
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 update the small
3 purchases ceiling to reflect the rising costs of goods,
4 services, and construction by specifying that purchases between
5 \$25,000 and \$50,000 shall be made in accordance with small
6 purchase procedures and through an electronic procurement
7 system.

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

10 **"§103D-305 Small purchases; prohibition against parceling.**

11 (a) Procurements of less than \$25,000 for goods, services, or
12 construction shall be made in accordance with procedures set
13 forth in rules adopted by the policy board that are designed to
14 ensure administrative simplicity and as much competition as is
15 practicable; provided that [~~multiple~~]:

16 (1) Multiple expenditures shall not be created at the
17 inception of a transaction or project so as to evade



1 the requirements of this chapter; and [~~provided~~
2 ~~further that procurement]~~

3 (2) Procurement requirements shall not be artificially
4 divided or parceled so as to constitute a small
5 purchase under this section.

6 (b) Procurements over \$24,999 but less than \$50,000 shall
7 be made:

8 (1) In accordance with subsection (a); and

9 (2) Through an electronic procurement system in accordance
10 with rules adopted by the policy board."

11 PART II

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



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

3 **"§39A-32 Department powers as to health care facilities.**

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

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



1 acquisition, purchase, construction, reconstruction,
2 improvement, betterment, extension, or refinancing of
3 outstanding obligations related to a project;

4 (4) As security for the payment of the principal of,
5 premium, if any, and interest of the special purpose
6 revenue bonds issued for this project, to:

7 (A) Pledge, assign, hypothecate, or otherwise
8 encumber all or any part of the revenues and
9 receipts derived or to be derived by the
10 department under the project agreement for the
11 project for which [~~such~~] the special purpose
12 revenue bonds are issued;

13 (B) Pledge and assign the interest and rights of the
14 department under the project agreement or other
15 agreement with respect to [~~such~~] the project or
16 [~~such~~] the special purpose revenue bonds;

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

20 (D) Any combination of the foregoing;

21 (5) To extend or renew any project agreement or any other
22 agreement related thereto; provided that any [~~such~~]



1 renewal or extension shall be subject to the approval
2 of the governor unless made in accordance with
3 provisions for [~~such~~] the extension or renewal
4 contained in a project agreement or related agreement
5 theretofore approved by the governor; and

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

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

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

17 "**§39A-72 Department powers as to manufacturing**
18 **enterprises.** In addition to powers [~~which~~] that it may now
19 have, the department shall have all powers necessary or
20 convenient to accomplish the purposes of this part. The powers
21 of the 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 maintenance of
18 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 a 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 SECTION 6. Section 39A-112, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§39A-112 Department powers as to processing enterprises.**

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

11 (1) Notwithstanding and without compliance with section
12 103-7[~~7~~] and chapter 103D, but with the approval of
13 the governor, to:

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

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

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



1 (3) To lend the proceeds of the special purpose revenue
2 bonds issued for a project to the project party for
3 use and application by the project party for the
4 acquisition, purchase, construction, reconstruction,
5 improvement, betterment, extension, or maintenance of
6 a project;

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

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

16 (B) Pledge and assign the interest and rights of the
17 department under the project agreement or other
18 agreement with respect to [~~such~~] the project or
19 [~~such~~] the special purpose revenue bonds;

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



- 1 (D) Any combination of the foregoing;
- 2 (5) To extend or renew any project agreement or any other
3 agreement related thereto; provided that any [~~such~~]
4 renewal or extension shall be subject to the approval
5 of the governor unless made in accordance with
6 provisions for [~~such~~] the extension or renewal
7 contained in a project agreement or related agreement
8 theretofore approved by the governor; and
- 9 (6) To do any and all things necessary or convenient to
10 carry out its purposes and exercise the powers given
11 and granted in this part."

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

14 **"§39A-152 Department powers as to industrial enterprises.**

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

- 19 (1) Notwithstanding and without compliance with section
20 103-7[~~7~~] and chapter 103D, but with the approval of
21 the governor, to:



