
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 PART I

2 SECTION 1. The purpose of this part is to raise the small
3 purchases ceiling from \$25,000 to \$50,000, to correspond to the
4 reality of the costs of goods, services, and construction.

5 SECTION 2. Section 103D-305, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§103D-305 Small purchases; prohibition against parceling.**

8 (a) Procurements of less than [~~\$25,000~~] \$50,000 for goods,
9 services, or construction shall be made in accordance with
10 procedures set forth in rules adopted by the policy board that
11 are designed to ensure administrative simplicity and as much
12 competition as is practicable; provided that multiple
13 expenditures shall not be created at the inception of a
14 transaction or project so as to evade the requirements of this
15 chapter; and provided further that procurement requirements
16 shall not be artificially divided or parceled so as to
17 constitute a small purchase under this section.

18 (b) Procurements under this section shall:



- 1 (1) Be solicited and transacted electronically over the
- 2 Internet; and
- 3 (2) Be made using pre-qualified lists of vendors from whom
- 4 bids or offers are solicited randomly."

PART II

6 SECTION 3. The purpose of this part is to restore or add
7 the exemption from the State's procurement code for special
8 purpose revenue bonds for health care facilities, manufacturing
9 enterprises, processing enterprises, industrial enterprises,
10 energy projects, early childhood education and care facilities
11 serving the general public and private nonsectarian and
12 sectarian elementary schools, secondary schools, colleges, and
13 universities serving the general public, on the basis that no
14 public moneys are involved in issuing special purpose revenue
15 bonds.

16 SECTION 4. Section 39A-32, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§39A-32 Department powers as to health care facilities.**

19 In addition to powers [~~which~~] that it may now have, the
20 department shall have all powers necessary or convenient to
21 accomplish the purposes of this part. The powers of the
22 department include but are not limited to the following:

- 1 (1) Notwithstanding and without compliance with section
2 103-7[7] and chapter 103D, but with the approval of
3 the governor, to:
- 4 (A) Enter into and carry out a project agreement, or
5 an amendment or supplement to an existing project
6 agreement, with a project party; and
- 7 (B) Enter into and carry out any agreement, whereby
8 the obligation of a project party under a project
9 agreement will be unconditionally guaranteed by a
10 person other than a project party;
- 11 (2) To issue special purpose revenue bonds pursuant to and
12 in accordance with this part;
- 13 (3) To lend the proceeds of the special purpose revenue
14 bonds issued for a project to the project party for
15 use and application by the project party for the
16 acquisition, purchase, construction, reconstruction,
17 improvement, betterment, extension, or refinancing of
18 outstanding obligations related to a project;
- 19 (4) As security for the payment of the principal of,
20 premium, if any, and interest of the special purpose
21 revenue bonds issued for this project, to:

- 1 (A) Pledge, assign, hypothecate, or otherwise
2 encumber all or any part of the revenues and
3 receipts derived or to be derived by the
4 department under the project agreement for the
5 project for which [~~such~~] the special purpose
6 revenue bonds are issued;
- 7 (B) Pledge and assign the interest and rights of the
8 department under the project agreement or other
9 agreement with respect to [~~such~~] the project or
10 [~~such~~] the special purpose revenue bonds;
- 11 (C) Pledge and assign any bond, debenture, note, or
12 other evidence of indebtedness received by the
13 department with respect to [~~such~~] the project; or
- 14 (D) Any combination of the foregoing;
- 15 (5) To extend or renew any project agreement or any other
16 agreement related thereto; provided that any [~~such~~]
17 renewal or extension shall be subject to the approval
18 of the governor unless made in accordance with
19 provisions for [~~such~~] the extension or renewal
20 contained in a project agreement or related agreement
21 theretofore approved by the governor; and



1 (6) To do any and all things necessary or convenient to
2 carry out its purposes and exercise the powers given
3 and granted in this part.

4 When the department finances or refines a project by the
5 issuance of special purpose revenue bonds as contemplated by
6 this part, the State shall not exercise the power of eminent
7 domain to acquire a project or any part thereof for lease or
8 transfer to a project party, nor shall the State operate a
9 project on behalf of a project party."

