

APPENDIX D

SESSION LAWS OF HAWAII 2006 REGULAR SESSION

ACT 240

S.B. NO. 2957

A Bill for an Act Relating to Energy.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for about ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel negatively impacts the environment. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature also finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

Over the years, the legislature has worked steadily to encourage the deployment of renewable energy resources and energy efficiency initiatives. This includes:

- (1) Establishing a net energy metering program, interconnection standards, and renewable energy tax credits;
- (2) Establishing greenhouse gas and energy consumption reduction goals for state facilities and requiring the use of energy efficient products in state facilities; and
- (3) Providing incentives for the deployment of solar energy devices.

The legislature also established an enforceable renewable energy portfolio standard under which twenty per cent of Hawaii's electricity is to be generated from renewable resources by the end of 2020.

There now exists an unprecedented, historical opportunity for Hawaii to emerge as a leader in the hydrogen economy.

Hydrogen technology development is already attracting billions of dollars in investment capital not only in the United States, but also in other countries in Europe, and Japan. On a national level, federal initiatives are resulting in the

development of hydrogen and fuel cell technologies in partnership with automakers and major energy companies. Analysts predict that these initiatives, along with efforts in other countries, will lead to the development of markets for hydrogen and supportive hydrogen fuel cell technologies and infrastructure. The question is no longer "if", but "when."

Locally, the historic confluence of the State's desire for energy self-sufficiency through development of renewable energy with the global opportunity of the emerging hydrogen economy calls for a major, far-sighted initiative, sustainable over the long-term, to develop Hawaii's renewable energy resources and, ultimately, to transition Hawaii to an indigenous-resource-based energy economy.

Right now, the greatest immediate opportunity to achieve this vision resides on the island of Hawaii.

On the island of Hawaii, more electricity is produced from renewable resources than can currently be used. Several wind projects are expected to be completed in the near term, exacerbating this problem. Furthermore, the Puna geothermal project is planning to increase its energy contribution only if the electric utility can take and use the energy. This provides an opportunity to use excess geothermal and other renewable energy resources to produce hydrogen using water electrolysis. This clean, renewable hydrogen would then be used as an energy carrier for stationary power and transportation fuels, making the island self-sufficient.

Hydrogen could also be exported to Oahu and other islands as the clean fuel of choice for power generation and transportation fuels, achieving greater self-sufficiency for the State of Hawaii.

To shape Hawaii's energy future and achieve the goal of energy self-sufficiency for the State of Hawaii, our efforts must continue on all fronts, integrating new and evolving technologies, seizing upon economic opportunities to become more energy efficient and economically diversified, and providing incentives and assistance to address barriers.

The purpose of this Act is to provide a one¹ segment of a larger comprehensive approach to achieving energy self-sufficiency for the State by:

- (1) Increasing the renewable energy technologies income tax credit for certain solar-thermal, wind-powered, and photovoltaic energy systems and removing the tax credits' 2008 sunset date;
- (2) Establishing a program and strategy for increased hydrogen and biofuel research and use in the State;
- (3) Establishing state support for achieving alternate fuels standards; and

- (4) Establishing the pay as you save pilot project to provide a financing mechanism to make purchases of residential solar hot water heater systems more affordable.

PART II

RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT

SECTION 2. Section 235-12.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) When the requirements of subsection (c) are met, each individual or corporate resident taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service by a taxpayer during the taxable year. This credit shall be available for systems installed and placed in service after June 30, 2003. The tax credit may be claimed as follows:

- (1) Solar thermal energy systems for:
 - (A) Single-family residential property: thirty-five per cent of the actual cost or [~~\$1,750~~] \$2,250, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
 - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less;
- (2) Wind-powered energy systems for:
 - (A) Single-family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;
 - (B) Multi-family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and
 - (C) Commercial property: twenty per cent of the actual cost or [~~\$250,000~~] \$500,000, whichever is less; and
- (3) Photovoltaic energy systems for:
 - (A) Single-family residential property: thirty-five per cent of the actual cost or [~~\$1,750~~] \$5,000, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and

(C) Commercial property: thirty-five per cent of the actual cost or [~~\$250,000~~] \$500,000, whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a)."

