

ACT 182

S.B. NO. 2477

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§10- Grants; conditions and qualifications. (a) Applications for grants shall be made to the office and contain such information as the office shall require. At a minimum, the applicant shall show:

- (1) The name of the requesting organization or individual;
 - (2) The purpose for the grant;
 - (3) The service to be supported by the grant;
 - (4) The target group to be benefited;
 - (5) The cost of the grant; and
 - (6) That the grant shall be used for activities that are consistent with the purposes of this chapter.
- (b) Grants shall only be awarded if:
- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
 - (2) The applicant agrees to comply with applicable federal, state, and county laws;
 - (3) The grant shall not be used for purposes of entertainment or perquisites;
 - (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
 - (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.
- (c) To receive a grant, an applicant shall:
- (1) Be:
 - (A) A for-profit subsidiary of a nonprofit organization incorporated under the law of the State;
 - (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
 - (C) A cooperative association; or
 - (D) An individual, who in the board's determination, is able to provide the services or activities proposed in the application for a grant;
 - (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies that describe the manner in which

business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree of consanguinity unless specifically permitted by the office;

- (3) Agree to make available to the office all records the applicant may have relating to the operation of the applicant's activity, business, or enterprise, to allow the office to monitor the applicant's compliance with the purpose of this chapter; and
 - (4) Establish, to the satisfaction of the office, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.
- (d) Every grant shall be:
- (1) Monitored by the office to ensure compliance with this chapter and the purposes and intent of the grant; and
 - (2) Evaluated annually to determine whether the grant attained the intended results in the manner contemplated."

SECTION 2. Section 10-2, Hawaii Revised Statutes, is amended to read as follows:

"§10-2 Definitions. In this chapter, if not inconsistent with the context:

"Administrator" means the administrator of the office of Hawaiian affairs[;].

"Beneficiary of the public trust entrusted upon the office" means native Hawaiians and Hawaiians[;].

"Board" means the board of trustees[;].

"Grant" means an award of funds by the office to a specified recipient to support the activities of the recipient for activities that are consistent with the purposes of this chapter.

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii[;].

"Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii[;].

"Office" means the office of Hawaiian affairs.

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

SECTION 3. Section 10-5, Hawaii Revised Statutes, is amended to read as follows:

"§10-5 Board of trustees; powers and duties. The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3[~~of this chapter~~];
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private

- sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
 - (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
 - (5) Otherwise act as a trustee as provided by law;
 - (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
 - (7) Provide grants to individuals, and public or private [agencies for pilot projects, demonstrations, or both, where such projects or demonstrations fulfill criteria established by the board;] organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-;
 - (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
 - (9) Adopt and use a common seal by which all official acts shall be authenticated.”

SECTION 4. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
 - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;

- (G) To governmental bodies of the State;
 - (H) As loans, under loan programs administered by a governmental body; [~~and~~]
 - (I) For contracts awarded in accordance with the provisions of chapter 103F; and
 - (J) For grants awarded by the Office of Hawaiian Affairs in accordance with the provisions of chapter 10.
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
 - (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
 - (H) Goods and services for commercial resale by the State;
 - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
 - (K) Financing agreements under chapter 37D; and
 - (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
 - (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
 - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 5. Section 103F-101, Hawaii Revised Statutes, is amended by amending subsection (a)¹ to read as follows:

“(a) This chapter shall apply to all contracts made by state agencies to provide health or human services to Hawaii’s residents, provided that this chapter shall not apply to:

- (1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual;
- (2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants;
- (3) Transactions expressly exempt from the requirements of this chapter; ~~[and]~~
- (4) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board~~[-];~~ and
- (5) Contracts to award grants of Office of Hawaiian Affairs funds pursuant to section 10-_____.”

(b) This chapter shall only apply to contracts solicited or entered into after July 1, 1998, unless the parties agree to its application to a contract solicited or entered into prior to that date.

(c) Nothing in this chapter or rules adopted hereunder shall prevent any state agency from complying with the terms or conditions of any grant, bequest, or cooperative agreement, or from satisfying any requirement of federal statute or regulation to avoid the loss or reduction of federal assistance.”

SECTION 6. Statutory material to be repealed is bracketed and ~~stricken~~. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.