
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that, while the Hawaii
2 public procurement code promotes fair and equitable treatment,
3 fosters broad-based competition, and increases public
4 confidence, in a few very limited instances, it restricts
5 compliance with legislative intent. The legislature notes that
6 legislative agencies that are preparing studies and reports for
7 submission to the legislature typically have only six to seven
8 months to prepare and print the studies and reports to submit
9 the studies and reports in a timely manner. If an agency finds
10 it necessary to hire a contractor to complete the report, the
11 requirements of the Hawaii public procurement code can delay the
12 start of work on the project, which, in turn, impinges upon the
13 agency's ability to comply timely with the legislature's
14 reporting requirement. A procurement code exemption for these
15 contracts would benefit all legislative agencies that need to
16 submit studies or reports to the legislature. Most of all,
17 however, the legislature recognizes that this exemption is
18 beneficial to the legislature itself. The legislature wants and



1 needs these studies and reports to be completed and submitted in
2 a timely manner. It is therefore appropriate that the
3 legislature help to promote this result by removing a barrier to
4 timely completion.

5 The legislature also notes that the Hawaii strategic
6 development corporation was created to address the critical
7 shortage of seed and venture capital resources in the State.
8 The legislature further finds that the nature of providing
9 venture capital investment financing is not "procurement". In
10 addition, the corporation needs the flexibility to be able to
11 respond quickly when funds come on the market; otherwise, it may
12 be impeded from fulfilling its statutory purposes. A
13 procurement exemption for the Hawaii strategic development
14 corporation will enable it to operate in a time-sensitive,
15 market-driven environment and meet the demands of private-sector
16 investors and entrepreneurs.

17 The legislature also finds that Act 216, Session Laws of
18 Hawaii 2004 (Act 216), repealed the Hawaii public procurement
19 code exemptions for the high technology development corporation
20 established by section 206M-3, Hawaii Revised Statutes (HRS),
21 relating to general powers of the corporation, and section
22 206M-42, HRS, relating to special facility leases. However, Act



1 216 did not amend section 206M-16(b), HRS, which provides an
2 exemption for project agreements, construction contracts, lease
3 and sublease agreements, or other contracts, unless a project
4 agreement so requires.

5 The Attorney General recommended, in testimony on
6 October 24, 2005, that sections 206M-3 and 206M-42, HRS be
7 amended to restore the exemptions that were repealed by Act 216
8 if the intent of the legislature is to confer a broad
9 procurement code exemption to the corporation. The existing
10 exemption under section 206M-16(b), HRS, does not provide a
11 broad exemption.

12 Finally, the legislature finds that a procurement code
13 exemption for the natural energy laboratory of Hawaii authority
14 would make it more efficient in its procurement process and
15 enable it to attract more competent service providers. Because
16 the authority is a unique agency that deals with various
17 cutting-edge technology projects, it is sometimes not practical
18 for it to go through the processes required by the procurement
19 code to select the best services from competent contractors
20 without long delays. Federal funds earmarked to the authority
21 are very difficult to pass through to contracted agencies under
22 procurement code procedures. Allowing the authority to procure



1 goods and services without the necessity of a bid process would
2 give it the opportunity to work with universities and
3 laboratories conducting research on a continual contract basis,
4 particularly when federal moneys are involved. Further, the
5 legislature notes that the natural energy laboratory of Hawaii
6 authority is subject to periodic federal government audits in
7 connection with the expenditure of federal funds.

8 The purpose of this Act is to:

9 (1) Provide an exemption from the Hawaii public
10 procurement code:

11 (A) For the services of contractors under contract
12 with a legislative agency to prepare a study or
13 report for the legislature;

14 (B) For the Hawaii strategic development corporation;
15 and

16 (C) For the natural energy laboratory of Hawaii
17 authority; and

18 (2) Restore the procurement code exemptions for the high
19 technology development corporation.