2. By amending subsection (c) to read:

"(c) [~~The~~] For taxable years beginning after December 31, 2005, the dollar amount of [any new federal energy tax credit similar to the credit provided in this section that is established after June 30, 2003, and] any utility rebate[~~]~~ shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit."

SECTION 3. Act 207, Session Laws of Hawaii 2003, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect on July 1, 2003[~~and shall be repealed January 1, 2008~~]."

PART III

RENEWABLE ENERGY RESEARCH AND DEVELOPMENT AND TRANSITION INTO A RENEWABLE HYDROGEN ECONOMY

SECTION 4. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§103D- Biofuel preference.** (a) Notwithstanding any other law to the contrary, contracts for the purchase of diesel fuel or boiler fuel shall be awarded to the lowest responsible and responsive bidders, with preference given to bids for biofuels or blends of biofuel and petroleum fuel.

(b) When purchasing fuel for use in diesel engines, the preference shall be five cents per gallon of one hundred per cent biodiesel. For blends containing both biodiesel and petroleum-based diesel, the preference shall be applied only to the biodiesel portion of the blend.

(c) When purchasing fuel for use in boilers, the preference shall be five cents per gallon of one hundred per cent biofuel. For blends containing both biofuel and petroleum based boiler fuel, the preference shall be applied only to the biofuel portion of the blend.

(d) As used in this section, "biodiesel" means a vegetable oil-based fuel that meets ASTM International standard D6751,

"Standard Specification for Biodiesel (B100) Fuel Blend Stock for Distillate Fuels", as amended.

(e) As used in this section, "biofuel" means fuel from non-petroleum plant or animal based sources that can be used for the generation of heat or power."

SECTION 5. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§196-A State support for achieving alternate fuels standards. The State shall facilitate the development of alternate fuels and support the attainment of a statewide alternate fuel standard of ten per cent of highway fuel demand to be provided by alternate fuels by 2010, fifteen per cent by 2015, and twenty per cent by 2020. For purposes of the alternate fuels standard, ethanol produced from cellulosic materials shall be considered the equivalent of 2.5 gallons of noncellulosic ethanol. "Alternate fuels" shall have the same meaning as contained in 10 Code of Federal Regulations Part 490; provided that it shall also include liquid or gaseous fuels produced from renewable feedstocks such as organic wastes, or from water using electricity from renewable energy sources."

SECTION 6. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§196-B Hawaii renewable hydrogen program. There is established, within the department of business, economic development, and tourism, a Hawaii renewable hydrogen program to manage the State's transition to a renewable hydrogen economy. The program shall design, implement, and administer activities that include:

- (1) Strategic partnerships for the research, development, testing, and deployment of renewable hydrogen technologies;
- (2) Engineering and economic evaluations of Hawaii's potential for renewable hydrogen use and near-term project opportunities for the State's renewable energy resources;
- (3) Electric grid reliability and security projects that will enable the integration of a substantial increase of electricity from renewable energy resources on the island of Hawaii;
- (4) Hydrogen demonstration projects, including infrastructure for the production, storage, and refueling of hydrogen vehicles;
- (5) A statewide hydrogen economy public education and outreach plan focusing on the island of Hawaii, to be

- developed in coordination with Hawaii's public education institutions;
- (6) Promotion of Hawaii's renewable hydrogen resources to potential partners and investors;
 - (7) A plan, for implementation during the years 2007 to 2010, to more fully deploy hydrogen technologies and infrastructure capable of supporting the island of Hawaii's energy needs, including:
 - (A) Expanded installation of hydrogen production facilities;
 - (B) Development of integrated energy systems, including hydrogen vehicles;
 - (C) Construction of additional hydrogen refueling stations; and
 - (D) Promotion of building design and construction that fully incorporates clean energy assets, including reliance on hydrogen-fueled energy generation;
 - (8) A plan, for implementation during the years 2010 to 2020, to transition the island of Hawaii to a hydrogen-fueled economy and to extend the application of the plan throughout the State; and
 - (9) Evaluation of policy recommendations to:
 - (A) Encourage the adoption of hydrogen-fueled vehicles;
 - (B) Continually fund the hydrogen investment capital special fund; and
 - (C) Support investment in hydrogen infrastructure, including production, storage, and dispensing facilities."

