

ACT 96

S.B. NO. 2411

A Bill for an Act Relating to Subsidies.

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

SECTION 1. Article VII, section 4, of the state constitution provides in part: "No grant of public money or property shall be made except pursuant to standards provided by law." Chapters 6E, 42F, 103F, 304A, and 383, Hawaii Revised Statutes, implement this constitutional requirement by establishing

standards and criteria for the award of a grant, as well as a subsidy, to a private organization or individual.

No substantive difference exists between a "grant" and "subsidy" in the Hawaii Revised Statutes and the state constitution does not require the establishment of standards for the grant of a "subsidy". Therefore, the legislature finds that the term "subsidy" is not necessary.

The purpose of this Act is to repeal references to "subsidy" or "subsidies" as a type of funding award that may be made to a private organization or individual for a public purpose.

SECTION 2. Section 6E-2, Hawaii Revised Statutes, is amended by amending the definition of "project" to read as follows:

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, [~~subsidies,~~] loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions."

SECTION 3. Section 6E-35, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) To receive state funds, the State of Hawaii Museum of Monarchy History shall:

- (1) Be licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which funds are appropriated;
- (2) Comply with all 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 disability;
- (3) Agree not to use the funds for entertainment or lobbying activities;
- (4) Be incorporated under the laws of the State;
- (5) Have bylaws or policies that describe the manner in which the activities or services for which a grant [~~or subsidy~~] is awarded shall be conducted or provided;
- (6) Have been determined and designated to be a tax-exempt organization by the Internal Revenue Service; and
- (7) Have a governing board whose members shall have no material conflict of interest and serve without compensation."

SECTION 4. Chapter 42F, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"CHAPTER 42F
GRANTS [~~AND SUBSIDIES~~]"**

SECTION 5. Section 42F-101, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "recipient" to read:

"Recipient" means any organization or person receiving a grant [~~or subsidy~~]."

2. By repealing the definition of "subsidy".

~~["Subsidy" means an award of state funds by the legislature, by an appropriation to a recipient specified in the appropriation, to reduce the costs in~~

curring by the organization or individual in providing a service available to some or all members of the public.”]

SECTION 6. Section 42F-102, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§42F-102]** Applications for grants ~~[and subsidies]~~. Requests for grants ~~[and subsidies]~~ shall be submitted to the appropriate standing committees of the legislature at the start of each regular session of the legislature. Each request shall state:

- (1) The name of the requesting organization~~;~~ or individual;
- (2) The public purpose for the grant ~~[or subsidy]~~;
- (3) The services to be supported by the grant ~~[or subsidy]~~;
- (4) The target group; and
- (5) The cost of the grant ~~[or subsidy]~~ and the budget.”

SECTION 7. Section 42F-103, Hawaii Revised Statutes, is amended to read as follows:

“**§42F-103 Standards for the award of grants ~~[and subsidies]~~**. (a) Grants ~~[and subsidies]~~ shall be awarded only to individuals who, and organizations that:

- (1) Are licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which a grant ~~[or subsidy]~~ is awarded;
- (2) Comply with all 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 disability;
- (3) Agree not to use state funds for entertainment or lobbying activities; and
- (4) Allow the state agency to which funds for the grant ~~[or subsidy]~~ were appropriated for expenditure, legislative committees and their staff, and the auditor full access to their records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditure of the grant ~~[or subsidy]~~.

(b) In addition, a grant ~~[or subsidy]~~ may be made to an organization only if the organization:

- (1) Is incorporated under the laws of the State; and
- (2) Has bylaws or policies that describe the manner in which the activities or services for which a grant ~~[or subsidy]~~ is awarded shall be conducted or provided.

(c) Further, a grant ~~[or subsidy]~~ may be awarded to a nonprofit organization only if the organization:

- (1) Has been determined and designated to be a nonprofit organization by the Internal Revenue Service; and
- (2) Has a governing board whose members have no material conflict of interest and serve without compensation.

(d) If a grant ~~[or subsidy]~~ is used by an organization for the acquisition of land, when the organization discontinues the activities or services on the land acquired for which the grant ~~[or subsidy]~~ was awarded and disposes of the land in fee simple or by lease, the organization shall negotiate with the expending agency for a lump sum or installment repayment to the State of the amount of the grant ~~[or subsidy]~~ used for the acquisition of the land. This restriction shall be registered, recorded, and indexed in the bureau of conveyances or with the as-

sistant registrar of the land court as an encumbrance on the property. Amounts received from the repayment of a grant [~~or subsidy~~] under this subsection shall be deposited into the general fund.”

