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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

**PART I.**

SECTION 1. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

(1) The comptroller[+] as an ex-officio nonvoting member;

(2) A county employee with significant high-level procurement experience; and

(3) Five persons who shall not otherwise be full-time employees of the State or any county; provided that at least one member shall be a certified professional in the field of procurement, at least one member shall have significant high-level, federal procurement experience, and at least two members shall have significant experience in the field of health and human services.



1 Each appointed member shall have demonstrated sufficient  
2 business or professional experience to discharge the functions  
3 of the state procurement policy board. The initial and  
4 subsequent members of the state procurement policy board, other  
5 than the comptroller, shall be appointed by the governor from a  
6 list of three individuals for each vacant position, submitted by  
7 a nominating committee composed of four individuals chosen as  
8 follows: two persons appointed by the governor; one person  
9 appointed by the president of the senate; and one person  
10 appointed by the speaker of the house. Except as provided in  
11 this section, the selection and terms of the state procurement  
12 policy board members shall be subject to the requirements of  
13 section 26-34. No member of the state procurement policy board  
14 shall act concurrently as a chief procurement officer. The  
15 members of the state procurement policy board shall devote such  
16 time to their duties as may be necessary for the proper  
17 discharge thereof."

18 **PART II.**

19 SECTION 2. The Hawaii public procurement code was  
20 originally enacted by Act 8, Special Session Laws of Hawaii  
21 1993, codified as chapter 103D, Hawaii Revised Statutes. Since  
22 1993, only one audit has been performed on the State's



1 procurement practices. That audit in 1995, Auditor's Report  
2 No. 95-8, states in pertinent part in the summary:

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

17 The new procurement organization structure is  
18 ineffective with conflicting and unclear roles and  
19 responsibilities. The division of responsibility and  
20 authority between the administrator and the policy office  
21 is not clear in law or practice. Both have a  
22 responsibility to audit procurement practices. In



1 addition, we found that the administrator has conflicting  
2 roles as the chief procurement officer (CPO) for the  
3 Executive Branch and as the individual responsible for  
4 reviewing procurement practices of all governmental  
5 agencies.

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

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

18 SECTION 3. The auditor shall conduct a compliance,  
19 performance, and management audit of chapter 103D, Hawaii  
20 Revised Statutes, and the administrative rules adopted pursuant  
21 to chapter 103D. The audit shall be limited to the state  
22 procurement office and the purchasing agencies, as defined in



1 section 103D-104, Hawaii Revised Statutes, of the State, not  
2 including the legislature, judicial branch, office of Hawaiian  
3 affairs, and the several counties.

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

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



1           (5) Whether adequate procurement practices training is  
2           made available to and regularly attended by  
3           appropriate procurement officials of state agencies;  
4           and

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

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

9           SECTION 5. The auditor shall make an interim report of  
10 findings and recommendations to the legislature no later than  
11 twenty days prior to the convening of the regular session of  
12 2009, and a final report on findings and recommendations,  
13 including proposals for statutory amendments, to the legislature  
14 no later than twenty days prior to the convening of the regular  
15 session of 2010.

16           SECTION 6. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$                    or so  
18 much thereof as may be necessary for fiscal year 2008-2009 for  
19 the auditor to contract for an audit pursuant to section 4 of  
20 this part.

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



1    PART III.

2                    SECTION 7. This Act shall take effect upon its approval;

3 provided that section 6 shall take effect on July 1, 2008.



**Report Title:**

Procurement Code; Auditor Review; Appropriation

**Description:**

Requires the auditor to review and make recommendations concerning the effectiveness of implementation and compliance by state departments and agencies with the Hawaii public procurement code; makes comptroller ex-officio nonvoting member of procurement board; appropriates funds for the audit. (SD1)