SECTION 7. Chapter 211F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§211F- Hydrogen investment capital special fund. (a)

There shall be established the hydrogen investment capital special fund, into which shall be deposited:

- (1) Appropriations made by the legislature to the fund;
 - (2) All contributions from public or private partners;
 - (3) All interest earned on or accrued to moneys deposited in the special fund; and
 - (4) Any other moneys made available to the special fund from other sources.
- (b) Moneys in the fund shall be used to:
- (1) Provide seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of

the Hawaii renewable hydrogen program, as set forth in section 196-B; and

- (2) For any other purpose deemed necessary to carry out the purposes of section 196-B."

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2006-2007, to conduct a statewide multi-fuel biofuels production assessment of potential feedstocks and technologies, the economics of the various renewable fuels pathways, and the potential for ethanol, biodiesel, and renewable hydrogen production to contribute to Hawaii's near-, mid-, and long-term energy needs.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this section.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2006-2007, to provide assistance to the agricultural community interested in developing energy projects, especially for the production of biodiesel from energy crops and cellulosic ethanol from agricultural waste streams, and to seek funding that may be available from the United States Departments of Agriculture and Energy, and other external sources.

The sum appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be deposited into the hydrogen investment capital special fund.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of section 211F- (b), Hawaii Revised Statutes.

SECTION 11. There is appropriated out of the hydrogen investment capital special fund the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be used for the purposes of the hydrogen investment capital special fund established pursuant to section 211F- , Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of section 211F- (b), Hawaii Revised Statutes.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the Hawaii natural energy institute to hire one full-time hydrogen system program manager position.

The sum appropriated shall be expended by the University of Hawaii through a contract with the Hawaii natural energy institute for the purposes of this part.

PART IV

SOLAR WATER HEATING PAY AS YOU SAVE

SECTION 13. **Solar water heating pay as you save program; purpose; establishment; tariff filing.** (a) Solar water heating systems are a renewable energy technology that uses solar collectors placed on roofs to heat water. These systems decrease reliance on imported oil used to generate electricity to heat water because they use less energy than the electric hot water heating systems replaced.

The legislature finds that the up-front cost of installation is a barrier preventing many Hawaii residents from installing solar water heating systems. The legislature further finds that the renewable energy technologies income tax credit and electric utility rebates have not been enough of an incentive to overcome these up-front costs, especially for rental housing and homes in need of retrofit for these important energy-saving devices.

The purpose of this section is to authorize the public utilities commission to implement a pilot project to be called the "solar water heating pay as you save program".

(b) The public utilities commission shall implement a pilot project to be called the "solar water heating pay as you save program", which shall:

- (1) Allow a residential electric utility customer to purchase a solar water heating system:
 - (A) With no upfront payments; and
 - (B) By paying the cost of the system over time on the customer's electricity bill;provided that the estimated life cycle electricity savings from the solar water heating system exceeds the cost of the system;
- (2) Provide for billing and payment of the solar water heating system on the utility bill;
- (3) Provide for disconnection of utility service for non-payment of solar water heating system pay as you save payments; and
- (4) Allow for assignment of system repayment costs attached to the meter location.

(c) The public utilities commission shall determine the time frame of the pilot program and shall gather and analyze information to evaluate the pilot program.

(d) No later than June 30, 2007, each electric utility shall implement by tariff a pay as you save model system program for residential consumers that is consistent with this section.

Each utility shall provide at least six months prior notice of its proposed tariff to the public utilities commission as prescribed in section 269-12(b), Hawaii Revised Statutes. Within the prescribed notice period, the public utilities commission shall review the proposed tariff and after a hearing may require modifications to the proposed tariff as necessary to comply with or effectuate the purposes of this section.

(e) The commission shall ensure that all reasonable costs incurred by electric utilities to start up and implement the pay as you save model system are recovered as part of the utility's revenue requirement, including necessary billing system adjustments and any costs for pay as you save model system efficiency measures that are not recovered via participating residential consumers' pay as you save model system bill payments or otherwise.

PART V

MISCELLANEOUS PROVISIONS

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. In codifying the new sections added by this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 17. This Act shall take effect upon its approval; provided that section 2 of this Act shall apply to taxable years beginning after December 31, 2005; provided further that the increased tax credits established in section 2 of this Act shall be available only to eligible renewable energy technology systems installed after July 1, 2006; and provided further that sections 8, 9, 10, 11, and 12 shall take effect on July 1, 2006.

