
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

PART I

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

"§103D- Moneys for trade missions and goodwill trips.

(a) Notwithstanding any provision of this chapter to the contrary, any moneys received by, on behalf of, or for the benefit of a governmental body pursuant to a solicitation of funds by the governmental body to cover the costs and expenses of trade missions and goodwill trips, shall be deposited into the general fund and disbursed pursuant to legislative appropriation. This subsection shall not apply to payments received by the State for booths and participation fees."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 to cover the costs and expenses of trade missions and goodwill trips of the State.



1 maintain a procurement practices training and development
2 program for procurement officers of the State and the several
3 counties. Attendance shall be mandatory for procurement
4 officers to ensure that their agency's procurement practices are
5 in compliance with the procurement code and that proper
6 procurement decisions are made consistent with this chapter."

7 **PART III**

8 SECTION 4. Section 103D-201, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The state procurement policy board shall consist of
11 seven members. Notwithstanding [~~the limitations of~~] section 78-
12 4, the members of the board shall include:

- 13 (1) The comptroller[+] as an ex-officio non-voting member;
14 (2) A county employee with significant high-level
15 procurement experience[+and], to be nominated by the
16 governor; and
17 (3) Five persons who shall not otherwise be full-time
18 employees of the State or any county; provided that at
19 least one member shall be a certified professional in
20 the field of procurement, at least one member shall
21 have significant high-level, federal procurement
22 experience, and at least two members shall have



1 significant experience in the field of health and
2 human services[-]; and provided further that of the
3 five persons, two shall be nominated by the governor
4 from a list of names submitted to the governor by the
5 president of the senate and two shall be nominated by
6 the governor from a list of names submitted to the
7 governor by the speaker of the house of
8 representatives.

9 Each appointed member shall have demonstrated sufficient
10 business or professional experience to discharge the functions
11 of the state procurement policy board. [~~The initial and~~
12 ~~subsequent members of the policy board, other than the~~
13 ~~comptroller, shall be appointed by the governor from a list of~~
14 ~~three individuals for each vacant position, submitted by a~~
15 ~~nominating committee composed of four individuals chosen as~~
16 ~~follows: two persons appointed by the governor; one person~~
17 ~~appointed by the president of the senate; and one person~~
18 ~~appointed by the speaker of the house.] Except as provided in
19 this section, the selection and terms of the policy board
20 members shall be subject to the requirements of section 26-34.
21 No member of the state procurement policy board shall act
22 concurrently as a chief procurement officer. The members of the~~



1 state procurement policy board shall devote such time to their
2 duties as may be necessary for the proper discharge thereof."

3 **PART IV**

4 SECTION 5. Section 103D-202, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§103D-202 Authority and duties of the policy board.** (a)

7 Except as otherwise provided in this chapter, the state
8 procurement policy board shall have the authority and
9 responsibility to adopt rules, consistent with this chapter,
10 governing the procurement, management, control, and disposal of
11 any and all goods, services, and construction[-], and to appoint
12 the administrator of the state procurement office under section
13 103D-204. All rules shall be adopted in accordance with chapter
14 91; provided that the state procurement policy board shall have
15 the power to issue interim rules by procurement directives,
16 which shall be exempt from the public notice, public hearing,
17 and gubernatorial approval requirements of chapter 91. The
18 interim rules shall be effective for not more than eighteen
19 months.

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



1 (c) The state procurement policy board [~~shall have the~~
2 ~~power to~~] shall audit and monitor the implementation of its
3 rules and the requirements of this chapter; but shall not
4 exercise authority over the award or administration of any
5 particular contract, or over any dispute, claim, or litigation
6 pertaining thereto.

7 The state procurement policy board shall annually audit a
8 minimum of two executive departments, divisions, or agencies, to
9 be randomly selected, to ensure compliance with this chapter.
10 In addition, the state procurement policy board shall select any
11 department, division, or agency for compliance audits:

- 12 (1) Based upon a pattern of non-compliance;
13 (2) Based upon circumstances of a particular procurement
14 that may indicate an intention to circumvent this
15 chapter; or
16 (3) As otherwise authorized by law;
17 provided that there shall be follow-up audits of a department,
18 division, or agency that has been previously audited under
19 paragraphs (1) or (2).

20 The state procurement office shall report the results of
21 all compliance audits to the legislature no later than twenty
22 days before the convening of each regular session."



