

ACT 194

S.B. NO. 2547

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. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$200,000, or .006425353 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. Chapter 42D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§42D- Executive coordinating council; establishment; appointment; duties. (a) There is established in the office of state planning for administrative

purposes an executive coordinating council that shall review, and make recommendations on, matters relating to subsidies and purchases of service to the governor.

(b) The governor shall appoint members to the coordinating council from among the heads of the departments or agencies involved in purchasing services or providing subsidies pursuant to this chapter.

(c) The coordinating council shall:

- (1) Coordinate and direct planning activities to ensure that the health and human service needs of the State are addressed in the context of coordination among state agencies and the private sector;
- (2) Provide recommendations to the governor on purchase of service funding levels for agencies contemplating purchasing services pursuant to this chapter;
- (3) Consider the advice of the advisory council; and
- (4) Provide the governor with any other information the coordinating council may determine to be helpful in formulating the executive budget with respect to subsidies and purchases of service."

SECTION 3. Section 42D-1, Hawaii Revised Statutes, is amended:

1. By adding a new definition for "executive coordinating council" or "coordinating council" to be appropriately inserted and to read as follows:

"Executive coordinating council" or "coordinating council" means the council established in the office of state planning for administrative purposes whose members are appointed by the governor to provide policy recommendations to the governor on purchase of service funding levels for state executive branch agencies contemplating purchasing services pursuant to this chapter."

2. By amending the definition of "agency" to read as follows:

"Agency" means the judiciary, any department, [officer,] office, board, foundation, commission, or other establishment of the state government, including the University of Hawaii."

3. By amending the definition of "request" to read as follows:

"Request" means a [submission by an organization asking] proposal for a grant,¹ [or] subsidy[, or purchase of service agreement.]

4. By deleting the definition of "agency advisory committee" or "committee".

["Agency advisory committee" or "committee" means the committee established pursuant to section 42D-5."]

SECTION 4. Section 42D-3, Hawaii Revised Statutes, is amended to read as follows:

"[§42D-3] Conditions for grants, subsidies, and purchase of service agreements. Organizations to which a grant, subsidy, 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 persons qualified to engage in the activity to be funded in whole or in part by the State or the judiciary, as the case may be; 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 that no salary or benefit increases 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, sexual orientation, or physical handicap;
- (3) Agree not to use public funds for purposes of entertainment or perquisites;
- (4) Comply with any other requirement 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 5. Section 42D-4, Hawaii Revised Statutes, is amended to read as follows:

"**[§42D-4] Advisory council; establishment; appointment, number, and term of members; duties; reports.** (a) There is established within the [department of budget and finance] office of state planning for administrative purposes an advisory council [which] that shall review, and make recommendations on[,] matters relating to types of services and service delivery for grants, subsidies, and purchases of service to the [governor, the chief justice, the president of the senate, and the speaker of the house of representatives.] coordinating council.

(b) The advisory council shall be [comprised] composed of [thirteen] twelve members as follows:

- (1) Two members from each county, except the county of Kalawao; and
- (2) Five members, with each representing one of the following program areas: health, human services, employment, education, and culture and the arts.

(c) The council members shall be appointed by the governor from a list of not less than thirty nominees provided by the president of the senate and the speaker of the house of representatives.]

- (1) Three members appointed by the president of the senate;
- (2) Three members appointed by the speaker of the house of representatives;
- (3) Five members appointed by the governor; and
- (4) A member of the coordinating council as designated by the governor, ex officio.

[(d)] (c) In appointing the members [from each county], the governor, speaker of the house of representatives, and the president of the senate shall select

persons who represent different business and civic organizations, geographical regions of the State, community groups, [grant recipients, subsidy recipients,] consumers of services, and purchase of service providers who have an interest or expertise in the design and delivery of the following types of programs: health, human services, [culture and the arts,] employment, and education. Each appointing authority shall appoint a consumer of services purchased by the State as a council member. The members of the council shall serve without compensation but shall be reimbursed for expenses, including intrastate travel expenses, necessary for the performance of their duties.

[(e)] (d) The members [shall be] appointed by the governor shall serve for four years[, except that the terms of the members first appointed shall be for two or four years as designated by the governor at the time of appointment.] or until the governor's term expires. The members appointed by the legislature shall serve for two years. The governor shall designate a member to be the chairperson of the council. Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply insofar as it relates to the number of terms and consecutive number of years a member may serve on the council.

