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# 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 state agencies, who 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 in order to  
9 submit to the legislature in a timely manner. If an agency  
10 finds it necessary to hire a contractor to complete the report,  
11 the requirements of the Hawaii public procurement code can delay  
12 the start of work on the project, which in turn impinges upon  
13 the agency's ability to timely comply with the legislature's  
14 reporting requirement. A procurement code exemption for these  
15 contracts would benefit all government agencies in all branches  
16 of government that need to submit studies or reports to the  
17 legislature. Most of all, however, the legislature recognizes  
18 that this exemption is beneficial to the legislature itself.



1 The legislature wants and needs these studies and reports to be  
2 completed and submitted in a timely manner. It is therefore  
3 appropriate that the legislature help to promote this result by  
4 removing a barrier to 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18 Hawaii 2004, repealed the Hawaii public procurement code  
19 exemptions for the high technology development corporation  
20 established by section 206M-3, Hawaii Revised Statutes, relating  
21 to general powers of the corporation, and section 206M-42,  
22 Hawaii Revised Statutes, relating to special facility leases.



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

6 The Attorney General recommended, in testimony on  
7 October 24, 2005, that sections 206M-3 and 206M-42 be amended to  
8 restore the exemptions that were repealed by Act 216 if the  
9 intent of the legislature is to confer a broad procurement code  
10 exemption to the corporation. The existing exemption under  
11 section 206M-16(b) does not provide a 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 cutting  
17 edge technology projects, it is sometimes not practical for it  
18 to go through the processes required by the procurement code to  
19 select the best services from competent contractors without long  
20 delays. Federal funds earmarked to the authority are very  
21 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 going through a bid  
2 process would give it the opportunity to work with universities  
3 and laboratories conducting research on a continual contract  
4 basis, particularly when federal moneys are involved. Further,  
5 the legislature notes that the national energy laboratory of  
6 Hawaii authority is subject to periodic federal government  
7 audits in 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 governmental body for the purpose of  
13 preparing a study or report for submission to the  
14 legislature;

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

17 (C) For the national energy laboratory of Hawaii  
18 authority; and

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

21 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:



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

3           (1) Solicited or entered into before July 1, 1994, unless  
4 the parties agree to its application to a contract  
5 solicited or entered into prior to July 1, 1994;

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

7           (A) For grants or subsidies as those terms are  
8 defined in section 42F-101, made\_ by the State  
9 in accordance with standards provided by law as  
10 required by article VII, section 4, of the State  
11 Constitution; or by the counties pursuant to  
12 their respective charters or ordinances;

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

16           (C) To satisfy obligations that the State is required  
17 to pay by law, including paying fees, permanent  
18 settlements, subsidies, or other claims, making  
19 refunds, and returning funds held by the State as  
20 trustee, custodian, or bailee;

21           (D) For entitlement programs, including public  
22 assistance, unemployment, and workers'



- 1 compensation programs, established by state or  
2 federal law;
- 3 (E) For dues and fees of organizations of which the  
4 State or its officers and employees are members,  
5 including the National Association of Governors,  
6 the National Association of State and County  
7 Governments, and the Multi-State Tax Commission;
- 8 (F) For deposit, investment, or safekeeping,  
9 including expenses related to their deposit,  
10 investment, or safekeeping;
- 11 (G) To governmental bodies of the State;
- 12 (H) As loans, under loan programs administered by a  
13 governmental body; and
- 14 (I) For contracts awarded in accordance with chapter  
15 103F[-];
- 16 (3) To procure goods, services, or construction from a  
17 governmental body other than the University of Hawaii  
18 bookstores, from the federal government, or from  
19 another state or its political subdivision;
- 20 (4) To procure the following goods or services [~~which~~]  
21 that are available from multiple sources but for which



- 1 procurement by competitive means is either not  
2 practicable or not advantageous to the State:
- 3 (A) Services of expert witnesses for potential and  
4 actual litigation of legal matters involving the  
5 State, its agencies, and its officers and  
6 employees, including administrative quasi-  
7 judicial proceedings;
  - 8 (B) Works of art for museum or public display;
  - 9 (C) Research and reference materials, including  
10 books, maps, periodicals, and pamphlets, [~~which~~]  
11 that are published in print, video, audio,  
12 magnetic, or electronic form;
  - 13 (D) Meats and foodstuffs for the Kalaupapa  
14 settlement;
  - 15 (E) Opponents for athletic contests;
  - 16 (F) Utility services whose rates or prices are fixed  
17 by regulatory processes or agencies;
  - 18 (G) Performances, including entertainment, speeches,  
19 and cultural and artistic presentations;
  - 20 (H) Goods and services for commercial resale by the  
21 State;



- 1 (I) Services of printers, rating agencies, support
- 2 facilities, fiscal and paying agents, and
- 3 registrars for the issuance and sale of the
- 4 State's or counties' bonds;
- 5 (J) Services of attorneys employed or retained to
- 6 advise, represent, or provide any other legal
- 7 service to the State or any of its agencies, on
- 8 matters arising under laws of another state or
- 9 foreign country~~[r]~~ or in an action brought in
- 10 another state, federal, or foreign jurisdiction,
- 11 when substantially all legal services are
- 12 expected to be performed outside this State;
- 13 (K) Financing agreements under chapter 37D; and
- 14 (L) Any other goods or services [~~which~~] that the
- 15 policy board determines by rules or the chief
- 16 procurement officer determines in writing is
- 17 available from multiple sources but for which
- 18 procurement by competitive means is either not
- 19 practicable or not advantageous to the State;
- 20 [~~and~~]





1        (5) For services of contractors contracted by a  
2                    governmental body for the purpose of preparing a study  
3                    or report for submission to the legislature; and

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

7                    (A) References in state or federal law to provisions  
8                    of this chapter or a section of this chapter, or  
9                    references to a particular requirement of this  
10                    chapter; and

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

17        SECTION 3. Chapter 211G, part II, Hawaii Revised Statutes,  
18 is amended by adding a new section to read as follows:

19        "**\$211G- Procurement exemption.** The corporation shall be  
20 exempt from the procurement code under chapter 103D."

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[+] 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[+] 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.



SB2997, SD1

**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 governmental body to prepare studies or reports for legislative submittal. (SD1)