(Approved June 26, 2006.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be utilized to procure goods, services, or construction designated in rules adopted by the procurement policy board as goods, services, or construction which are either not practicable or not advantageous to the State to procure by competitive sealed bidding. Competitive sealed proposals may also be utilized when the head of a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State.

(b) Proposals shall be solicited through a request for proposals.

(c) Notice of the request for proposals shall be given in the same manner as provided in section 103D-302(c).

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules adopted by the policy board and shall be open for public inspection after contract award.

(e) The request for proposals shall state the relative importance of price and other evaluation factors.

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(h) In cases of awards made under this section, nonselected offerors may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed. [L Sp 1993, c 8, pt of §2; am L 1995, c 178, §§8, 9; am L 1997, c 352, §23; am L 2003, c 52, §4]

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officer may determine that it is neither practicable, nor advantageous to the State to issue a new solicitation.

- (1) When making this determination, consideration shall be given to:
 - (A) Time constraints;
 - (B) Competition in the marketplace; and
 - (C) Whether the additional potential cost of preparing, soliciting, and evaluating competitive sealed bids is expected to exceed the benefits normally associated with the solicitations;
- (2) In the event of this determination, an alternative procurement method may be selected to include, but not be limited to, direct negotiations.
- (c) Documentation of the alternative procurement method selected shall:
 - (1) State the reasons for selection and length of contract period;
 - (2) Receive prior approval of the chief procurement officer or a designee; and
 - (3) Be made a part of the contract file upon award by the procurement officer. [Eff. 12/15/95; am and comp 11/17/97; am and comp MAR 21 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-302)

§§3-122-36 to 3-122-40 (Reserved).

SUBCHAPTER 6

COMPETITIVE SEALED PROPOSALS

§3-122-41 Purpose. The purpose of this subchapter is to provide rules for the use of the competitive sealed proposal method of source selection when it is determined that competitive sealed bidding is neither practicable nor advantageous to the State. [Eff 12/15/95; comp 11/17/97; comp MAR 21 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

§§-122-42 REPEALED. [R MAR 21 2008]

§3-122-43 When competitive sealed bidding is not practicable or advantageous. (a) Unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the invitation for bids, competitive sealed bidding is not practicable or advantageous.

(b) A determination may be made to use competitive sealed proposals if it is determined that competitive sealed bidding is not practicable, even though advantageous. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- (1) Whether the primary consideration in determining award may not be price;
- (2) Whether the contract needs to be other than a fixed-price type;
- (3) Whether the specifications for the goods, services, or construction, or delivery requirements cannot be sufficiently described in the invitation for bids;
- (4) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- (5) Whether offerors may need to be afforded the opportunity to revise their proposals, including price; and
- (6) Whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal.

(c) A determination may be made to use competitive sealed proposals if it is determined that competitive sealed bidding is not advantageous, even though practicable. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- (1) If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and

- (2) Whether the factors listed in subsection (b)(4) through (b)(6) are desirable in conducting a procurement rather than necessary; if they are, then the factors may be used to support a determination that competitive sealed bidding is not advantageous.

(d) The determinations required by this section shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. [Eff 12/15/95; am and comp 11/17/97; am and comp MAR 21 2008] (Auth: HRS §§103D-202, 103D-318) (Imp: HRS §§103D-303, 103D-318)

§3-122-44 REPEALED. [R 11/17/97]

§3-122-45 Determinations. (a) Pursuant to section 103D-303(a), HRS, the procurement policy board may approve a list of goods, services, or construction that may be procured by competitive sealed proposals without a determination by the head of the purchasing agency.

(b) The list, entitled "Procurements Approved for Competitive Sealed Proposals," shall be reviewed biennially by the procurement policy board and issued by procurement directive. Although the good, service, or construction is listed, purchasing agencies may use the competitive sealed bidding process under section 103D-302, HRS.

(c) If the procurement is not listed pursuant to subsection (a), the head of a purchasing agency shall then determine in writing that competitive sealed proposals is a more appropriate method of contracting in that competitive sealed bidding is neither practicable nor advantageous. The determinations may be made for categories of goods, services, or construction rather than by individual procurement.

