
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 legislature finds that if the state
3 procurement policy office is to fully discharge its
4 responsibilities, it must take further steps to ensure that
5 government agencies comply with the Hawaii public procurement
6 code.

7 The purpose of this part is to require the procurement
8 policy board to conduct compliance audits.

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

11 "**§103D-202 Authority and duties of the procurement policy**
12 **board.** (a) Except as otherwise provided in this chapter, the
13 procurement policy board shall have the authority and
14 responsibility to adopt rules, consistent with this chapter,
15 governing the procurement, management, control, and disposal of
16 any and all goods, services, and construction. All rules shall
17 be adopted in accordance with chapter 91; provided that the



1 policy board shall have the power to issue interim rules by
2 procurement directives, which shall be exempt from the public
3 notice, public hearing, and gubernatorial approval requirements
4 of chapter 91. The interim rules shall be effective for not
5 more than eighteen months.

6 (b) The policy board shall consider and decide matters of
7 policy within the scope of this chapter including those referred
8 to it by a chief procurement officer.

9 (c) The policy board shall [~~have the power to~~] audit and
10 monitor the implementation of its rules and the requirements of
11 this chapter; but shall not exercise authority over the award or
12 administration of any particular contract, or over any dispute,
13 claim, or litigation pertaining thereto.

14 The policy board shall ensure compliance with this chapter
15 by:

16 (1) Annually performing compliance audits on a minimum of
17 two governmental departments, divisions, or agencies,
18 to be randomly selected by the policy board;

19 (2) Selecting any department, division, or agency for a
20 compliance audit:

21 (A) Based upon a pattern of noncompliance;



1 (B) Based upon circumstances of a particular
2 procurement that may indicate an intention to
3 circumvent this chapter; or

4 (C) As otherwise authorized by law,
5 and conducting follow-up audits of a department,
6 division, or agency that has been audited under
7 paragraph (2)(A) or (B);

8 and

9 (3) Reporting the results of all compliance audits to the
10 legislature no later than twenty days before the
11 convening of each regular session."

12 PART II

13 SECTION 3. The Hawaii public procurement code was
14 originally enacted by Act 8, Special Session Laws of Hawaii
15 1993, codified as chapter 103D, Hawaii Revised Statutes. Since
16 1993, only one audit of the State's procurement practices has
17 been performed. That audit, Auditor's Report No. 95-8, was
18 performed in 1995 and states in pertinent part in the summary:

19 "We found that the administration has been slow in
20 implementing the procurement code and has not taken the
21 necessary steps to ensure effective implementation. The
22 late start of the Procurement Policy Office without



1 appropriate staff has limited the ability of the policy
2 board to carry out its responsibilities. Furthermore, the
3 late appointment of the interim administrator of the
4 Procurement Office delayed development of an on-going
5 training program, procurement manual, and a periodic review
6 of the procurement process. Because rules were issued late
7 and insufficient attention was paid to interpreting the law
8 and communicating the rules clearly, we found a number of
9 instances of noncompliance and confusion about the law and
10 rules. . . .

11 The new procurement organization structure is
12 ineffective with conflicting and unclear roles and
13 responsibilities. The division of responsibility and
14 authority between the administrator and the policy office
15 is not clear in law or practice. Both have a
16 responsibility to audit procurement practices. In
17 addition, we found that the administrator has conflicting
18 roles as the chief procurement officer (CPO) for the
19 Executive Branch and as the individual responsible for
20 reviewing procurement practices of all governmental
21 agencies."



1 The legislature finds that a new audit is timely and
2 necessary, given that thirteen years have elapsed since the 1993
3 audit and the recent problems in state procurement practices
4 brought to light during the interim hearings by the senate
5 committee on tourism and government operations. One of the
6 concerns is the apparent noncompliance with procurement laws in
7 the award of contracts, which is a critical element of public
8 procurement.

9 The purpose of this part is to require the auditor to
10 conduct a compliance, performance, and management audit of
11 executive agency compliance with chapter 103D, Hawaii Revised
12 Statutes, and the administrative rules adopted thereto.

13 SECTION 4. The auditor shall conduct a compliance,
14 performance, and management audit of chapter 103D, Hawaii
15 Revised Statutes, and the administrative rules adopted pursuant
16 to chapter 103D. The audit shall be limited to the state
17 procurement office and the purchasing agencies, as defined in
18 section 103D-104, Hawaii Revised Statutes, of the State, not
19 including the legislature, judicial branch, office of Hawaiian
20 affairs, and the several counties.

21 The purpose of the audit, among other relevant issues as
22 determined by the auditor, shall be to determine compliance with



1 chapter 103D, Hawaii Revised Statutes, including but not limited
2 to:

- 3 (1) Compliance with requirements that contracts be awarded
4 to the highest ranking bidder;
- 5 (2) The use of an evaluation committee by a procurement
6 purchasing agency to score proposals based on
7 evaluation criteria;
- 8 (3) Whether awards are based solely on qualifications, and
9 not on other considerations such as personal judgments
10 and biased preferences when selecting another bidder
11 with a lower score;
- 12 (4) The proper documentation of each step of the
13 procurement process by a purchasing agency and its
14 chief procurement officer, including but not limited
15 to decisions and justifications to select a bidder and
16 to award a contract;
- 17 (5) Whether adequate procurement practices training is
18 made available to and regularly attended by
19 appropriate procurement officials of state agencies;
20 and



1 (6) The proper use of an alternative procurement method.

2 SECTION 5. The auditor may contract with a private entity
3 for purposes of conducting the audit and studies required under
4 this part.

5 SECTION 6. The auditor shall make an interim report of the
6 findings and recommendations to the legislature no later than
7 twenty days prior to the convening of the regular session of
8 2009, and a final report on findings and recommendations,
9 including proposals for statutory amendments, to the legislature
10 no later than twenty days prior to the convening of the regular
11 session of 2010.

12 SECTION 7. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2008-2009 for
15 the auditor to contract for an audit pursuant to section 5 of
16 this part.

17 The sum appropriated shall be expended by the office of the
18 auditor for the purposes of this part.

19 PART III

20 SECTION 8. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 9. This Act shall take effect on July 1, 2034.



Report Title:

Procurement Code; Random Audits; Auditor Review; Appropriation

Description:

To ensure compliance with procurement code, requires State Procurement Office annual random audits of government purchasing agencies and audits of agencies selected based on a pattern of agency noncompliance. Appropriates funds for Auditor to audit State Procurement Office and Executive agencies. (SB2824 HD1)

