties provided by law, any recipient found by the foundation to have violated this part or the terms of its contract shall be prohibited from applying for any foundation grant for a period of five years from the date of termination.

§9- Applicability and interpretation. This part shall control all grants made by the foundation. This part shall be liberally construed so as not to hinder or impede the application, receipt, and use of federal moneys that may become available to the State and the foundation. If unanticipated federal moneys not included in the legislature's appropriation to the foundation become available, the foundation, pursuant to chapter 29, may apply for, receive, and expend the federal moneys in accordance with the terms and conditions specified in the applicable federal statutes, regulations, or financial award documents."

SECTION 2. Chapter 9, Hawaii Revised Statutes, is amended by designating sections 9-1 through 9-5, as Part I and inserting a title before section 9-1 to read:

"PART I. GENERAL PROVISIONS"

SECTION 3. Section 9-1, Hawaii Revised Statutes, is amended by adding seven new definitions to be appropriately inserted and to read as follows:

"Foundation" means the state foundation on culture and the arts established by section 9-2.

"Grant" means an award of public funds to a recipient, based on merit and need, to stimulate and support activities of the recipient for a specified public purpose.

"Individual" means a natural person.

"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.

"Organization" means an association formed for a common purpose.

"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.

"Recipient" means any individual or organization receiving a grant."

SECTION 4. Section 9-3, Hawaii Revised Statutes, is amended to read as follows:

"§9-3 Duties. The foundation shall:

- (1) Assist in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;

- (2) To establish written standards and criteria by which grant contracts shall be evaluated:
- [(2)] (3) Appraise the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devise programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;
- [(3)] (4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;
- [(4)] (5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;
- [(5)] (6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;
- [(6)] (7) Through its [chairman administer] chairperson:
 - (A) Administer funds allocated by grant, gift, or bequest to the foundation; accept, hold, disburse, and allocate funds which may become available from other governmental and private sources; provided that all [such] those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of [such] any designation, [such] the funds shall be disbursed or allocated for the promotion and furtherance of culture and the arts and history and the humanities; and
 - (B) Accept, hold, disburse, and allocate public funds that are made available to the foundation by the legislature for disbursement or allocation, pursuant to the standards and procedures established in part II, for the promotion and furtherance of culture and the arts and history and the humanities;
- [(7)] (8) Select and employ a director to serve on a part-time or full-time basis who shall be a person who by reason of education or extensive experience is generally recognized as being professionally qualified in the administration of programs in the fields of culture and the arts and history and the humanities, who is familiar with the peoples and cultures of Hawaii, and who shall be exempt from [the provisions of] chapters 76 and 77 and select necessary additional staff subject to chapters 76 and 77, within available appropriations;
- [(8)] (9) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year[; provided that the second annual report thereof shall include recommendations as to the responsibility and role which the State should assume in the long-run with respect to preservation and furtherance of culture and the arts and history and the humanities in Hawaii and as to organizational and administrative arrangements which should be provided for in law and otherwise]. Annual reports shall include the total number and amount of gifts received, payroll disbursements, contracts entered into, and progress and accomplishments made during the year;
- [(9)] (10) Display student art works in public buildings, sponsor student art displays, and in other ways encourage the development of creative talent among the young people of Hawaii;

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- [(10)] (11) In cooperation with qualified organizations conduct research, studies, and investigations in the fields of ethnohistory and the humanities; make, publish, and distribute works documenting the contributions of individual ethnic groups in their relationship to one another and to the whole population of Hawaii; place ethnohistorical and cultural materials developed by the foundation or received by the foundation as gifts and donations in public archives, libraries, and other suitable institutions accessible to the public; and maintain a register of the location of such materials; and
- [(11)] (12) Cooperate with and assist the department of land and natural resources and other state agencies in developing and implementing programs relating to historic preservation, research, restoration and presentation, as well as museum activities.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)