

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

COMPTROLLER'S MEMORANDUM NO. 2023-03

TO: All Department Heads

FROM: Keith A. Regan, Comptroller
Department of Accounting and General Services

SUBJECT: Assessment for Works of Art, HRS Section 103-8.5

This memorandum supersedes Comptroller's Memorandum 2020-22 dated September 24, 2020, and Comptroller's Memorandum 2021-09 dated June 17, 2022, and is effective July 1, 2023.

This Comptroller's Memorandum provides further guidance to the Governor's Budget Execution Policies and Instructions regarding transfers to the Works of Art Special Fund from Capital Improvement Program (CIP) appropriations pursuant to HRS Section 103- 8.5.

In addition, attached herewith for your use are the procedures and criteria for the 1% assessment under the subject statute. User and expending agencies should follow the procedures and criteria for the 1% assessment for preparation of CIP allotment advice (Form A-15) and the formulation of CIP budget requests for FY 24 and future fiscal years. Exceptions to this Memorandum will be considered on a case-by-case basis by the Comptroller.

Please call the State Foundation on Culture and the Arts at 586-0301 if you have any questions regarding these procedures.

Attachments

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Procedures for Budgeting and Transferring the 1% Works of Art
Assessment Under HRS Section 103-8.5

1. The Comptroller shall provide each user and expending agency receiving capital improvement program (CIP) appropriations with information regarding appropriation items that shall be included and excluded from the 1% assessment.

User and expending agencies shall follow the criteria to determine which appropriations are subject to the 1% assessment. For budgeting purposes, user agencies, with the assistance of their expending agencies, shall increase the amount of their CIP requests to allow for the assessment by dividing the estimated cost of the qualifying construction by 0.99 and rounding to the nearest whole dollar.

2. The Comptroller shall ensure that each agency calculates the 1% amounts correctly.
 - a. If a CIP appropriation does not have construction cost element amounts designated, to implement the legislative intent of HRS Section 103-8.5, the 1% amount will be based on the amount to be allotted for construction. Thus, if neither a construction cost element amount nor a works of art cost element amount is specified in a CIP appropriation, the expending agency shall include, as part of each CIP allotment request that includes the release of construction funds for a qualifying project, the transfer of 1% of the construction amount requested for allotment to the State Foundation on Culture and the Arts' (SFCA) Works of Art Special Fund Appropriation S-XX-319-M. Calculation of the amount to be transferred shall be rounded to the nearest whole dollar, provided such rounding shall not result in transfer of an amount equal to less than one percent of the amount allotted for construction.
 - b. If a construction cost element is specified in a CIP appropriation but a works of art cost element is not specified, the expending agency shall include, as part of each CIP allotment request that includes the release of construction funds for a qualifying project the transfer of 1% of the state fund appropriations designated for the construction cost element to the State Foundation on Culture and the Arts' (SFCA) Works of Art Special Fund Appropriation S-XX-319-M. Calculation of the amount to be transferred shall be rounded to the nearest whole dollar, provided such rounding shall not result in transfer of an amount equal to less than 1% of the state fund appropriations designated for the construction cost element.
 - c. If a works of art cost element is specified in a CIP appropriation, the expending agency shall include, as part of each CIP allotment request that includes the release of construction funds for a qualifying project, the transfer of the entire works of art cost element appropriation amount to the State Foundation on Culture and the Arts' (SFCA) Works of Art Special Fund Appropriation S-XX-319-M. Provided further that the expending agency shall ensure the total works of art allotment conforms to the legislative intent of HRS Section 103-8.5 as described in sections 2.a and 2.b., above. Should the funds appropriated in the works of art cost element be less than required by HRS 103-8.5, then the expending agency shall identify additional funding from the funds appropriated for the construction cost element to be transferred to the works of art allotment to satisfy the shortfall.