20 SECTION 2. Chapter 211G, part II, Hawaii Revised Statutes,
21 is amended by adding a new section to read as follows:



1 "§211G- Procurement exemption. The corporation shall be
2 exempt from the procurement code under chapter 103D."

3 SECTION 3. Section 103D-102, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Notwithstanding subsection (a), this chapter shall
6 not apply to contracts by governmental bodies:

7 (1) Solicited or entered into before July 1, 1994, unless
8 the parties agree to its application to a contract
9 solicited or entered into prior to July 1, 1994;

10 (2) To disburse funds, irrespective of their source:

11 (A) For grants or subsidies as those terms are
12 defined in section 42F-101, made by [~~the~~]:

13 (i) The State in accordance with standards
14 provided by law as required by article VII,
15 section 4, of the State Constitution; [~~or by~~
16 ~~the~~]

17 (ii) The counties pursuant to their respective
18 charters or ordinances;

19 (B) To make payments to or on behalf of public
20 officers and employees for salaries, fringe
21 benefits, professional fees, or reimbursements;



- 1 (C) To satisfy obligations that the State is required
- 2 to pay by law, including paying fees, permanent
- 3 settlements, subsidies, or other claims, making
- 4 refunds, and returning funds held by the State as
- 5 trustee, custodian, or bailee;
- 6 (D) For entitlement programs, including public
- 7 assistance, unemployment, and workers'
- 8 compensation programs, established by state or
- 9 federal law;
- 10 (E) For dues and fees of organizations of which the
- 11 State or its officers and employees are members,
- 12 including the National Association of Governors,
- 13 the National Association of State and County
- 14 Governments, and the Multi-State Tax Commission;
- 15 (F) For deposit, investment, or safekeeping,
- 16 including expenses related to their deposit,
- 17 investment, or safekeeping;
- 18 (G) To governmental bodies of the State;
- 19 (H) As loans, under loan programs administered by a
- 20 governmental body; and
- 21 (I) For contracts awarded in accordance with chapter
- 22 103F[~~-~~];



- 1 (3) To procure goods, services, or construction from a
2 governmental body other than the University of Hawaii
3 bookstores, from the federal government, or from
4 another state or its political subdivision;
- 5 (4) To procure the following goods or services [~~which~~]
6 that are available from multiple sources but for which
7 procurement by competitive means is either not
8 practicable or not advantageous to the State:
- 9 (A) Services of expert witnesses for potential and
10 actual litigation of legal matters involving the
11 State, its agencies, and its officers and
12 employees, including administrative quasi-
13 judicial proceedings;
- 14 (B) Works of art for museum or public display;
- 15 (C) Research and reference materials, including
16 books, maps, periodicals, and pamphlets, [~~which~~]
17 that are published in print, video, audio,
18 magnetic, or electronic form;
- 19 (D) Meats and foodstuffs for the Kalaupapa
20 settlement;
- 21 (E) Opponents for athletic contests;



- 1 (F) Utility services whose rates or prices are fixed
- 2 by regulatory processes or agencies;
- 3 (G) Performances, including entertainment, speeches,
- 4 and cultural and artistic presentations;
- 5 (H) Goods and services for commercial resale by the
- 6 State;
- 7 (I) Services of printers, rating agencies, support
- 8 facilities, fiscal and paying agents, and
- 9 registrars for the issuance and sale of the
- 10 State's or counties' bonds;
- 11 (J) Services of attorneys employed or retained to
- 12 advise, represent, or provide any other legal
- 13 service to the State or any of its agencies, on
- 14 matters arising under laws of another state or
- 15 foreign country[7] or in an action brought in
- 16 another state, federal, or foreign jurisdiction,
- 17 when substantially all legal services are
- 18 expected to be performed outside this State;
- 19 (K) Financing agreements under chapter 37D; and
- 20 (L) Any other goods or services [~~which~~] that the
- 21 policy board determines by rules or the chief
- 22 procurement officer determines in writing is