SECTION 8. Section 42F-104, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§42F-104]]~~ **Contracts for grants [~~and subsidies~~]**. An appropriation for a grant [~~or subsidy~~] shall be disbursed by a contract between the state agency designated the expending agency for the appropriation by the legislature, and the recipient of the grant [~~or subsidy~~]. The contract shall be effective as of the first day of the fiscal year for which the funds for the grant [~~or subsidy~~] are appropriated[;]; provided that up to one-fourth of the total amount appropriated may be disbursed prior to the execution of the contract.”

SECTION 9. Section 42F-105, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§42F-105]]~~ **Allotment**. Contracts to disburse and appropriations for grants [~~and subsidies~~] shall be subject to the allotment system generally applicable to all appropriations made by the legislature.”

SECTION 10. Section 42F-106, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§42F-106]]~~ **Monitoring and evaluation**. Every grant [~~or subsidy~~] shall be monitored by the expending agency to ensure compliance with this chapter and the public purpose and legislative intent of the grant [~~or subsidy~~].”

SECTION 11. Section 46-15.1, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any law to the contrary notwithstanding, any county may:

- (1) Authorize and issue bonds under chapter 47 and chapter 49 to provide moneys to carry out the purposes of this section or section 46-15.2, including the satisfaction of any guarantees made by the county pursuant to this section;
- (2) Appropriate moneys of the county to carry out the purposes of this section;
- (3) Obtain insurance and guarantees from the State or the United States, or [~~subsidies~~] grants from either;
- (4) Designate, after holding a public hearing on the matter and with the approval of the respective council, any lands owned by it for the purposes of this section;
- (5) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted project mortgage insurance, or other similar programs of federal assistance for persons of low and moderate income; and
- (6) Adopt rules pursuant to chapter 91 as are necessary to carry out the purposes of this section.”

SECTION 12. Section 103-53, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) This section shall not apply to:

- (1) Any procurement of less than \$25,000 or that is considered a small purchase under section 103D-305 and any state or county department contract of less than \$25,000;
- (2) Emergency purchases for the procurement of goods, services, or construction under section 103D-307, disaster relief under chapter 127, or a civil defense emergency under chapter 128;
- (3) Grants [~~and subsidies~~] disbursed by a state agency pursuant to chapter 42F or in accordance with standards provided by law as required by article VII, section 4, of the state constitution, or made by the counties pursuant to their respective charters or ordinances;
- (4) Contracts or agreements between government agencies;
- (5) Contracts or agreements to disburse funds:
 - (A) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, and reimbursements;
 - (B) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;
 - (C) To make refunds or return funds held by the State or county 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 deposit, investment, or safekeeping, including sums to pay expenses related to their deposit investment, or safekeeping;
 - (F) For loans under government-administered loan programs; or
 - (G) To make periodic, recurring payments for utility services;
- (6) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility; and
- (7) Contracts or agreements of the Hawaii health systems corporation and its regional system boards."

SECTION 13. 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 chapter 103F;
- (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 14. Section 103F-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall apply to all contracts made by state agencies and may be used by county 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.”

SECTION 15. Section 103F-409, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A standard contract form for health and human services, including purchases[;] and grants, [~~and subsidies~~] shall be provided to governmental bodies by the attorney general that may be utilized, at the option of the head of the purchasing agency, without requiring prior approval as to form by the attorney general so long as no substantive changes are made to the form and the contents are appropriate.”

SECTION 16. Section 261-6, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The Hawaii wing, civil air patrol shall comply with chapter 42F in its application for grants [~~and subsidies~~]; execute an annual contract with the department of transportation by the third day of July; and submit to the department of transportation an annual expenditure plan to ensure the disbursement of funds by the tenth day of July, October, January, and April of each fiscal year.”

SECTION 17. Section 302D-28, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Charter schools shall be eligible for all federal financial support to the same extent as all other public schools. The department shall provide all authorizers with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. Federal funds received by the department for charter schools shall be transferred to authorizers for distribution to the charter schools they authorize in accordance with the federal requirements. If administrative services related to federal grants [~~and subsidies~~] are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the charter school’s federal grants [~~and subsidies~~].

Any charter school shall be eligible to receive any supplemental federal grant or award for which any other public school may submit a proposal, or

any supplemental federal grants limited to charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplemental grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the supplemental grant for which the services are used.

All additional funds generated by the governing boards, that are not from a supplemental grant, shall be held separate from allotted funds and may be expended at the discretion of the governing boards.”