10 SECTION 5. Section 39A-72, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§39A-72 Department powers as to manufacturing**
13 **enterprises.** In addition to powers [~~which~~] that it may now
14 have, the department shall have all powers necessary or
15 convenient to accomplish the purposes of this part. The powers
16 of the department include but are not limited to the following:

17 (1) Notwithstanding and without compliance with section
18 103-7[7] and chapter 103D, but with the approval of
19 the governor, to:

20 (A) Enter into and carry out a project agreement, or
21 an amendment or supplement to an existing project
22 agreement, with a project party; and



1 (B) Enter into and carry out any agreement, whereby
2 the obligation of a project party under a project
3 agreement will be unconditionally guaranteed by a
4 person other than a project party;

5 (2) To issue special purpose revenue bonds pursuant to and
6 in accordance with this part;

7 (3) To lend the proceeds of the special purpose revenue
8 bonds issued for a project to the project party for
9 use and application by the project party for the
10 acquisition, purchase, construction, reconstruction,
11 improvement, betterment, extension, or maintenance of
12 a project;

13 (4) As security for the payment of the principal of,
14 premium, if any, and interest of the special purpose
15 revenue bonds issued for a project, to:

16 (A) Pledge, assign, hypothecate, or otherwise
17 encumber all or any part of the revenues and
18 receipts derived or to be derived by the
19 department under the project agreement for the
20 project for which ~~such~~ the special purpose
21 revenue bonds are issued;

- 1 (B) Pledge and assign the interest and rights of the
2 department under the project agreement or other
3 agreement with respect to [~~such~~] the project or
4 [~~such~~] the special purpose revenue bonds;
- 5 (C) Pledge and assign any bond, debenture, note, or
6 other evidence of indebtedness received by the
7 department with respect to [~~such~~] the project; or
- 8 (D) Any combination of the foregoing;
- 9 (5) To extend or renew any project agreement or any other
10 agreement related thereto; provided that any [~~such~~]
11 renewal or extension shall be subject to the approval
12 of the governor unless made in accordance with
13 provisions for [~~such~~] the extension or renewal
14 contained in a project agreement or related agreement
15 theretofore approved by the governor; and
- 16 (6) To do any and all things necessary or convenient to
17 carry out its purposes and exercise the powers given
18 and granted in this part."

19 SECTION 6. Section 39A-112, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§39A-112 Department powers as to processing enterprises.**

22 In addition to powers [~~which~~] that it may now have, the



1 department shall have all powers necessary or convenient to
2 accomplish the purposes of this part. The powers of the
3 department include but are not limited to the following:

4 (1) Notwithstanding and without compliance with section
5 103-7[~~7~~] and chapter 103D, but with the approval of
6 the governor, to:

7 (A) Enter into and carry out a project agreement, or
8 an amendment or supplement to an existing project
9 agreement, with a project party; and

10 (B) Enter into and carry out any agreement, whereby
11 the obligation of a project party under a project
12 agreement will be unconditionally guaranteed by a
13 person other than a project party;

14 (2) To issue special purpose revenue bonds pursuant to and
15 in accordance with this part;

16 (3) To lend the proceeds of the special purpose revenue
17 bonds issued for a project to the project party for
18 use and application by the project party for the
19 acquisition, purchase, construction, reconstruction,
20 improvement, betterment, extension, or maintenance of
21 a project;



- 1 (4) As security for the payment of the principal of,
2 premium, if any, and interest of the special purpose
3 revenue bonds issued for a project, to:
- 4 (A) Pledge, assign, hypothecate, or otherwise
5 encumber all or any part of the revenues and
6 receipts derived or to be derived by the
7 department under the project agreement for the
8 project for which [~~such~~] the special purpose
9 revenue bonds are issued;
- 10 (B) Pledge and assign the interest and rights of the
11 department under the project agreement or other
12 agreement with respect to [~~such~~] the project or
13 [~~such~~] the special purpose revenue bonds;
- 14 (C) Pledge and assign any bond, debenture, note, or
15 other evidence of indebtedness received by the
16 department with respect to [~~such~~] the project; or
- 17 (D) Any combination of the foregoing;
- 18 (5) To extend or renew any project agreement or any other
19 agreement related thereto; provided that any [~~such~~]
20 renewal or extension shall be subject to the approval
21 of the governor unless made in accordance with
22 provisions for [~~such~~] the extension or renewal



1 contained in a project agreement or related agreement
2 theretofore approved by the governor; and

3 (6) To do any and all things necessary or convenient to
4 carry out its purposes and exercise the powers given
5 and granted in this part."