[(f)] (e) The [duties of the] advisory council shall [be to]:

- (1) Conduct comprehensive assessments of the State's resources and needs;
- (2) Serve as the community liaison to the governor, chief justice, president of the senate, speaker of the house of representatives, state agencies, grant recipients, subsidy recipients, and purchase of service providers;
- (3) Submit recommendations to the appropriate state agencies on the advisability of funding grants, subsidies, and purchase of service agreements for inclusion in the executive or judiciary budget;
- (4) Submit recommendations to the appropriate standing committees of the legislature on the advisability of funding grants and subsidies, not included in the executive or judiciary budget; and
- (5) Provide recourse for purchase of service provider grievances, by investigating, expediting, and making recommendation on complaints that involve funding, policy, or procedural decisions made by the agency. The final recommendation shall be completed and submitted to the agency director within thirty days of receipt of a written complaint from a provider.

The agency director shall receive the advisory council's recommendation and render a final ruling within ten days of receipt thereof.]

- (1) Advise the coordinating council on matters relating to the provision of services to be included in the purchase of service budgets of the appropriate state agencies;
- (2) Advise the coordinating council on matters relating to the format and content of submission of requests;
- (3) Provide input to the coordinating council on market or other business conditions facing organizations contracted to provide services; and
- (4) Provide other information as may be required by the coordinating council.

[(g)] The council shall submit reports on its findings and recommendations to the governor, the chief justice, the president of the senate, and the speaker of the house of representatives before July 1, and before January 1, of each year. The reports by the council shall include but not be limited to:

- (1) An assessment of the council's impact on identifying state resources and needs;
- (2) The composition and duties of the council;
- (3) Recommendations regarding funding allocations as expressed as a percentage of total funding for grants, subsidies, and purchase of service agreements in the program areas of health, human services, culture and the arts, employment, and education; and
- (4) Any other information the council may determine to be helpful to the executive, judicial, and legislative branches.]”

SECTION 6. Section 42D-8, Hawaii Revised Statutes, is amended to read as follows:

“**[§42D-8] Contracts.** (a) An appropriation for a grant, subsidy, or purchase of service shall not be released unless a contract is entered into between the appropriate agency and the recipient or provider. The agency shall determine, 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.

(b) Each contract shall 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 appropriate officers, employees, and agents from and against all claims, damages, and 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.]”

SECTION 7. Section 42D-9, Hawaii Revised Statutes, is amended to read as follows:

“**[§42D-9] Continued eligibility.** Any recipient or provider who withholds or omits any material facts or deliberately misrepresents any facts to an agency shall be in violation of this chapter. Any recipient or provider [which] that has been found by an agency to have violated this chapter or the terms of its contract shall be prohibited from requesting a grant or subsidy or submitting a proposal for a purchase of service agreement for a period of five years.”

SECTION 8. Section 42D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“**[(a)]** Notwithstanding any provision of law to the contrary, the duration of any purchase of service agreement contract governed by this chapter may be extended for a specified period not to exceed ninety days if the following conditions are satisfied at the time of extension:

- (1) The contract is in effect;
- (2) The provider is not in default or breach of the contract;
- (3) Funds have been [appropriated] designated pursuant to the request for proposal process for a successive contract with the provider;

- (4) The terms and conditions with respect to the performance of the provider under the successive contract will be substantially the same as those of the contract;
- (5) The agency has provided the provider a letter offering to extend the contract at least sixty days prior to the end of the contract year, without other modification of its terms, except as to the amount of compensation and duration[;] and number of units; and
- (6) The provider gives the agency a written acceptance of the extension."

SECTION 9. Section 42D-21, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The chief executive and the director shall review the recommended purchase of services budgets, revise the same as necessary, determine for each agency a level of funding for each program for purchases of service, and submit to the legislature funding recommendations for purchases of service. The chief executive shall include in the executive or judiciary budget submitted to the legislature all amounts for purchases of service recommended for funding. Such requests shall be included in the appropriate program budget and shall be identified by [agency] service activity and source of funding in a supplemental budget submittal.

(c) Every recommendation for funding of purchase of service that the chief executive submits to the legislature for appropriation shall state:

- (1) The public purpose to be served;
- (2) The objective intended to be achieved;
- (3) The activities and services to be performed;
- (4) The target groups to be affected;
- (5) The means of financing;
- (6) Measures by which the effectiveness of the services purchased are to be evaluated;
- (7) The analyses and justifications for the recommended purchase of service agreements;
- (8) The amounts requested; and
- (9) An assessment to determine costs of not providing the service[; and
- (10) The intended uses of the funds, according to "cost categories" and "cost elements" as defined in section 37-62]."

SECTION 10. Section 42D-23, Hawaii Revised Statutes, is amended to read as follows:

"**[[§42D-23]] Required review of requests[.] for proposals.** (a) Each agency shall review each request to determine the efficiency and the effectiveness of the proposal in achieving the objectives of the program. 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. 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] may invite the organization to discuss the request with the agency and to comment on the analysis of the agency.