(d) When it is determined that it is more practicable or advantageous to the State to procure construction by competitive sealed proposals:

- (1) A procurement officer may issue a request for proposals requesting the submission of proposals to provide construction in accordance with a design provided by the offeror; and
- (2) The request for proposals shall require that

each proposal submitted contain a single price that includes both design and build.

(e) The head of the purchasing agency who made the determination pursuant to subsection (c) or (d) may modify or revoke it at any time and the determination shall be reviewed for current applicability on the next procurement for the goods, services, or construction. The head of the purchasing agency may also request that the procurement of the goods, services, or construction by competitive sealed proposals be added to or deleted from the list in subsection (b).

(f) The determinations required by this section shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. [Eff 12/15/95; am and comp 11/17/97; am 07/06/99; am and comp **MAR 21 2008**] (Auth: HRS §§103D-202, 103D-303, 103D-318) (Imp: HRS §§103D-303, 103D-318)

§3-122-45.01 Evaluation committee. Prior to the preparation of the request for proposals, a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the proposals. A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file.

- (1) The evaluation committee shall consist of at least three governmental employees with sufficient qualifications in the area of the goods, services, or construction to be procured;
- (2) Private consultants may also serve on the committee and shall:
 - (A) Have sufficient knowledge to serve on the committee;
 - (B) Serve without compensation, unless justified and determined in writing by the head of the purchasing agency that compensation is justified; and
 - (C) Sign an affidavit:
 - (i) Attesting to having no personal, business, or any other relationship that will influence their decision in the evaluation process;
 - (ii) Agreeing not to disclose any information on the evaluation

- process to other than an employee of a governmental body; and
 - (iii) Agreeing that their names will become public information upon award of the contract;
 - (3) The contract administrator shall serve as a member of the committee;
 - (4) The contract administrator or a designee shall serve as chairperson, and the procurement officer or a designee shall serve as advisor. [Eff and comp MAR 21 2008]
(Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

§3-122-46 Preparing a request for proposals. The request for proposals is used to initiate a competitive sealed proposal procurement and shall include:

- (1) The specifications for the goods, services, or construction items to be procured, including a description of the performance or benefit required;
- (2) All contractual terms and conditions applicable to the procurement;
- (3) A statement as to when and in what manner prices are to be submitted;
- (4) A statement concerning whether the proposal shall be accompanied by a proposal security pursuant to subchapter 24 or other evidence of financial responsibility;
- (5) The term of the contract and conditions of renewal or extension, if any;
- (6) Instructions and information to offerors, including pre-proposal conferences, the location where proposals are to be received, and the date, time, and place where proposals are to be received and reviewed;
- (7) The relative importance of price and other evaluation criteria; and specific evaluation criteria to be used in evaluation of proposals which may include but is not limited to:
 - (A) Technical capability and approach for meeting performance requirements;
 - (B) Competitiveness and reasonableness of price;
 - (C) Managerial capabilities; and
 - (D) Best value factors;

- (8) A statement that discussions may be conducted with "priority-listed offerors" pursuant to section 3-122-53, but that proposals may be accepted without discussions; and
- (9) A statement that offerors shall designate in writing those portions of the unpriced proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-58; that the material designated as confidential shall be readily separable from the proposal in order to facilitate inspection of the nonconfidential portion of the proposal.

[Eff 12/15/95; am and comp 11/17/97; am and comp **MAR 21 2008**] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

§3-122-47 REPEALED. [R 11/17/97]

§3-122-48 REPEALED. [R **MAR 21 2008**]

§3-122-49 REPEALED. [R **MAR 21 2008**]

§3-122-50 REPEALED. [R **MAR 21 2008**]

§3-122-51 Receipt and registration of proposals.

(a) Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the procurement officer until the established due date. Purchasing agencies may use other methods of receipt when approved by the chief procurement officer.

- (1) Proposals and modifications shall not be opened publicly, but shall be opened in the presence of two or more state officials;
- (2) Proposals and modifications shall be shown only to members of the evaluation committee and state personnel or their designees having legitimate interest in them.