1 available from multiple sources but for which
2 procurement by competitive means is either not
3 practicable or not advantageous to the State;
4 [~~and~~]

5 (5) For services of contractors contracted by a
6 legislative agency for the purpose of preparing a
7 study or report for submission to the legislature; and

8 [~~(5) Which~~] (6) That are specific procurements expressly
9 exempt from any or all of the requirements of this
10 chapter by:

11 (A) References in state or federal law to provisions
12 of this chapter or a section of this chapter, or
13 references to a particular requirement of this
14 chapter; and

15 (B) Trade agreements, including the Uruguay Round
16 General Agreement on Tariffs and Trade (GATT)
17 [~~which~~], that require certain non-construction
18 and non-software development procurements by the
19 comptroller to be conducted in accordance with
20 its terms."

21 SECTION 4. Section 206M-3, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:

1 "(b) The corporation shall be exempt from [~~chapter~~
2 chapters 102[~~7~~] and 103D."

3 SECTION 5. Section 206M-42, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§206M-42 Powers.** In addition to any other powers granted
6 to the development corporation by law, the development
7 corporation may:

8 (1) With the approval of the governor[~~7~~] and without
9 public bidding, enter into a special facility lease or
10 an amendment or supplement thereto whereby the
11 development corporation agrees to acquire, construct,
12 improve, install, equip, and develop a special
13 facility solely for the use by another party to a
14 special facility lease;

15 (2) With the approval of the governor, issue special
16 facility revenue bonds in principal amounts that may
17 be necessary to yield the amount of the cost of any
18 acquisition, construction, improvement, installation,
19 equipping, and development of any special facility,
20 including, subject to paragraph (6), the costs of
21 acquisition of the site thereof; provided that the
22 total principal amount of the special facility revenue



1 bonds [~~which~~] that may be issued pursuant to the
2 authorization of this section shall not exceed
3 \$100,000,000;

4 (3) With the approval of the governor, issue refunding
5 special facility revenue bonds with which to provide
6 for the payment of outstanding special facility
7 revenue bonds (including any special facility revenue
8 bonds theretofore issued for this refunding purpose)
9 or any part thereof; provided any issuance of
10 refundng special facility revenue bonds shall not
11 reduce the principal amount of the bonds that may be
12 issued as provided in paragraph (2);

13 (4) Perform and carry out the terms and provisions of any
14 special facility lease;

15 (5) Notwithstanding section 103-7 or any other law to the
16 contrary, acquire, construct, improve, install, equip
17 or develop any special facility[~~r~~] or accept the
18 assignment of any contract therefor entered into by
19 the other party to the special facility lease;

20 (6) Construct any special facility on land owned by the
21 State; provided that no funds derived herein shall be
22 expended for land acquisition; and

1 (7) Agree with the other party to the special facility
 2 lease whereby any acquisition, construction,
 3 improvement, installation, equipping, or development
 4 of the special facility and the expenditure of moneys
 5 therefor shall be undertaken or supervised by another
 6 person. Any agreement under this paragraph shall not
 7 be subject to chapter 103D."

8 SECTION 6. Section 227D-7, Hawaii Revised Statutes, is
 9 amended by amending subsection (b) to read as follows:

10 "(b) The authority shall not be subject to [~~the~~
 11 ~~requirements of chapter~~] chapters 103 and 103D for project
 12 agreements, construction contracts, retail concession or tour-
 13 related contracts, or other contracts, unless a project
 14 agreement with respect to a project or research and technology
 15 park shall require otherwise."

16 SECTION 7. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect upon its approval.

Report Title:

Procurement Code

Description:

Provides a procurement exemption for the natural energy laboratory of Hawaii authority, Hawaii strategic development corporation, high technology development corporation, and contracted services with a legislative agency to prepare studies or reports for legislative submittal. (CD1)

