

ACT 230

S.B. NO. 2213

A Bill for an Act Relating to State Government.

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

PART I.

SECTION 1. The purpose of this Act is to provide various means of making state government more efficient and more capable of competing in and supporting the efforts of Hawaii's businesses and enterprises to participate and compete successfully in the world's ever-evolving global economy.

This Act is divided into five parts. Part II creates a special committee to begin the task of transforming the State's budgeting, accounting, and procurement systems. The assessment and improvement in the system will set clearer directions in the plans for a privatization process in Part III. Part III establishes a process to facilitate increased public-private competition and partnerships for the provision of services to or on behalf of government. Part IV is intended to ensure that during the development and implementation of a managed competitive process, the State and counties are permitted to contract for necessary goods and services without being disrupted or delayed by lawsuits. Part V provides logistical directions for these efforts.

PART II.

SECTION 2. The legislature believes that the state government's budgeting, accounting, and procurement systems should serve as effective tools for the efficient

use of scarce resources in pursuing the goals and objectives of the people of Hawaii by:

- (1) Describing the links between state resources and actions to implement the State's strategies and operating level objectives;
- (2) Focusing on the provision and measurement of outputs and their relationship to outcomes, rather than looking at simple inputs of funds and personnel positions;
- (3) Implementing activity-based costing, including the means of allocating the cost of assets with lives greater than one year over multi-year periods;
- (4) Providing decision-makers and the public with clear and easily-understandable information about resource allocation choices, decisions, and implementation; and
- (5) Providing a means of establishing resource allocation priorities based on desired outcomes and related outputs.

The purpose of this Part is to establish a special committee to begin the task of transforming the State's accounting, procurement, and budgeting systems. This committee shall also develop prototype models for transforming the budgeting and accounting systems of three departments.

This Part also implements recommendations related to the efficient delivery of government services that were made by the economic revitalization task force, which was convened by the governor, the president of the senate, and the speaker of the house of representatives.

**SECTION 3.** There is created a committee that shall develop and oversee the implementation of plans for the transformation of the State's accounting, procurement, and budgeting systems. With respect to the budgeting system, the committee shall develop and oversee the implementation of a performance-based budgeting system that incorporates quantitative or qualitative indicators to assess the State's budget performance.

The committee shall consist of nine members, one of which shall be the legislative analyst appointed pursuant to chapter 21F, and eight who shall be appointed in the following manner:

- (1) One member shall be appointed by the governor from a list nominated by the president of the senate;
- (2) One member shall be appointed by the governor from a list nominated by the speaker of the house of representatives;
- (3) Two members with budgetary, accounting, financial services, or comparable public accounting experience, shall be appointed by the governor from the public at-large; and
- (4) Four members shall be appointed by the governor from among the members of the governor's cabinet, including the director of finance and the comptroller, or their designees.

The committee shall elect a chairperson and vice-chairperson from among its members. A majority of the members of the committee shall constitute a quorum. The members of the committee shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

**SECTION 4.** To initiate the implementation of the process of transforming the State's accounting system and the budgeting system to a performance-based budgeting system, the committee shall select three departments that differ in function and organization to develop prototype models of implementation. The three departments shall be selected by January 1, 1999. The committee and the selected

departments shall complete the implementation of their prototype transformations by December 31, 1999.

SECTION 5. The committee shall submit annual reports of its plans, recommendations, and implementing actions to the legislature no fewer than fifteen days before the convening of the regular sessions of 1999, 2000, and 2001.

### PART III.

SECTION 6. There is created a committee that shall develop a managed process that enables state and county governments to implement public-private competition for government services through the managed process that determines whether a particular service can be provided more efficiently, effectively, and economically by a public agency or a private enterprise. The managed process shall consider all relevant costs, identify the types of contracts which may be exempt from the managed process, establish protections for the affected state and county employees, and ensure that civil service laws, merit principles, and collective bargaining laws are not violated. The committee members shall be appointed by the governor within sixty days from the date of this Act.

The members of the committee shall include:

- (1) The director of finance;
- (2) The comptroller;
- (3) The director of human resources development;
- (4) One representative from each of the four major counties to be appointed by the respective mayors;
- (5) Two public-sector union representatives;
- (6) One private-sector union representative;
- (7) Two representatives for private-sector businesses; and
- (8) One representative for nonprofit organizations that is a recipient or is entitled to be a recipient under chapters 42D and 42F, Hawaii Revised Statutes.

The committee shall elect a chairperson and vice-chairperson from among its members. A majority of the members shall constitute a quorum. The department of accounting and general services shall provide administrative support for the committee. Members of the committee shall serve without compensation. The committee shall submit its report, including its recommendations for statutory changes to civil service laws and such other laws as may be necessary to implement the managed process, to the legislature not less than twenty days prior to the convening of the 1999 regular session of the legislature.

### PART IV.

SECTION 7. The purpose of this Part is to address the concerns of the State and counties, private providers of public services, representatives of public and private employees which have been generated in response to the Supreme Court's decision in *Konno v. County of Hawaii*, 85 Haw. 61, 937 P.2d 397 (1997).

The legislature finds that until performance-based budgeting and the process for managed competition are firmly established, the State and counties need clear legislative authorization to maintain their existing contracts and to contract with private entities to provide goods and to perform public services where appropriate. Accordingly, this Part provides legislation to give clear and necessary authority to the State and counties to perform their missions.