6 SECTION 7. Section 39A-152, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§39A-152 Department powers as to industrial enterprises.**

9 In addition to powers [~~which~~] that it may now have, the
10 department shall have all powers necessary or convenient to
11 accomplish the purposes of this part. The powers of the
12 department include but are not limited to the following:

13 (1) Notwithstanding and without compliance with section
14 103-7[7] and chapter 103D, but with the approval of
15 the governor, to:

16 (A) Enter into and carry out a project agreement, or
17 an amendment or supplement to an existing project
18 agreement, with a project party; and

19 (B) Enter into and carry out any agreement, whereby
20 the obligation of a project party under a project
21 agreement will be unconditionally guaranteed by a
22 person other than a project party;

- 1 (2) To issue special purpose revenue bonds pursuant to and
2 in accordance with this part;
- 3 (3) To lend the proceeds of the special purpose revenue
4 bonds issued for a project to the project party for
5 use and application by the project party for the
6 acquisition, purchase, construction, reconstruction,
7 improvement, betterment, extension, or maintenance of
8 a project;
- 9 (4) As security for the payment of the principal of,
10 premium, if any, and interest of the special purpose
11 revenue bonds issued for a project, to:
 - 12 (A) Pledge, assign, hypothecate, or otherwise
13 encumber all or any part of the revenues and
14 receipts derived or to be derived by the
15 department under the project agreement for the
16 project for which [~~such~~] the special purpose
17 revenue bonds are issued;
 - 18 (B) Pledge and assign the interest and rights of the
19 department under the project agreement or other
20 agreement with respect to [~~such~~] the project or
21 [~~such~~] the special purpose revenue bonds;

1 (C) Pledge and assign any bond, debenture, note, or
2 other evidence of indebtedness received by the
3 department with respect to [~~such~~] the project; or

4 (D) Any combination of the foregoing;

5 (5) To extend or renew any project agreement or any other
6 agreement related thereto; provided that any [~~such~~]
7 renewal or extension shall be subject to the approval
8 of the governor unless made in accordance with
9 provisions for [~~such~~] the extension or renewal
10 contained in a project agreement or related agreement
11 theretofore approved by the governor; and

12 (6) To do any and all things necessary or convenient to
13 carry out its purposes and exercise the powers given
14 and granted in this part."

15 SECTION 8. Section 39A-192, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§39A-192 Department powers as to energy projects.** In
18 addition to powers [~~which~~] that it may now have, the department
19 shall have all powers necessary or convenient to accomplish the
20 purposes of this part. The powers of the department include but
21 are not limited to the following:

- 1 (1) Notwithstanding and without compliance with section
2 103-7[7] and chapter 103D, but with the approval of
3 the governor, to:
- 4 (A) Enter into and carry out a project agreement, or
5 an amendment or supplement to an existing project
6 agreement, with a project party; and
- 7 (B) Enter into and carry out any agreement, whereby
8 the obligation of a project party under a project
9 agreement will be unconditionally guaranteed by a
10 person other than a project party;
- 11 (2) To issue special purpose revenue bonds pursuant to and
12 in accordance with this part;
- 13 (3) To lend the proceeds of the special purpose revenue
14 bonds issued for an energy project to the project
15 party for use and application by the project party for
16 the acquisition, purchase, construction,
17 reconstruction, improvement, betterment, or extension
18 of an energy project;
- 19 (4) As security for the payment of the principal of and
20 interest on the special purpose revenue bonds issued
21 for an energy project, to:



- 1 (A) Pledge, assign, hypothecate, or otherwise
2 encumber all or any part of the revenues and
3 receipts derived or to be derived by the
4 department under the project agreement for the
5 energy project for which [~~such~~] the special
6 purpose revenue bonds are issued;
- 7 (B) Pledge and assign the interest and rights of the
8 department under the project agreement or other
9 agreement with respect to [~~such~~] the project or
10 [~~such~~] the special purpose revenue bonds;
- 11 (C) Pledge and assign any bond, debenture, note, or
12 other evidence of indebtedness received by the
13 department with respect to [~~such~~] the energy
14 project; or
- 15 (D) Any combination of the foregoing;
- 16 (5) To extend or renew any project agreement or any other
17 agreement related thereto; provided that any [~~such~~]
18 renewal or extension shall be subject to the approval
19 of the governor unless made in accordance with
20 provisions for [~~such~~] the extension or renewal
21 contained in a project agreement or related agreement
22 theretofore approved by the governor; and



1 (6) To do any and all things necessary or convenient to
2 carry out its purposes and exercise the powers given
3 and granted in this part.

4 When the department finances an energy project by the issuance
5 of special purpose revenue bonds as contemplated by this part,
6 the State shall not exercise the power of eminent domain to
7 acquire an energy project or any part thereof for lease or
8 transfer to a project party, nor shall the State operate a
9 project on behalf of a project party."

10 SECTION 9. Section 39A-222, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~§~~39A-222~~§~~ Department powers as to early childhood
13 education and care facilities. In addition to powers ~~which~~
14 that it may now have, the department shall have all powers
15 necessary or convenient to accomplish the purposes of this part.
16 The powers of the department include~~§~~ but are not limited
17 to~~§~~ the following:

18 (1) Notwithstanding and without compliance with section
19 103-7~~§~~ and chapter 103D, but with the approval of
20 the governor, to enter into and carry out a project
21 agreement, or an amendment or supplement to an
22 existing project agreement, with a project party, and



1 to enter into and carry out any agreement, whereby the
2 obligation of a project party under a project
3 agreement will be unconditionally guaranteed by a
4 person other than a project party~~[-]~~;

5 (2) To issue special purpose revenue bonds pursuant to and
6 in accordance with this part~~[-]~~;

7 (3) To lend the proceeds of the special purpose revenue
8 bonds issued for a project to the project party for
9 use and application by the project party for the
10 acquisition, purchase, construction, reconstruction,
11 improvement, betterment, extension, or refinancing of
12 outstanding obligations related to a project~~[-]~~;

13 (4) As security for the payment of the principal of,
14 premium, if any, and interest of the special purpose
15 revenue bonds issued for this project, to ~~[pledge]~~:

16 (A) Pledge, assign, hypothecate, or otherwise
17 encumber all or any part of the revenues and
18 receipts derived or to be derived by the
19 department under the project agreement for the
20 project for which ~~[such]~~ the special purpose
21 revenue bonds are issued; ~~[to pledge]~~



1 (B) Pledge and assign the interest and rights of the
2 department under the project agreement or other
3 agreement with respect to [~~such~~] the project or
4 [~~such~~] the special purpose revenue bonds; [~~and to~~
5 pledge]

6 (C) Pledge and assign any bond, debenture, note, or
7 other evidence of indebtedness received by the
8 department with respect to [~~such~~] the project; or
9 [any]

10 (D) Any combination of the foregoing[~~-~~];

11 (5) To extend or renew any project agreement or any other
12 agreement related thereto; provided that any [~~such~~]
13 renewal or extension shall be subject to the approval
14 of the governor unless made in accordance with
15 provisions for [~~such~~] the extension or renewal
16 contained in a project agreement or related agreement
17 theretofore approved by the governor[~~-~~]; and

18 (6) To do any and all things necessary or convenient to
19 carry out its purposes and exercise the powers given
20 and granted in this part.

21 When the department finances or refinances a project by the
22 issuance of special purpose revenue bonds as contemplated by

1 this part, the State shall not exercise the power of eminent
2 domain to acquire a project or any part thereof for lease or
3 transfer to a project party, nor shall the State operate a
4 project on behalf of a project party."

