

JAN 24 2007

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# A BILL FOR AN ACT

RELATING TO PUBLIC PROCUREMENT.

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

1           SECTION 1. Chapter 103D, Hawaii Revised Statutes, is  
2 amended by adding a new section to part VII to be appropriately  
3 designated and to read as follows:

4           "§103D-       Authority to assess an administrative fine. (a)

5 After reasonable notice to the person involved and reasonable  
6 opportunity for that person to be heard, the chief procurement  
7 officer, after consultation with the using agency and the  
8 attorney general or corporation counsel, may render a written  
9 decision or issue a written order providing for the assessment  
10 of an administrative fine.

11           (b) The authority to assess an administrative fine shall  
12 be exercised in accordance with the rules adopted by the policy  
13 board and shall be applied to violations as determined by the  
14 policy board pursuant to section 103D-202.

15           (c) A written decision or written order under this section  
16 shall be final and conclusive, unless the person assessed the



1 administrative fine commences an administrative proceeding under  
2 section 103D-709."

3 SECTION 2. Section 103D-202, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§103D-202 Authority and duties of the policy board. (a)  
6 Except as otherwise provided in this chapter, the policy board  
7 shall ~~[have the authority and responsibility to]~~ adopt rules~~[~~  
8 ~~consistent with this chapter,~~] governing ~~[the]~~;

9 (1) The procurement, management, control, and disposal of  
10 any and all goods, services, and construction[-]; and

11 (2) The assessment and collection of administrative fines.

12 (b) All rules shall be adopted in accordance with chapter  
13 91; provided that the policy board ~~[shall have the power to]~~ may  
14 issue interim rules by procurement directives, which shall be  
15 exempt from the public notice, public hearing, and gubernatorial  
16 approval requirements of chapter 91. The interim rules shall be  
17 effective for not more than eighteen months.

18 (c) The policy board shall ~~[consider]~~ also:

19 (1) Consider and decide matters of policy ~~[within the~~  
20 ~~scope of this chapter]~~, including those referred to it  
21 by a chief procurement officer~~[-. The policy board~~  
22 ~~shall have the power to audit]~~;



- 1           (2) Audit and monitor the implementation of its rules and  
2           ~~[the requirements of]~~ this chapter, ~~[but shall not~~  
3           ~~exercise authority over]~~ except for the award or  
4           administration of any particular contract, or ~~[over]~~  
5           any dispute, claim, or litigation pertaining  
6           ~~[thereto.]~~ to the award or administration of any  
7           particular contract; and
- 8           (3) Set administrative fines for the violations of its  
9           rules and this chapter it deems necessary and proper."

10           SECTION 3. Section 103D-704, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§103D-704 Exclusivity of remedies.** The procedures and  
13 remedies provided for in this part, and the rules adopted by the  
14 policy board, shall be the exclusive means available for persons  
15 aggrieved in connection with the solicitation or award of a  
16 contract, a suspension or debarment proceeding, the assessment  
17 of an administrative fine, or in connection with a contract  
18 controversy, to resolve their claims or differences. The  
19 contested case proceedings set out in chapter 91 shall not apply  
20 to protested solicitations and awards, debarments or  
21 suspensions, the assessment of an administrative fine, or the  
22 resolution of contract controversies."



1 SECTION 4. Section 103D-709, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (a) to read:

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

12 2. By amending subsection (c) to read:

13 "(c) Only parties to the protest made and decided pursuant  
14 to sections 103D-310(b), 103D-701, 103D-702(g), 103D-709(a),  
15 [~~103D-310(b)~~, and [~~103D-702(g)~~]] and 103D- may initiate a  
16 proceeding under this section. The party initiating the  
17 proceeding shall have the burden of proof, including the burden  
18 of producing evidence [~~as well as~~] and the burden of persuasion.  
19 The degree or quantum of proof shall be a preponderance of the  
20 evidence. All parties to the proceeding shall be afforded an  
21 opportunity to present oral or documentary evidence, conduct

1 cross-examination as may be required, and argument on all issues  
2 involved. The rules of evidence shall apply."

3 SECTION 5. Section 103D-712, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Requests for administrative review under section  
6 103D-709 shall be made directly to the office of administrative  
7 hearings of the department of commerce and consumer affairs  
8 within seven calendar days of the issuance of a written  
9 determination under section 103D-310, 103D-701, [~~or~~] 103D-  
10 702 [~~or~~], or 103D- ."

11 SECTION 6. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.  
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INTRODUCED BY:

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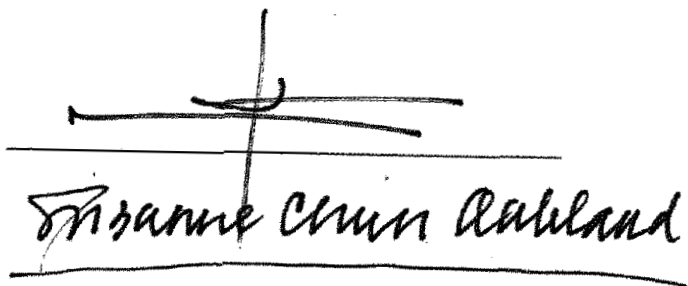
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S.B. NO. 1929

A handwritten signature in cursive script, reading "Thomas Crum Oakland", is written on a horizontal line. Above the signature, there are several additional horizontal lines and a vertical line that intersect to form a stylized mark or signature element.



**Report Title:**

Public Procurement Code; Administrative Fines

**Description:**

Authorizes the procurement policy board to set administrative fines and authorizes the chief procurement officer to assess the administrative fines.