(b) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals:

- (1) The name of each offeror;
- (2) The number of modifications received, if any;

- and
- (3) A description sufficient to identify the good, service, or construction item offered.
 - (c) The register of proposal shall be open to public inspection as provided in section 3-122-58.
 - (d) Proposals shall be open to public inspection as provided in section 3-122-58. [Eff 12/15/95; am and comp 11/17/97; am and comp MAR 21 2008] (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

§3-122-52 Evaluation of proposals. (a)

Evaluation factors shall be set out in the request for proposals and the evaluation shall be based only on the evaluation factors. Evaluation factors not specified in the request for proposals may not be considered.

(b) A numerical rating system shall be used. The relative priority to be applied to each evaluation factor shall also be set out in the request for proposals.

(c) The points to be applied to each evaluation factor shall be set out in the request for proposals.

- (1) The procurement officer, or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing which shall be placed in the procurement file;
- (2) The written ranking evaluations or explanations shall be available for public inspection after the award of the contract is posted.

(d) When applicable, cost shall be an evaluation factor.

- (1) The proposal with the lowest cost factor must receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower rating for cost;
- (2) The points allocated to higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

(e) An evaluation factor must be included which takes into consideration whether an offeror qualifies for any procurement preferences pursuant to chapter 3-124.

(f) Evaluations may not be based on

discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap, or political affiliation of the offeror. (Auth: HRS §103D-202) (Imp: HRS §103D-303)

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§3-122-53 Discussions with offerors. (a) Before conducting discussions, a "priority list" shall be generated by the procurement officer or evaluation committee.

- (1) In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable;
- (2) All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list;
- (3) If numerous acceptable and potentially acceptable proposals have been submitted, the procurement officer or the evaluation committee may rank the proposals and limit the priority list to at least three responsible offerors who submitted the highest-ranked proposals;
- (4) Those responsible offerors who are selected for the priority list are referred to as the "priority-listed offerors".

(b) Discussions will be limited to only "priority-listed offerors" and are held to:

- (1) Promote understanding of a state agency's requirements and priority-listed offerors' proposals; and
- (2) Facilitate arriving at a contract that will provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals.

The procurement officer shall establish procedures and schedules for conducting discussions and keep a record of the date, place, purpose of meetings, and those attending.

(c) Proposals may be accepted on evaluation without discussion.

(d) Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

- (1) Any substantial oral clarification of a

- proposal shall be reduced to writing by the priority-listed offeror;
- (2) If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by an addendum to incorporate the clarification or change.
- (e) Addenda to the request for proposals shall be distributed only to priority-listed offerors.
- (1) The priority-listed offerors shall be permitted to submit new proposals or to amend those submitted;
 - (2) If in the opinion of the procurement officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the request for proposals shall be canceled and a new request for proposals issued.
- (f) The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion process. [Eff 12/15/95; comp 11/17/97; am and comp MAR 21 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

§3-122-54 Best and final offers. (a) The procurement officer shall establish a date and time for the priority-listed offerors to submit their best and final offers.

(b) Best and final offers shall be submitted only once, unless the chief procurement officer or the head of a purchasing agency or a designee of either officer above the level of procurement officer determines in writing that it is in the State's best interest to conduct additional discussions or change the State's requirements by an addendum distributed only to priority-listed offerors and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award.

(c) Priority-listed offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(d) After best and final offers are received, final evaluations will be conducted for an award pursuant to section 3-122-57. [Eff 12/15/95; am and

§3-122-54

comp 11/17/97; am and comp **MAR 21 2008**] (Auth: HRS
§103D-202) (Imp: HRS §103D-303)

§3-122-55 REPEALED. [R **MAR 21 2008**]

§3-122-56 REPEALED. [R **MAR 21 2008**]

§3-122-57 Award of contract. (a) The award shall be issued in writing to the responsible offeror whose proposal is determined in writing to provide the best value to the State taking into consideration price and the evaluation criteria in the request for proposals and posted pursuant to section 103D-701, HRS, for five working days. Other criteria may not be used in the evaluation. The contract file shall include the basis for selecting the successful offeror.

(b) Cost or pricing data requirements shall be as specified in section 103D-312, HRS, and subchapter 15.