5 SECTION 10. Section 39A-252, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§39A-252[+] Department powers as to private
8 nonsectarian and sectarian elementary schools, secondary
9 schools, colleges, and universities. In addition to powers that
10 it may now have, the department shall have all powers necessary
11 or convenient to accomplish the purposes of this part. The
12 powers of the department include but are not limited to the
13 following:

14 (1) Notwithstanding and without compliance with section
15 103-7[7] and chapter 103D, but with the approval of
16 the governor, to:

17 (A) Enter into and carry out a project agreement or
18 an amendment or supplement to an existing project
19 agreement with a project party; and

20 (B) Enter into and carry out any agreement, whereby
21 the obligation of a project party under a project



1 agreement will be unconditionally guaranteed by a
2 person other than a project party;

3 (2) To issue special purpose revenue bonds pursuant to and
4 in accordance with this part;

5 (3) To lend the proceeds of the special purpose revenue
6 bonds issued for a project to the project party for
7 use and application by the project party for the
8 acquisition, purchase, construction, reconstruction,
9 improvement, betterment, extension, or refinancing of
10 outstanding obligations related to a project;

11 (4) As security for the payment of the principal, premium,
12 if any, and interest of the special purpose revenue
13 bonds issued for this project, to [~~pledge,~~]:

14 (A) Pledge, assign, hypothecate, or otherwise
15 encumber all or any part of the revenues and
16 receipts derived or to be derived by the
17 department under the project agreement for the
18 project for which [~~such~~] the special purpose
19 revenue bonds are issued; [~~to pledge~~]

20 (B) Pledge and assign the interest and rights of the
21 department under the project agreement or other



1 agreement with respect to the project or the
 2 special purpose revenue bonds; [~~and to pledge~~]
 3 (C) Pledge and assign any bond, debenture, note, or
 4 other evidence of indebtedness received by the
 5 department with respect to the project; or [~~any~~]

6 (D) Any combination of the foregoing;

7 (5) To extend or renew any project agreement or any other
 8 agreement related to the project agreement; provided
 9 that any [~~such~~] renewal or extension shall be subject
 10 to the approval of the governor unless made in
 11 accordance with provisions for [~~such~~] the extension or
 12 renewal contained in a project agreement or related
 13 agreement theretofore approved by the governor; and

14 (6) To do any and all things necessary or convenient to
 15 carry out its purposes and exercise the powers given
 16 and granted in this part.

17 When the department finances or refinances a project by the
 18 issuance of special purpose revenue bonds as contemplated by
 19 this part, the State shall not exercise the power of eminent
 20 domain to acquire a project or any part of the project for lease
 21 or transfer to a project party, nor shall the State operate a
 22 project on behalf of a project party."

1 PART III

2 SECTION 11. The purpose of this part is to prohibit certain
3 governmental procurement contracts from requiring contractors to
4 defend the governmental body.

5 SECTION 12. Chapter 103D, Hawaii Revised Statutes, is amended
6 by adding a new section to part VII to be appropriately
7 designated and to read as follows:

8 "§103D- Defense of a governmental body. Any provision
9 in a government contract in which professional services are to
10 be performed by one or more construction design professionals,
11 that purports to require the construction design professionals
12 or their business to defend, indemnify, or hold harmless the
13 governmental body or its officers, employees and agents from
14 negligent acts, errors or omissions committed by the government
15 body or its officers, employees and agents, is void as against
16 public policy."

17 PART IV

18 SECTION 13. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 14. This Act shall take effect upon its approval.

Report Title:
Procurement Code

**SB NO. 2897 SD2
HD1**

Description:

Raises small purchases limit from \$25,000 to \$50,000; requires small purchases to be transacted over the Internet; requires selection of bidders from pre-qualified lists of vendors. Restores procurement code exemption for special purpose revenue bonds. Prohibits provisions in governmental procurement contracts that require the contractor to defend the governmental body. (SB2897 HD1)

SB2897 HD1 HMS 2006-2801

