

CHAPTER 9
[FOUNDATION ON CULTURE AND THE ARTS]

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PART I. GENERAL PROVISIONS**Note**

Sections 9-1 to 9-5 designated as Part I by L 1992, c 181, §2.

§9-1 Definitions. The following terms, whenever used and referred to in this chapter, shall have the following respective meanings unless a different meaning clearly appears in context.

"Arts" includes music, dance, painting, drawing, sculpture, architecture, drama, poetry, prose, crafts, industrial design, interior design, fashion design, photography, television, motion picture art, unique or decorative plants, landscaping, and all other creative activity of imagination and beauty.

"Commission" means the state foundation on culture and the arts commission established in section 9-2.

"Culture" includes the arts, customs, traditions, mores, and history of all of the various ethnic groups of Hawaii.

"Executive director" means the executive director of the state foundation on culture and the arts appointed in section 9-2.

"Foundation" means the state foundation on culture and the arts established by section 9-2.

"Grant" means an award of public funds to a recipient, based on merit and need, to stimulate and support activities of the recipient for a specified public purpose.

"Humanities" includes fields of study or learning activities which deal with human thoughts, attitudes, and values, and encourages the understanding of ideas, values, and experiences which have or will have formative effects upon our culture.

"Individual" means a natural person.

"Nepotism" means appointing persons to positions on a basis of their blood or marital relationship to the appointing authority, rather than on merit or ability.

"Organization" means an association formed for a common purpose.

"Perquisite" means a privilege furnished or a service rendered by an organization to an employee, officer, director, or member of that organization to reduce the individual's

personal expenses.

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

"State art museum" means the museum established pursuant to section 9-22. [L 1965, c 269, §1; am L 1977, c 138, §1; am L 1980, c 293, §2; am L 1992, c 181, §3; am L 1999, c 80, §2; am L 2004, c 125, §3]

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§9-2 Establishment of foundation. (a) There is hereby created a state foundation on culture and the arts, which shall be placed within the department of accounting and general services for administrative purposes.

(b) The foundation shall be governed by a policymaking and oversight commission to be known as the state foundation on culture and the arts commission. The commission shall be composed of nine members to be appointed and removed by the governor pursuant to section 26-34. The term of each member shall be for four years, commencing on July 1 and expiring on June 30; provided that for terms commencing on or after July 1, 1999, the governor shall appoint at least one member who resides in the county of Hawaii, one member who resides in the county of Kauai, and one member who resides in the county of Maui. The governor shall appoint the chairperson of the commission from among its members. The members of the commission shall serve without compensation, but shall be reimbursed for travel and other necessary expenses in the performance of their official duties.

(c) The commission shall appoint an executive director of the foundation, who shall:

(1) Serve as the foundation's chief executive officer;

(2) Be responsible for developing and administering the foundation's programs under the commission's direction;

(3) Serve on a part-time or full-time basis;

(4) Be a person who, by reason of education or extensive experience, is generally recognized as being professionally qualified in the administration of programs in the fields of culture, the arts, history, and the humanities;

(5) Be familiar with the people and cultures of Hawaii;

(6) Be exempt from chapter 76; and

(7) Select necessary additional staff pursuant to chapter 76, within available appropriations. [L 1965, c 269, §2; am L 1970, c 192, §2; am L 1974, c 24, §2; am L 1978, c 6, §1; am L 1980, c 302, pt of §2; am L 1986, c 130, §1; gen ch 1992; am L 1999, c 80, §3; am L 2000, c

253, §150]

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§9-3 Duties. The foundation shall:

(1) Assist in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;

(2) Establish written standards and criteria by which grant contracts shall be evaluated;

(3) Appraise the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devise programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;

(4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;

(5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;

(6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;

(7) Through its executive director:

(A) Administer funds allocated by grant, gift, or bequest to the foundation; accept, hold, disburse, and allocate funds that may become available from other governmental and private sources; provided that all those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of any designation, the funds shall be disbursed or allocated for the promotion and furtherance of culture and the arts and history and the humanities; and

(B) Accept, hold, disburse, and allocate public funds that are made available to the foundation by the legislature for disbursement or allocation, pursuant to the standards and procedures established in part II, for the promotion and

furtherance of culture and the arts and history and the humanities;

(8) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year. Annual reports shall include the total number and amount of gifts and other grants and income received, payroll disbursements, contracts entered into, and progress and accomplishments made during the year, including the efforts of the Hawaii arts education partners and its progress in implementing the Hawaii arts education strategic plan and the accomplishments of the art in public places and relocatable works of art programs and the state art museum;

(9) Convene the Hawaii arts education partners, which is composed of the department of education, the colleges of education and arts and humanities of the University of Hawaii at Manoa, the Hawaii Association of Independent Schools, and the Hawaii Alliance for Art Education, to fully implement the terms of the Hawaii arts education strategic plan;

(10) Display student art works in public buildings, sponsor student art displays, promote arts education, and in other ways encourage the development of creative talent among the young people of Hawaii;

(11) In cooperation with qualified organizations, conduct research, studies, and investigations in the fields of ethnohistory and the humanities:

(A) Make, publish, and distribute works documenting the contributions of individual ethnic groups in their relationship to one another and to the whole population of Hawaii;

(B) Place ethnohistorical and cultural materials developed by the foundation or received by the foundation as gifts and donations in public archives, libraries, and other suitable institutions accessible to the public; and

(C) Maintain a register of the location of such materials;

(12) Cooperate with and assist the department of land and natural resources and other state agencies in

developing and implementing programs relating to historic preservation, research, restoration, and presentation, as well as museum activities;

(13) Establish an individual artist fellowship program to encourage artists to remain and work in Hawaii and to reaffirm the importance of Hawaii's artists and their cultural and economic contributions to the State by:

(A) Recognizing and honoring Hawaii's exceptionally talented visual and performing artists for their outstanding work in and commitment to the arts; and

(B) Enabling these artists to further their artistic goals;

(14) In consultation with the comptroller and affected agencies and departments, administer the art in public places and relocatable works of art programs established pursuant to section 103-8.5; and

(15) Administer the operations of the state art museum established pursuant to section 9-22. [L 1965, c 269, §3; am L 1977, c 112, §1; am L 1980, c 293, §3; am L 1992, c 181, §4; am L 1993, c 133, §2; am L 1999, c 80, §4; am L 2001, c 306, §2; am L 2004, c 125, §4]

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§9-4 Student art work. The foundation, in consultation with the department of education, the University of Hawaii, private schools, and community art groups, shall establish a program for the recognition and display of student art work. Student art work shall mean any work of art made by any student attending any elementary, intermediate, high school, college, or university in the State.

Recognition shall be through the sponsoring of student art exhibits and the granting of scholarships, monetary awards, or certificates to the student whose art work is being recognized. Any funds appropriated to the foundation may be used for the recognition of student art work. Student art work recognized under this section may be acquired for the purpose of temporary or permanent display in state buildings and public facilities pursuant to section 103-8.5. [L 1977, c 112, pt of §2; am L 1989, c 389, §2]

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[§9-5] Rules. The foundation shall adopt rules in consultation with the comptroller for the purposes of administering this chapter. Such rules shall be adopted in accordance with chapter 91. [L 1977, c 112, pt of §2]

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[§9-6] Qualifying standards for individual artist fellowships. Any individual applying for a fellowship shall meet all of the following standards:

(1) The individual has proof of United States citizenship or permanent United States resident alien status and is a resident of the State of Hawaii at the time of application;

(2) The individual is a recognized professional artist who:

(A) Engages in a particular art form or discipline as a result of education, experience, or natural talent; and

(B) Is financially compensated for engaging in the art form or discipline as part of the individual's livelihood; and

(3) The individual is able to provide documentation of having engaged in artistic endeavors for at least five years prior to the time of application. [L 1993, c 133, pt of §1]

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[§9-7] Requirement for artists receiving an individual artist fellowship. Each artist who, after meeting the qualifications set out in section 9-6, receives an individual artist fellowship from the foundation, is required to hold an exhibition or give a performance for the benefit of the people of Hawaii. [L 1993, c 133, pt of §1]

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PART II. FOUNDATION GRANT PROGRAM

[§9-11] Qualifying standards for foundation grant applications. An applicant for a foundation grant shall meet the following standards:

(1) If the applicant is an organization:

(A) Be a for-profit organization incorporated under the laws of the State or a nonprofit organization exempt from the federal income tax by the Internal Revenue Service;

(B) In the case of a tax exempt nonprofit organization, the organization shall have a governing board whose members have no material conflict of interest and serve without compensation;

(C) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflict of interest situations; and

(D) Have at least one year's experience with the project or in the program or activity area for which the request for grant is being made; provided that the foundation may grant an exception where the requesting or proposing organization has demonstrated the necessary experience in the program area.

(2) If the applicant is an individual, the applicant must be determined by the foundation to be:

(A) Professionally recognized in the field of culture and the arts or history and the humanities; and

(B) Qualified to carry out the activity or program proposed for delivery to the general public or specified members of the general public. [L 1992, c 181, pt of §1]

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[\S9-12] Conditions for foundation grants. Applicants to whom a grant has been awarded shall agree to comply with the following conditions before receiving the grant:

(1) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State; 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 foundation;

(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, or physical handicap;

(3) Agree not to use public funds for purposes of entertainment or perquisites;

(4) Comply with other requirements as the foundation may prescribe to ensure adherence to federal, state, and county laws by the grant recipient; and

(5) Allow the foundation, 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. [L 1992, c 181, pt of §1]

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§9-13 Required review of requests for foundation grants.

(a) Every request for a foundation grant shall be reviewed in accordance with this section.

(b) Every request for a foundation grant shall be submitted to the foundation on an application form provided by the foundation. Each application shall contain:

(1) A statement of the purpose of the activity or program to be funded by the grant;

(2) A written description of the activity or program;

(3) Financial information regarding the activity or program;

(4) If the applicant is an organization, personnel position salaries; and

(5) Any other information the foundation requires.

