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





- 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; [~~to pledge~~]
- 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; [~~and to~~  
11          pledge]
- 12          (C) Pledge and assign any bond, debenture, note, or  
13          other evidence of indebtedness received by the  
14          department with respect to [~~such~~] the project; or  
15          [any]
- 16          (D) Any combination of the foregoing[~~-~~];
- 17          (5) To extend or renew any project agreement or any other  
18          agreement related thereto; provided that any [~~such~~]  
19          renewal or extension shall be subject to the approval  
20          of the governor unless made in accordance with  
21          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 When the department finances or refines a project by the  
7 issuance of special purpose revenue bonds as contemplated by  
8 this part, the State shall not exercise the power of eminent  
9 domain to acquire a project or any part thereof for lease or  
10 transfer to a project party, nor shall the State operate a  
11 project on behalf of a project party."

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

14 "[~~+~~]**§39A-252**[~~+~~] **Department powers as to private**  
15 **nonsectarian and sectarian elementary schools, secondary**  
16 **schools, colleges, and universities.** In addition to powers that  
17 it may now have, the department shall have all powers necessary  
18 or convenient to accomplish the purposes of this part. The  
19 powers of the department include but are not limited to the  
20 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, premium,  
20          if any, and interest of the special purpose revenue  
21          bonds issued for this project, to [~~pledge~~]:

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





1 facility lease or an amendment or supplement thereto  
2 whereby the development corporation agrees to acquire,  
3 construct, improve, install, equip, and develop a  
4 special facility solely for the use by another party  
5 to a special facility lease;

6 (2) With the approval of the governor, issue special  
7 facility revenue bonds in principal amounts that may  
8 be necessary to yield the amount of the cost of any  
9 acquisition, construction, improvement, installation,  
10 equipping, and development of any special facility,  
11 including, subject to paragraph (6), the costs of  
12 acquisition of the site thereof; provided that the  
13 total principal amount of the special facility revenue  
14 bonds which may be issued pursuant to the  
15 authorization of this section shall not exceed  
16 \$100,000,000;

17 (3) With the approval of the governor, issue refunding  
18 special facility revenue bonds with which to provide  
19 for the payment of outstanding special facility  
20 revenue bonds (including any special facility revenue  
21 bonds theretofore issued for this refunding purpose)  
22 or any part thereof; provided any issuance of





1 defend the governmental body against claims of negligence.

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

5 "§103D- Defense of a governmental body. Any provision  
6 in a government contract in which professional services are to  
7 be performed by one or more construction design professionals  
8 that purports to require the construction design professionals  
9 or their business to defend, indemnify, or hold harmless the  
10 governmental body or its officers, employees, and agents from  
11 negligent acts, errors, or omissions committed by the government  
12 body or its officers, employees, and agents, is void as against  
13 public policy."

14 PART V

15 SECTION 15. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 16. This Act shall take effect on July 1, 2020.





**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. Effective July 1, 2020. (SB2897 HD3)