- 1 (A) Enter into and carry out a project agreement, or
- 2 an amendment or supplement to an existing project
- 3 agreement, with a project party; and
- 4 (B) Enter into and carry out any agreement, whereby
- 5 the obligation of a project party under a project
- 6 agreement will be unconditionally guaranteed by a
- 7 person other than a project party;
- 8 (2) To issue special purpose revenue bonds pursuant to and
- 9 in accordance with this part;
- 10 (3) To lend the proceeds of the special purpose revenue
- 11 bonds issued for a project to the project party for
- 12 use and application by the project party for the
- 13 acquisition, purchase, construction, reconstruction,
- 14 improvement, betterment, extension, or maintenance of
- 15 a project;
- 16 (4) As security for the payment of the principal of,
- 17 premium, if any, and interest of the special purpose
- 18 revenue bonds issued for a project, to:
 - 19 (A) Pledge, assign, hypothecate, or otherwise
 - 20 encumber all or any part of the revenues and
 - 21 receipts derived or to be derived by the
 - 22 department under the project agreement for the



1 project for which [~~such~~] the special purpose
2 revenue bonds are issued;

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

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

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



1 "**§39A-192 Department powers as to energy projects.** In
2 addition to powers [~~which~~] that it may now have, the department
3 shall have all powers necessary or convenient to accomplish the
4 purposes of this part. The powers of the department include but
5 are not limited to the following:

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

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

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

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

18 (3) To lend the proceeds of the special purpose revenue
19 bonds issued for an energy project to the project
20 party for use and application by the project party for
21 the acquisition, purchase, construction,



1 reconstruction, improvement, betterment, or extension
2 of an energy project;

3 (4) As security for the payment of the principal of and
4 interest on the special purpose revenue bonds issued
5 for an energy project, to:

6 (A) Pledge, assign, hypothecate, or otherwise
7 encumber all or any part of the revenues and
8 receipts derived or to be derived by the
9 department under the project agreement for the
10 energy project for which [~~such~~] the special
11 purpose revenue bonds are issued;

12 (B) Pledge and assign the interest and rights of the
13 department under the project agreement or other
14 agreement with respect to [~~such~~] the project or
15 [~~such~~] the special purpose revenue bonds;

16 (C) Pledge and assign any bond, debenture, note, or
17 other evidence of indebtedness received by the
18 department with respect to [~~such~~] the energy
19 project; or

20 (D) Any combination of the foregoing;

21 (5) To extend or renew any project agreement or any other
22 agreement related thereto; provided that any [~~such~~]



1 renewal or extension shall be subject to the approval
2 of the governor unless made in accordance with
3 provisions for ~~such~~ the extension or renewal
4 contained in a project agreement or related agreement
5 theretofore approved by the governor; and

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

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

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

17 "[+]§39A-222[+] **Department powers as to early childhood**
18 **education and care facilities.** In addition to powers ~~which~~
19 that it may now have, the department shall have all powers
20 necessary or convenient to accomplish the purposes of this part.
21 The powers of the department include[7] but are not limited
22 to[7] 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 enter into and carry out a project
4 agreement, or an amendment or supplement to an
5 existing project agreement, with a project party, and
6 to enter into and carry out any agreement, whereby the
7 obligation of a project party under a project
8 agreement will be unconditionally guaranteed by a
9 person other than a project party[~~7~~];
- 10 (2) To issue special purpose revenue bonds pursuant to and
11 in accordance with this part[~~7~~];
- 12 (3) To lend the proceeds of the special purpose revenue
13 bonds issued for a project to the project party for
14 use and application by the project party for the
15 acquisition, purchase, construction, reconstruction,
16 improvement, betterment, extension, or refinancing of
17 outstanding obligations related to a project[~~7~~];
- 18 (4) As security for the payment of the principal of,
19 premium, if any, and interest of the special purpose
20 revenue bonds issued for this project, to [~~pledge~~]:
- 21 (A) Pledge, assign, hypothecate, or otherwise
22 encumber all or any part of the revenues and



1 receipts derived or to be derived by the
2 department under the project agreement for the
3 project for which [~~such~~] the special purpose
4 revenue bonds are issued; [~~to pledge~~]

5 (B) Pledge and assign the interest and rights of the
6 department under the project agreement or other
7 agreement with respect to [~~such~~] the project or
8 [~~such~~] the special purpose revenue bonds; [~~and to~~
9 ~~pledge~~]

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

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

12 "~~§~~39A-252~~§~~ Department powers as to private
13 nonsectarian and sectarian elementary schools, secondary
14 schools, colleges, and universities. In addition to powers that
15 it may now have, the department shall have all powers necessary
16 or convenient to accomplish the purposes of this part. The
17 powers of the department include but are not limited to the
18 following:

19 (1) Notwithstanding and without compliance with section
20 103-7~~§~~ and chapter 103D, but with the approval of
21 the governor, to:



- 1 (A) Enter into and carry out a project agreement or
2 an amendment or supplement to an existing project
3 agreement with a project party; and
- 4 (B) Enter into and carry out any agreement, whereby
5 the obligation of a project party under a project
6 agreement will be unconditionally guaranteed by a
7 person other than a project party;
- 8 (2) To issue special purpose revenue bonds pursuant to and
9 in accordance with this part;
- 10 (3) To lend the proceeds of the special purpose revenue
11 bonds issued for a project to the project party for
12 use and application by the project party for the
13 acquisition, purchase, construction, reconstruction,
14 improvement, betterment, extension, or refinancing of
15 outstanding obligations related to a project;
- 16 (4) As security for the payment of the principal, premium,
17 if any, and interest of the special purpose revenue
18 bonds issued for this project, to [~~pledge~~]:
- 19 (A) Pledge, assign, hypothecate, or otherwise
20 encumber all or any part of the revenues and
21 receipts derived or to be derived by the
22 department under the project agreement for the



1 project for which [~~such~~] the special purpose
2 revenue bonds are issued; [~~to pledge~~]

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

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

10 (D) Any combination of the foregoing;

11 (5) To extend or renew any project agreement or any other
12 agreement related to the project agreement; provided
13 that any [~~such~~] renewal or extension shall be subject
14 to the approval of the governor unless made in
15 accordance with provisions for [~~such~~] the extension or
16 renewal contained in a project agreement or related
17 agreement 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 of the project for lease
3 or transfer to a project party, nor shall the State operate a
4 project on behalf of a project party."

5 PART III

6 SECTION 11. The purpose of this part is to provide an
7 exemption from the State's procurement code for special facility
8 revenue bonds for special facilities acquired, constructed,
9 improved, and developed by the high technology development
10 corporation solely for the use by another party.

11 SECTION 12. Section 206M-42, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§206M-42 Powers.** In addition to any other powers granted
14 to the development corporation by law, the development
15 corporation may:

16 (1) ~~With~~ Without compliance with chapter 103D, but with
17 the approval of the governor, enter into a special
18 facility lease or an amendment or supplement thereto
19 whereby the development corporation agrees to acquire,
20 construct, improve, install, equip, and develop a
21 special facility solely for the use by another party
22 to a special facility lease;



- 1 (2) With the approval of the governor, issue special
2 facility revenue bonds in principal amounts that may
3 be necessary to yield the amount of the cost of any
4 acquisition, construction, improvement, installation,
5 equipping, and development of any special facility,
6 including, subject to paragraph (6), the costs of
7 acquisition of the site thereof; provided that the
8 total principal amount of the special facility revenue
9 bonds which may be issued pursuant to the
10 authorization of this section shall not exceed
11 \$100,000,000;
- 12 (3) With the approval of the governor, issue refunding
13 special facility revenue bonds with which to provide
14 for the payment of outstanding special facility
15 revenue bonds (including any special facility revenue
16 bonds theretofore issued for this refunding purpose)
17 or any part thereof; provided any issuance of
18 refundng special facility revenue bonds shall not
19 reduce the principal amount of the bonds that may be
20 issued as provided in paragraph (2);
- 21 (4) Perform and carry out the terms and provisions of any
22 special facility lease;



- 1 (5) Notwithstanding section 103-7 or any other law to the
2 contrary, acquire, construct, improve, install, equip,
3 or develop any special facility, or accept the
4 assignment of any contract therefor entered into by
5 the other party to the special facility lease;
- 6 (6) Construct any special facility on land owned by the
7 State; provided that no funds derived herein shall be
8 expended for land acquisition; and
- 9 (7) Agree with the other party to the special facility
10 lease whereby any acquisition, construction,
11 improvement, installation, equipping, or development
12 of the special facility and the expenditure of moneys
13 therefor shall be undertaken or supervised by another
14 person."

PART IV

16 SECTION 13. The purpose of this part is to prohibit certain
17 governmental procurement contracts from requiring contractors to
18 defend the governmental body.

19 SECTION 14. Chapter 103D, Hawaii Revised Statutes, is
20 amended by adding a new section to part VII to be appropriately
21 designated and to read as follows:



SB 2897
SD 2
HD 2

Report Title:
Procurement Code

Description:

Requires that purchases between \$25,000 and \$50,000 shall be made in accordance with small purchase procedures and through an electronic procurement system. Restores procurement code exemption for special purpose revenue bonds. Provides procurement code exemption for special facility revenue bonds issued by the High Technology Development Corporation. Prohibits provisions in governmental procurement contracts that require the contractor to defend the governmental body. (SB2897 HD2)