The legislature also finds that contracts with private entities should not result in the loss of a job by a covered employee, or the transfer of a covered employee to

another position without adequate training or assistance to maintain the covered employee's ability to continue to perform the duties and responsibilities of the employee's assignments. This Act allows contracting out of services performed by a covered employee and services that were customarily and traditionally performed by covered employees, but prohibits contracts that result in the termination of a covered employee. Covered employees who are not terminated, but who are transferred to another position because of the contract shall be offered retraining or such additional assistance to enable the transferred covered employee to maintain a similar, comparable, or better position in civil service.

The legislature further finds that when the managed process for public-private competition is developed and implemented, state and county employers will be able to choose between keeping public services in-house or outsourcing them. If the public employer's choice is to keep the services in-house based on the managed process, employees who were transferred should be given the opportunity to be restored to their former positions or to remain in the positions to which they were transferred.

Any contract with a private entity that is entered into during the development of the managed process is made subject to a single managed process review.

SECTION 8. Except as otherwise provided herein, no existing contract, or contract subsequently executed by a department or agency of the State or county under this Act, shall be void or deemed to be void as being contrary to the merit principles under chapters 76 and 77, Hawaii Revised Statutes, or the collective bargaining laws under chapter 89, Hawaii Revised Statutes. The authority of a department or agency of the State or county to enter into a contract with a private provider, shall not be prevented, restricted, diminished, conditioned, limited, or otherwise qualified by chapters 76, 77, 89, and sections 46-33 and 46-34, Hawaii Revised Statutes.

SECTION 9. Prior to the implementation of a managed process pursuant to Section 6 of this Act, when a department or agency of the State or county contracts in accordance with Section 8 of this Act, the department or agency shall provide a one page public statement to their respective directors of personnel, civil service, or human resources development, containing a brief description of the contract and its rationale. For any contract that results in the transfer of any covered employee, the department or agency of the State or county issuing the contract shall give notice of the contract to the exclusive representative of the covered employee who may be transferred because of the contract. The notice of the contract shall be given on the signing of the contract by the parties to the contract.

If a covered employee is transferred to a new or different position because of the contract, the transferred employee shall not be subject to any reduction in pay or loss of seniority, and shall be offered retraining, if necessary to qualify for or perform the duties and responsibilities of the new or different position, or to such additional assistance to enable the transferred employee to maintain a similar, comparable, or better position in the civil service.

SECTION 10. Section 8 of this Act shall not be deemed to authorize:

- (1) Any contract with a private entity that directly results in the termination of a covered employee in the state or county service; or
- (2) Any contract with a private entity that directly results in the transfer of a covered employee from a position in civil service to another position in civil service, or to a position that is exempt from civil service, in which the intent of the transfer is to enable the contracting agency to contract the services of the transferred covered employee to a private

entity and to thereafter terminate the public employee without other cause.

For purposes of Sections 8, 9, 10, and 11 of this Act, a “covered employee” means an employee, who is in a state or county position that is not exempt under sections 46-33, 46-34, 76-16, and 76-77, Hawaii Revised Statutes; and “private entity” means individuals, corporations, partnerships, limited liability corporations and partnerships, and other for profit or nonprofit organizations.

SECTION 11. When the managed process for public-private competition for government services pursuant to Section 6 of this Act is developed and implemented, and the State or county, pursuant to the managed process, is authorized to perform the services that were previously contracted out to a private entity, any covered employee who was transferred to a new or different position as a result of the contract with a private entity shall have the right of first refusal to be restored to the employee’s former position or remain in the position to which the employee was transferred.

SECTION 12. Sections 9 and 11 of this Act shall not apply to any state or county contract for services which are provided by organizations which are awarded grants, subsidies, or purchase of service contracts pursuant to chapters 42D and 42F, Hawaii Revised Statutes, and to standards which are set by law, or established by county ordinances for the grant of public money or property pursuant to Section 4 of Article VII of the Constitution of the State of Hawaii.

## PART V.

SECTION 13. The director of finance, with the assistance of the comptroller, shall assist in the implementation of performance-based budgeting as provided in Part II of this Act.

SECTION 14. (a) Part IV of this Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, prior to the effective date of this Act. Upon the effective date of this Act, no action or proceeding may be initiated by any party against the State or county regarding any contract with any private entity for goods, services, or construction that was entered into pursuant to Part IV of this Act.

(b) All new contracts for goods, services, or construction which are entered into by the State or county after the effective date of this Act and prior to July 1, 2001, which extend beyond June 30, 2001, shall include a provision stating that the contract, during its term, is subject to a single review by the State or county pursuant to the managed process in Part III, Section 6. Pursuant to the managed process review, the contract may be canceled, renegotiated, continued, or extended by the State or county. All of these contracts shall continue to be exempt from civil service laws, merit principles, and collective bargaining laws for the duration of the contract even if a managed process is not implemented.

(c) All contracts for goods, services, or construction which are entered into by the State or county on or before the effective date of this Act, including contracts which extend beyond June 30, 2001, shall not be subject to review by the State or county pursuant to the managed process in Part III, Section 6. All of these contracts shall continue to be exempt from civil service laws and merit principles for the duration of the contract.

SECTION 15. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any county or any agency

## **ACT 230**

thereof to the holders of any bond issued by the State or any county or by any such agency.

SECTION 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

SECTION 17. This Act shall take effect upon approval; provided that Part III and IV shall be repealed on June 30, 2001.

(Approved July 20, 1998.)