
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 administrative
2 review of determinations made by the chief procurement officer
3 is handled by the department of commerce and consumer affairs.
4 Since the agencies that are rendering a determination and
5 reviewing the fairness of that determination are both state
6 executive agencies, a possible conflict of interest arises. To
7 enhance the procurement process and provide a more fair and
8 impartial rendering and review of procurement determinations,
9 this Act transfers the review of procurement determinations to
10 the office of the ombudsman, a legislative agency.

11 SECTION 2. Section 96-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§96-3 Assistance, staff, delegation, funding.** The
14 ombudsman shall appoint a first assistant, one or more
15 administrative hearings officers pursuant to section 103D-
16 709(a), and other officers and employees as may be necessary to
17 carry out this chapter. All employees, including the first
18 assistant, shall be hired by the ombudsman and shall serve at



1 the ombudsman's pleasure. In determining the salary of each
2 employee, the ombudsman shall consult with the department of
3 human resources development and shall follow as closely as
4 possible the recommendations of the department. Effective July
5 1, 2005, the first assistant's salary shall be not more than
6 eighty-seven per cent of the salary of the ombudsman. The
7 ombudsman and the ombudsman's full-time staff shall be entitled
8 to participate in any employee benefit plan.

9 The ombudsman may delegate to the ombudsman's appointees
10 any of the ombudsman's duties except those specified in sections
11 96-12 and 96-13; provided that during the absence of the
12 ombudsman from the island of Oahu, or the ombudsman's temporary
13 inability to exercise and discharge the powers and duties of the
14 ombudsman's office, the powers and duties as contained in
15 sections 96-12 and 96-13 shall devolve upon the first assistant
16 during the ombudsman's absence or inability.

17 The funds for the support of the office of the ombudsman
18 shall be provided for in the act providing for the expenses of
19 the legislature."

20 SECTION 3. Section 96-5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§96-5 Jurisdiction.** The ombudsman has jurisdiction to
2 [investigate]:

3 (1) Investigate the administrative acts of agencies and
4 [~~the ombudsman~~] may exercise the ombudsman's powers
5 without regard to the finality of any administrative
6 act[-]; and

7 (2) Review and determine de novo, pursuant to section
8 103D-709(a), determinations of the chief procurement
9 officer, head of a purchasing agency, or a designee of
10 either officer under sections 103D-310, 103D-701, or
11 103D-702."

12 SECTION 4. Section 96-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§96-6 Investigation of complaints[-] duties.** (a) The
15 ombudsman may investigate any complaint which the ombudsman
16 determines to be an appropriate subject for investigation under
17 section 96-8.

18 (b) The ombudsman may investigate on the ombudsman's own
19 motion if the ombudsman reasonably believes that an appropriate
20 subject for investigation under section 96-8 exists.

21 (c) Pursuant to section 103D-709(a), the ombudsman shall
22 assign an administrative hearings officer to review and



1 determine de novo, determinations of the chief procurement
2 officer, head of a purchasing agency, or a designee of either
3 officer under sections 103D-310, 103D-701, or 103D-702."

4 SECTION 5. Section 103D-709, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) [~~The several hearings officers appointed by the~~
7 ~~director of the department of commerce and consumer affairs~~
8 ~~pursuant to section 26-9(f)] An administrative hearings officer
9 in the office of the ombudsman shall have jurisdiction to review
10 and determine de novo any request from any bidder, offeror,
11 contractor or governmental body aggrieved by a determination of
12 the chief procurement officer, head of a purchasing agency, or a
13 designee of either officer under sections 103D-310, 103D-701, or
14 103D-702."~~

15 SECTION 6. Notwithstanding any other law to the contrary,
16 all the rights, powers, functions, and duties of the
17 administrative hearings officer under the department of commerce
18 and consumer affairs reviewing procurement matters shall be
19 transferred to the office of the ombudsman.

20 The administrative hearings officer shall be transferred to
21 the office of the ombudsman and perform the same functions and
22 continue to perform the administrative hearing officer's regular

1 duties upon the transfer, subject to state personnel laws and
2 this Act.

3 The administrative hearings officer shall not suffer any
4 loss of salary, seniority, prior service credit, vacation, sick
5 leave, or other employee benefit or privilege as a consequence
6 of this Act; provided that subsequent changes in status may be
7 made pursuant to applicable laws.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

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

11

INTRODUCED BY: *Bud Cann*
[Signature]
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JAN 22 2007



Report Title:

Procurement; Ombudsman

Description:

Transfers the review function of state procurement determinations to the office of the ombudsman.