(b) An organization that has submitted a request for proposal may request to review and comment on the analysis conducted by the agency prior to the

preparation of the agency's statement of findings and recommendations.

[(b)] (c) The agency shall prepare a statement of its findings and recommendations for each request and shall send a copy of the statement to the requesting organization according to a timetable as specified by the director.

(d) Requesting organizations not recommended for funding or not satisfied with the recommended level of funding may submit a written request to the executive coordinating council for reconsideration within ten days of receipt of the agency's statement of findings and recommendations. The coordinating council shall respond in writing to the requesting organization within ten days of receipt of the written request for reconsideration. The director shall adopt rules pursuant to chapter 91 to assist agencies in this review process."

SECTION 11. Section 42D-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Agencies [receiving] anticipating appropriations for purchases of service shall advertise for proposals in a newspaper of general circulation in each county of the State. Agreements for purchases of service shall be awarded on the basis of cost-effectiveness, quality of services, or other criteria as may be determined by the director. [An agency shall not be required to advertise requests for proposals upon submission of its certification in the form prescribed by the director that the providers are specified by federal law.] When providers are specified by federal law, and upon certification to that effect in the form prescribed by the director, an agency shall not be required to advertise requests for proposals."

SECTION 12. Section 42D-25, Hawaii Revised Statutes, is amended to read as follows:

"[§42D-25] Monitoring and evaluation; purchase of service agreement. (a) Every purchase of service agreement shall be monitored by the agency to ensure compliance with this chapter and the public purpose and legislative intent of the purchase of service.

(b) Each agency shall be required to establish an employee team, consisting of not less than two members, which shall formulate and implement an agency-approved monitoring plan consisting of the following components:

- (1) A comprehensive monitoring and evaluation manual that outlines the objectives, procedures, and specifications of the monitoring process;
- (2) A requirement of quarterly progress reports to be completed by each provider on standardized forms specified by the agency;
- (3) An annual on-site visit to each program funded by a purchase of service agreement;
- (4) An annual written report, to be completed within thirty days of the annual on-site visit, describing progress, compliance, and required corrective action. Providers shall receive a copy of the report and may respond in writing within thirty days of receipt thereof; and
- (5) A clear procedure for follow-up on recommendations and criticisms.

(c) Every purchase of service agreement shall be evaluated annually to determine whether the agreement has attained the intended results in the manner contemplated. Each agency shall establish criteria for program evaluation procedures by soliciting direct input from purchase of service providers and the department of budget and finance. Funding for the evaluation process shall be the

agency's responsibility and shall not be paid from funds budgeted for a purchase of service provider's operations.

[(d) Each agency shall assimilate both the monitoring and evaluation manual volume III and systems forms volume IV as provided to the State by SMS Research and Arthur Anderson & Co. into its monitoring and evaluation systems. The procedures and forms as described in these two volumes shall be the minimum monitoring and evaluation standards that shall be used by all agencies in the executive branch. Each agency may adopt additional requirements to the system as deemed necessary by the agency's director.]”

SECTION 13. Section 42D-31, Hawaii Revised Statutes, is amended to read as follows:

“[§42D-31] Applications for grants and subsidies. Agencies may receive from organizations for review requests for funding of grants and subsidies no later than September 1 of any year, and recommendations for funding based on such requests shall be submitted to the next regular session of the legislature. The requests shall be submitted on forms as prescribed by the director and shall contain information as prescribed by the director to ensure conformance with section 42D-32(c).”

SECTION 14. Section 42D-5, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 42D-6, Hawaii Revised Statutes, is repealed.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1992-93, for the purpose of coordinating a planning process to ensure that the health and human services needs of the State are addressed; provided that:

- (1) The office of state planning shall submit a report to the governor and the legislature upon the completion of the planning process;
- (2) This planning effort shall involve the private sector; and
- (3) Nothing shall prohibit the contribution of in-kind services or monetary support from the private sector in assisting in the planning efforts.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1992-93, for staff support in the office of state planning and for the reimbursement of expenses incurred by the members of the advisory council necessary for the performance of their duties.

SECTION 18. The sums appropriated shall be expended by the office of state planning for the purposes of this Act.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 20. This Act shall take effect on July 1, 1992, and shall be repealed on July 1, 1996; provided that sections 42D-1, 42D-2,³ 42D-3, 42D-4, 42D-5, 42D-6, 42D-7(a),³ 42D-8, 42D-9, 42D-12(a), 42D-21(b) and (c), 42D-23,

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42D-24(a), 42D-25, 42D-31, 42D-32,³ 42D-33,³ and 42D-34³ shall be reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 12, 1992.)

Notes

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.
3. Section not amended.