(c) The foundation shall review each request to determine the efficiency and the effectiveness of the proposed activity or program in achieving the objectives of the foundation and its legislative mandate. The review shall be based upon an analysis of the request in terms of the objectives to be achieved, the need in the community for the particular activity or program, the quality of the proposed program or activity, the ability of the applicant to carry out the proposed program or activity, the benefits to be provided by the request in comparison to the estimated costs, and the extent to which the proposed program and activity meet the priorities established by the foundation.

(d) The foundation shall make a final decision on each request.

(e) The foundation shall inform each foundation grant applicant of the disposition of the application's request.

(f) The appeal process in the foundation's rules adopted pursuant to section 9-5 shall be available for any applicant. [L 1992, c 181, pt of §1; am L 1993, c 6, §1]

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[§9-14] Allotment. Appropriations for foundation grants to be made under this chapter shall be subject to the allotment system generally applicable to all appropriations made by the legislature. [L 1992, c 181, pt of §1]

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§9-15 Contracts. (a) The foundation shall not release the public funds approved for a foundation grant unless a contract is entered into between the foundation and the recipient of the grant. The foundation shall develop and determine, in consultation with and subject to the review and approval of the attorney general, the specific contract form to be used.

(b) Payment of funds shall be made within sixty days after a contract is executed. Contracts shall be executed in accordance with the foundation's rules adopted pursuant to section 9-5 and no later than ninety days after receipt of a foundation-approved revised service proposal or foundation-approved certification that there have been no programmatic or budgetary changes to the application.

(c) All contracts shall be reviewed by the attorney general for conformance with this part. [L 1992, c 181, pt of §1; am L 1993, c 6, §2]

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[\$9-16] Monitoring and evaluation. (a) Every foundation grant contract shall be monitored by the foundation to ensure compliance with this part.

(b) Every foundation grant contract shall be evaluated annually to determine whether the grant attained the intended results in the manner contemplated.

(c) The foundation shall develop procedures and adopt rules under chapter 91 for monitoring and evaluating grant contracts. [L 1992, c 181, pt of §1]

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[§9-17] Continued eligibility. Any recipient of a foundation grant who withholds or omits any material fact or deliberately misrepresents facts to the foundation shall be in violation of this part. In addition to any other penalties provided by law, any recipient found by the foundation to have violated this part or the terms of its contract shall be prohibited from applying for any foundation grant for a period of five years from the date of termination. [L 1992, c 181, pt of §1]

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[§9-18] Applicability and interpretation. This part shall control all grants made by the foundation. This part shall be liberally construed so as not to hinder or impede the application, receipt, and use of federal moneys that may become available to the State and the foundation. If unanticipated federal moneys not included in the legislature's appropriation to the foundation become available, the foundation, pursuant to chapter 29, may apply for, receive, and expend the federal moneys in accordance with the terms and conditions specified in the applicable federal statutes, regulations, or financial award documents. [L 1992, c 181, pt of §1]

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[PART III.] ART IN PUBLIC PLACES AND RELOCATABLE WORKS
OF [ART] PROGRAMS AND STATE ART MUSEUM

[§9-21] Purpose. The foundation shall administer the art in public places and relocatable works of art programs, pursuant to section 103-8.5, and the state art museum to achieve the following purposes:

(1) Replace in public state buildings the natural beauty displaced in construction with works of art expressive of the State's cultural, creative, and traditional arts of its various ethnic groups;

(2) Support, promote, and recognize excellence of the State's diverse cultural, creative, and traditional artists; and

(3) Create, display, and maintain in public places and the state art museum a collection of works of art that:

(A) Represents the diversity and excellence of the State's artistic expression; and

(B) Provides to all the citizens of the State the fullest possible access to the highest quality aesthetic and educational experiences available. [L 2004, c 125, pt of §2]

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[§9-22] State art museum; establishment. The state art museum is established within the foundation. The operations of the state art museum shall be funded and supported by the works of art special fund, pursuant to section 103-8.5. [L 2004, c 125, pt of §2]

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[\S9-23] Friends of the Hawaii state art museum;

establishment. (a) There shall be established a nonprofit group, the friends of the Hawaii state art museum, to work effectively with the foundation and its professional staff to enhance and support the work of the museum, its ancillary programs, and amenities, pursuant to this part.

(b) The friends of the Hawaii state art museum shall operate concessions or other for-profit business enterprises within or on the grounds of the state art museum as directed by the foundation, and may enter into contracts as approved by and with the foundation, and with any association, individuals, or corporations to further the purposes of this part.

(c) Funds generated by the friends of the Hawaii state art museum shall be used as supplemental funds that may be expended for the following purposes:

(1) Employing personnel as required to operate and maintain the museum and ancillary programs for educational, cultural, and promotional purposes;

(2) Planning and development of state art museum programs;

(3) Construction, repairs, replacement, additions, and extensions of state art museum facilities;

(4) Operational and maintenance costs of state art museum and ancillary programs and amenities;

(5) Administrative costs of the state art museum;
and

(6) Doing other things necessary to accomplish the purpose of this chapter, including the adoption, amending, or repeal of rules pursuant to chapter 91. [L 2004, c 125, pt of §2]

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