H.B. NO. 3141

A BILL FOR AN ACT

RELATING TO GOVERNMENT SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. In 2001, the legislature found that it was important for state and county government to have the ability to deliver services by the most efficient means possible, and that such flexibility can have a positive impact upon both the public and private sectors of our economy.

The legislature also found that it was important to address and resolve the uncertainty created by the Hawaii supreme court's decision in *Konno v. County of Hawaii*, 85 Haw. 61 (1997) regarding government's ability to rely upon the private sector for services government needs or is required to provide.

With the sunsetting of part II of Act 90, Session Laws of Hawaii 2001, in June 2007, this uncertainty has now returned and once again the basic authority of state and county government to deliver public services has been called into question.

The legislature remains committed to the principle that government should have the ability to deliver services by the most efficient means possible and, toward this end, to rely upon contracting arrangements where appropriate for needed or

required government services. The legislature also finds that it is desirable to the government and to the general public to limit the disruption of such.

Accordingly, the purpose of this Act is to address the uncertainty and disruption created by the sunsetting of part II of Act 90, Session Laws of Hawaii 2001, and to enable the governor and the executives of other jurisdictions to utilize appropriate contracting arrangements to provide government services more efficiently.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"**CHAPTER**

CONTRACTS WITH NON-GOVERNMENT ENTITIES

§ -1 Scope and application. This chapter preempts and supersedes all other state law with regard to determining whether services, including services obtained in conjunction with the procurement of goods and construction, funded by the State or any of its counties, should be provided exclusively by government or obtained through government contracts from the private sector. Procurement laws shall be applied, as appropriate, if a determination is made pursuant to this chapter

that a service should be obtained by contract from the private sector.

§ -2 Determination; standards. (a) Notwithstanding any law to the contrary, including chapters 46, 76, 77, 78, 89, and 89A, any other applicable civil service law, customary or historical past practices, or the fact that the services hereinafter described may have been performed by persons or positions in civil service, any state or county official in whom procurement authority is vested by law may enter into a contract financed by public funds, with a private entity to obtain services, including services provided in conjunction with the procurement of goods or construction, from a private entity, when there is reasonable basis to believe that the service of equivalent or better quality than that which could be provided by a government agency can be provided at lower cost.

(b) For purposes of this chapter, a "private entity" is any individual, company, or organization that is not an employee or agency within the federal, state, or county government.

(c) In the determination made pursuant to this chapter, the state or county official shall consider whether contracting with the private entity will:

(1) Jeopardize the government's ability to provide the service if the private entity fails to perform, or the contract becomes unprofitable or impossible for a private entity to perform;

(2) Impact on any employee covered by civil service laws; provided that the impact shall not prevent the procurement of services pursuant to this chapter;

(3) Affect the nature of the service the agency needs, including whether:

(A) The service is self-contained or part of a larger service delivery system;

(B) The service is geographically dispersed;

(C) The service is a core or ancillary government service and if in-house resources are available or needed;

(D) Government control is necessary;

(E) Government accountability can be shared; and

(F) Governmental authority will be diluted;

(4) Increase the potential for achieving cost savings, including:

(A) The need to abandon or repurchase capital improvements or equipment that are not fully depreciated;

(B) The extent to which the service is available in the private sector marketplace; and

(C) The extent to which federal or state restrictions may reduce private sector interest in providing or performing the needed or required service; and

(5) Affect the extent to which the services are needed or required, and how the criteria to select a service provider can be described in objective specifications.

§ -3 Annual reports. Except for the judiciary, each state and county department and agency that uses the contracting process set out in this chapter, shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of each year beginning with 2008. The report shall include:

(1) An itemization of all services that were outsourced or subjected to the processes set out in this chapter;

(2) The agency's or department's justification that standards for determination were met;

(3) The cost of services obtained through the process set out in this chapter;

(4) A copy of all contracts entered into under this chapter; and

(5) A confirmation that civil service employees were not displaced as a consequence of this chapter."

SECTION 3. Chapter 76-77, Hawaii Revised Statutes, is amended to read as follows:

"**§76-77 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

(1) Positions in the office of the mayor; provided that the positions shall be included in the classification systems;

(2) Positions of officers elected by public vote, positions of heads of departments, and positions of one first deputy or first assistant of heads of departments;

(3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;

(4) Positions of members of any board, commission, or agency;

(5) Positions filled by students; positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;

(6) Positions of district judges, jurors, and witnesses;

(7) Positions filled by persons employed by contract where the personnel director has certified that the service is special or unique, is essential to the public interest, and that because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be recruited through normal civil service procedures; provided that no contract pursuant to this paragraph shall be for any period exceeding one year;

(8) Positions of a temporary nature needed in the public interest where the need does not exceed ninety days; provided that before any person may be employed to render temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director;

(9) Positions of temporary election clerks in the office of the county clerk employed during election periods;

(10) Positions specifically exempted from this part by any other state statutes;

(11) Positions of one private secretary for each department head; provided that the positions shall be included in the classification systems;

(12) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with their private business

or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified by the director;

(13) Positions filled by persons with a severe disability who are certified by the state vocational rehabilitation office as able to safely perform the duties of the positions;

(14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions; and

(15) The following positions in the office of the prosecuting attorney: private secretary to the prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney; provided that the positions shall be included in the classification systems[~~; and~~]

[~~(16) Positions or contracts for personal services with private persons or entities for services lasting no more than one year and at a cost of no more than $750,000~~].

The director shall determine the applicability of this section to specific positions and shall determine whether or not positions exempted by paragraphs (7) and (8) shall be included in the classification systems.

Nothing in this section shall be deemed to affect the civil service status of any incumbent private secretary of a department head who held that position on May 7, 1977."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3141

Report Title:
Contracts for personal services; Civil Service

Description:
Provides flexibility and reliability to the hiring and contracting processes by exempting from civil service law positions or contracts lasting up to one year with non-government entities for personal services.

HB 3141

JUSTIFICATION SHEET

DEPARTMENT: Human Resources Development

TITLE: A BILL FOR AN ACT RELATING TO GOVERNMENT SERVICES.

PURPOSE: The purpose of this amendment is to reinstate the authority of state and local political subdivisions to provide necessary state services by exempting positions or contracts with non-government entities from hiring and contracting processes.

MEANS: Add a new chapter to the Hawaii Revised Statutes and amend Section 76-77, Hawaii Revised Statutes.

JUSTIFICATION: In passing Act 90 in 2001, the Legislature found that it was important for state and county government to have the ability to deliver services by the most efficient means possible, and that such flexibility can have a positive impact upon both the public and private sectors of our economy.

The Legislature also found that it was important to address and resolve the uncertainty created by the Hawaii supreme court's decision in *Konno v. County of Hawaii*, 85 Haw. 61 (1997), regarding government's ability to rely upon the private sector for services government needs or is required to provide.

With the sunsetting of Act 90, Part II, in June 2007, this uncertainty has now returned and once again the basic authority of state, city and even county government to deliver public services has been called into question.

The purpose of this Act is to address the uncertainty and disruption created by the sunsetting of Act 90, and enable the Governor and the executives of other

jurisdictions to utilize appropriate contracting arrangements to provide government services more efficiently.

Impact on the public: More efficient governmental operation. Eliminate imminent disruptive impact upon the provision of governmental services.

Impact on the department and other agencies: More efficient governmental operation. Eliminate imminent disruptive impact upon the provision of governmental services.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, University of Hawaii, Department of Education, Department of Human Resources, City and County of Honolulu, County of Maui, County of Hawaii, and County of Kauai.

EFFECTIVE DATE: Upon approval.