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The Department of Budget and Finance (B&F) will verify that 1% of the state fund appropriations designated for the construction cost element or of the construction fund allotment being requested as set forth above will be transferred to the SFCA's Works of Art Special Fund on the same allotment advice.

3. Each agency shall ensure the transfers in the correct amount to the Works of Art Special Fund are completed in a timely manner.

B&F will provide a copy of the approved A-15 to the State Foundation on Culture and the Arts (SFCA).

4. The Comptroller and the SFCA shall track the potential amounts due from each agency under the 1% requirement as provided in this section.

To assist the Comptroller and the SFCA with their Works of Art revenue projections and for tracking purposes, State Departments with CIP appropriations will provide SFCA and the Comptroller one copy of the CIP Expenditure Plan (Form CEP) following the format and matching the submission due dates in the Governor's Budget Execution Policies and Instructions. In the "Comments" column, please include the 1% Works of Art assessment amount for applicable projects and any justification for excluding assessments in accordance with the following criteria.

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Criteria for 1% Works of Art Assessment Under HRS Section 103-8.5

The following guidance should be used to determine which appropriations are subject to the 1% assessment for the acquisition of works of art.

1) Type of Appropriation:

a. Included -	Capital Improvement Program(CIP) appropriations funded from sources such as Taxable General Obligation (G.O.) Bond, Tax- Exempt G.O. Bond, Taxable G.O. Reimbursable Bond, Tax-Exempt G.O. Reimbursable Bond, Tax- Exempt Revenue Bond, General, Special, and Federal Funds (if allowed by the grant agreement).
b. Excluded -	Operating appropriations and CIP appropriations exempt from HRS Section 103-8.5.

2) Purpose of Appropriation:

a. Included -	Appropriations for the cost element CONSTRUCTION. In the case of a CIP appropriation, if the word “construction” appears in project title or description or if it does not specifically preclude construction work, then it may be presumed to potentially qualify for the 1% Works of Art assessment.
b. Excluded -	Appropriations for the cost elements PLANS, DESIGN, LAND or EQUIPMENT. In the case of a CIP appropriation, if the appropriation limits expenditures to work other than construction, then it may be presumed to not qualify for the 1% Works of Art assessment.

3) Type of Construction Authorized:

a. Included -	Appropriations that authorize the construction of new State-owned buildings or the construction of additions that add a substantial amount of floor space outside the boundaries of the existing building either vertically or horizontally. Site work (utilities) incidental to building are included. Appropriations for renovations, modernizations, or other changes to an existing building are included. The term “building” shall be interpreted according to the dictionary definition. It shall be interpreted to include such physical building structures as: maintenance buildings, hangars, stadiums, kennels, etc.
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b. Excluded -	Appropriations that limit work strictly to the construction of site work such as roads, waterworks, bridges, airfields, walls, fences, canals, surface parking, utilities, piers, landscaping, athletic fields and courts, etc. Appropriations which authorize construction not owned by the State, i.e., county facilities or privately owned facilities in the case of grant appropriations pursuant to HRS Chapter 42F.
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4) Amount of the Appropriation Subject to the 1% Assessment:

a. Included -	The amount to be allotted for the cost element CONSTRUCTION qualifying under this criteria as indicated in the CIP allotment request.
b. Excluded -	Any appropriation amount added by transfers to the originally appropriated amount from the Governor's Project Adjustment Fund or from surpluses from other CIP appropriations. Appropriations under \$100,000 are to be excluded from the assessment consideration.

5) Use of Works of Art Special Fund

Pursuant to HRS Section 103-8.5(b), the Works of Art Special Fund shall be used solely for the following purposes:

- 1) Costs related to the acquisition of works of art, including any consultant or staff services required to carry out the art in public places and relocatable works or art programs;
- 2) Site modifications, display, and interpretive work necessary for the exhibition of works of art;
- 3) Upkeep services; including maintenance, repair, and restoration or works of art;
- 4) Storing and transporting works of art.