1 SECTION 6. Section 103D-204, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The administrator shall be appointed by the [~~governor~~
4 ~~from a list of no less than three and no more than five names~~
5 ~~submitted by the]~~ state procurement policy board. The
6 appointment of the administrator shall require the advice and
7 consent of the senate. The administrator may only be removed
8 from office by the governor, provided the governor shall give
9 prior notification of such removal to the chairperson of the
10 state procurement policy board, the president of the senate, and
11 the speaker of the house of representatives."

12 **PART V**

13 SECTION 7. Section 103D-206, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§103D-206 Additional duties of the administrator of the**
16 **procurement office.** In addition to the duties referred to in
17 section 103D-205, the administrator shall:

18 (1) Perform periodic review of the procurement practices
19 of all governmental bodies;

20 (2) Assist, advise, and guide governmental bodies in
21 matters relating to procurement[+], including
22 determinations of corrective actions; provided that if



1 a procurement officer fails to comply with any
2 determination rendered by the administrator within
3 thirty days from the date of the issuance of the
4 determination, or longer if permitted upon request by
5 the procurement officer, the procurement officer shall
6 be subject to an administrative fine under section
7 103D-106, for every day of noncompliance;

- 8 (3) Develop and administer a statewide procurement
9 orientation and training program;
- 10 (4) Develop, distribute, and maintain a procurement manual
11 for all state procurement officials; and
- 12 (5) Develop, distribute, and maintain a procurement guide
13 for vendors wishing to do business with the State and
14 its counties."

15 **PART VI**

16 SECTION 8. The Hawaii public procurement code was
17 originally enacted by Act 8, Special Session Laws of Hawaii
18 1993, codified as chapter 103D, Hawaii Revised Statutes. Since
19 1993, only one audit has been performed on the State's
20 procurement practices. That audit in 1995, Auditor's Report
21 No. 95-8, states in pertinent part in the summary:



1 We found that the administration has been slow in
2 implementing the procurement code and has not taken the
3 necessary steps to ensure effective implementation. The
4 late start of the Procurement Policy Office without
5 appropriate staff has limited the ability of the policy
6 board to carry out its responsibilities. Furthermore, the
7 late appointment of the interim administrator of the
8 Procurement Office delayed development of an on-going
9 training program, procurement manual, and a periodic review
10 of the procurement process. Because rules were issued late
11 and insufficient attention was paid to interpreting the law
12 and communicating the rules clearly, we found a number of
13 instances of noncompliance and confusion about the law and
14 rules. . . .

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



1 Executive Branch and as the individual responsible for
2 reviewing procurement practices of all governmental
3 agencies.

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

12 The purpose of this part is to require the auditor to
13 conduct a compliance, performance, and management audit of
14 compliance with chapter 103D, Hawaii Revised Statutes, and the
15 administrative rules adopted thereto.

16 SECTION 9. The auditor shall conduct a compliance,
17 performance, and management audit of chapter 103D, Hawaii
18 Revised Statutes, and the administrative rules adopted pursuant
19 to chapter 103D. The audit shall be limited to the state
20 procurement office and the purchasing agencies, as defined in
21 section 103D-104, Hawaii Revised Statutes, of the State, not



1 including the legislature, judicial branch, office of Hawaiian
2 affairs, and the several counties.

3 The purpose of the audit, among other relevant issues as
4 determined by the auditor, shall be to determine the
5 implementation and compliance with chapter 103D, Hawaii Revised
6 Statutes, including but not limited to:

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



1 appropriate procurement officials of state agencies;

2 and

3 (6) The proper usage of an alternative procurement method.

4 SECTION 10. The auditor may contract with a private entity
5 for purposes of conducting the audit and studies as may be
6 required under this part.

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

14 SECTION 12. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2008-2009 for
17 the auditor to contract for an audit pursuant to section 9 of
18 this Act.

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

21 **PART VII**



1 SECTION 13. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect upon its approval;
4 provided that sections 2 and 12 shall take effect on July 1,
5 2008.



Report Title:

Procurement; Omnibus

Description:

Requires moneys received for trade missions to be deposited into the general fund; appropriates funds for trade missions and goodwill trips; requires SPO to develop procurement training program; makes comptroller ex-officio non-voting member of policy board; requires senate president and house speaker to submit names to governor for appointments to policy board and repeals nominating committee; requires policy board to appoint administrator of SPO; requires SPO to make annual audits; places time limits to comply with corrective actions; requires auditor to conduct procurement audit and makes appropriation for audit.
(SD1)