SECTION 18. Section 304A-2351, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Neither the trust established by the university pursuant to subsection (a), nor any trustee thereof, shall be a department, office, agency, board, commission, bureau, instrumentality, committee, authority, or office of the State or any of its political subdivisions, or otherwise deemed a public or quasi-public entity, nor shall the initial funding of, or a transfer to, the trust constitute a state grant [~~or subsidy~~]. The trust shall not be subject to laws or rules governing state and other public or quasi-public entities, including but not limited to chapters 23, 36, 37, 38, 40, 42F, 76, 78, 84, 89, 91, 92, 92F, 103, and 103D.”

SECTION 19. Section 321-442, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other power or duty prescribed by law or in this part, the director, through the department, may maintain an emergency response stockpile to prepare for or respond to a CBRNE event. The director may undertake all lawful activities necessary to carry out this part, including but not limited to adopting rules pursuant to chapter 91, disbursing funds for grants [~~or subsidies~~] pursuant to chapter 42F, and procuring goods or services pursuant to chapter 103D or 103F.”

SECTION 20. Section 352D-6, Hawaii Revised Statutes, is amended to read as follows:

“**§352D-6 Organizational structure.** The office of youth services shall be composed of such divisions and sections as are deemed necessary by the director to:

- (1) Provide diagnostic evaluation, treatment, and rehabilitation services for all youths referred to services provided by the office or placed in the office’s custody by the family court;
- (2) Provide supervision and counseling services for youth in shelter or correctional facilities under the office’s jurisdiction, including community-based facilities;
- (3) Provide educational, vocational-educational, and other programs to effectively occupy the time of the youth placed in a facility under the office’s jurisdiction which promote the development of self-esteem and useful skills to prepare youths in becoming productive members of the community;
- (4) Provide continuous program planning, development, and coordination of youth services, including the coordination with other government and private social service agencies that work with youths to ensure that a full-range of programs is available and that such programs are consistent with the policy of this chapter and are not unnecessarily duplicative or conflicting;

- (5) Provide prevention services to include a comprehensive intake/assessment and information/referral system throughout the State which shall access services to youth and their families;
- (6) Provide a case management system based on the individual needs of youth which shall provide for in-depth client assessment, appropriate service planning, and client advocacy;
- (7) Provide for the implementation of chapter 352, youth correctional facilities and other needed correctional services, including ensuring that these facilities and services meet the present and future needs of youth under the jurisdiction of the youth correctional facilities;
- (8) Facilitate the development of and, when appropriate, provide for training programs for persons offering services to youth at risk;
- (9) Provide for technical assistance and consultation to providers and potential providers;
- (10) Seek, apply for, and encourage the use of all federal funds for youth services and facilitate the coordination of federal, state, and local policies concerning services for youth;
- (11) Prepare and submit an annual report to the governor and the legislature. This report shall include, but not be limited to, a review of the status of youth services within the State, recommendations for priorities for the development and coordination of youth services; and
- (12) Monitor, evaluate, and audit all grants~~[-subsidies,]~~ under chapter 42F, and purchase of services under chapter ~~[42D]~~ 103F which relate to the office of youth services.”

SECTION 21. Section 383-128, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) For purposes of grants ~~[and subsidies]~~ awarded under subsection (d), any organization requesting a grant ~~[or subsidy]~~ shall:

- (1) Be licensed and accredited, as applicable, under the laws of the State;
- (2) Have at least one year’s experience with the project or in the program area for which the request or proposal is being made; except that the director may grant an exception where the project or program area deals with new industry training; and
- (3) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State.

(g) Recipients of grants ~~[or subsidies]~~ shall be subject to the following conditions:

- (1) Any organization requesting a grant ~~[or subsidy]~~ shall submit its request together with all the information required by the director on an application form provided by the department;
- (2) The recipient of a grant ~~[or subsidy]~~ shall not use public funds for purposes of entertainment or perquisites;
- (3) The recipient of a grant ~~[or subsidy]~~ shall comply with applicable federal, state, and county laws;
- (4) The recipient of a grant ~~[or subsidy]~~ shall comply with any other requirements the director may prescribe;
- (5) The recipient of a grant ~~[or subsidy]~~ shall allow the director, 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;

- (6) Every grant ~~[or subsidy]~~ shall be monitored according to rules established by the director to ensure compliance with this section; and
- (7) Any recipient of a grant ~~[or subsidy]~~ under this section who withholds or omits any material fact or deliberately misrepresents facts to the director or who violates the terms of the recipient's contract shall be in violation of this section and, in addition to any other penalties provided by law, shall be prohibited from applying for a grant ~~[or subsidy]~~ under this section for a period of five years from the date of termination."

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval; provided that the amendment made to section 46-15.1(c), Hawaii Revised Statutes, by section 11 of this Act shall not be repealed when section 46-15.1 is reenacted on June 30, 2015, pursuant to section 3 of Act 141, Session Laws of Hawaii 2009.

(Approved June 16, 2014.)