(c) The determinations required by this section shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law. [Eff 12/15/95; am and comp 11/17/97; am and comp **MAR 21 2008**] (Auth: HRS §§103D-202, 103D-318) (Imp: HRS §§103D-303, 103D-318)

§3-122-58 Public inspection. (a) The existing contract file, except those portions the offeror designates in writing as trade secrets or other proprietary data to be confidential subject to subsection (b), shall be available for public inspection upon posting of award pursuant to section 103D-701, HRS. The contract file shall include but not be limited to the following:

- (1) The register of proposals prepared pursuant to section 3-122-51;
- (2) A listing of all vendors to whom copies of the request for proposals were distributed;
- (3) Name of successful offeror and dollar amount of offer;
- (4) The basis on which the award was made;
- (5) A copy of the request for proposals;
- (6) A copy of the successful offeror's proposal;
- (7) A copy of all unsuccessful offerors' proposals; and

(8) A copy of the executed contract resulting from the request for proposals.

(b) If a person requests to inspect the portions of an offeror's proposal designated as confidential pursuant to section 3-122-46(9), the inspection shall be subject to written determination by the respective attorney general or corporation counsel for confidentiality in accordance with chapter 92F, HRS.

(c) If the attorney general or corporation counsel determines in writing that the material designated as confidential is subject to disclosure, the material shall be open to public inspection unless the offeror appeals pursuant to section 92F-42(1), HRS.

(d) When a purchasing agency denies a person access to a state procurement record, the person may appeal the denial to the office of information practices in accordance with section 92F-15.5, HRS.

[Eff 12/15/95; am and comp 11/17/97; am and comp
MAR 21 2008] (Auth: HRS §103D-202) (Imp: HRS §§92F-42, 103D-303)

§3-122-59 Waiver to competitive sealed proposal process. (a) If for a given request for proposals, there is only one responsible offeror submitting an acceptable proposal:

(1) An award may be made to the single offeror, provided the procurement officer determines in writing that the price submitted is fair and reasonable and that either:

- (A) Other prospective offerors had reasonable opportunity to respond; or
- (B) There is not adequate time for resolicitation;

(2) The offer may be rejected pursuant to subchapter 11 and new requests for proposals may be solicited if the conditions in paragraph (1) are not met;

(3) The proposed procurement may be cancelled;

(4) An alternative procurement method may be conducted to include, but not be limited to, direct negotiations with the sole offeror first, and then with any contractor or vendor should negotiations with the sole offeror fail, provided the procurement officer determines in writing that the need for the good, service, or construction continues, but that the price of the one offer is not fair

and reasonable and that either:

- (A) There is no time for resolicitation, or
- (B) Resolicitation would likely be futile.

(b) If for a given request for proposals, there are no proposals received or there are no responsible offerors submitting acceptable proposals, the procurement officer may determine that it is neither practical nor advantageous to issue a new solicitation.

(1) When making this determination, consideration shall be given to:

- (A) Time constraints;
- (B) Competition in the marketplace; and
- (C) Whether the additional potential cost of preparing, soliciting, and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with the solicitations;

(2) In the event of this determination, an alternative procurement method may be selected, to include but not be limited to, direct negotiations.

(c) Documentation of the alternative procurement method selected shall:

- (1) State the reasons for selection and length of contract period;
- (2) Receive prior approval of the chief procurement officer or a designee; and
- (3) Be made a part of the contract file upon award by the procurement officer. [Eff 12/15/95; am and comp 11/17/97; am and comp 12/15/98]

(Auth: HRS §103D-202) (Imp: HRS §103D-203)

§3-122-60 Debriefing. (a) The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.

(b) A written request for a debriefing shall be made within three working days after the posting of the award of the contract.

(c) Debriefing shall be held by the procurement officer or designee, to the maximum extent practicable, within seven working days; provided the procurement officer or designee may determine whether or not to conduct individual or combined debriefings.

(d) A protest by the requestor submitted pursuant to section 103D-701, HRS, following a debriefing shall

be filed within five working days, as specified in section 103D-303(h), HRS. [Eff and comp MAR 21 2008] (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

\$3-122-61 (Reserved).

SUBCHAPTER 6.5

MULTI-STEP COMPETITIVE SEALED BIDDING

\$3-122-61.05 Purpose. The purpose of this subchapter is to provide rules for the use of the multi-step competitive sealed bidding method of source selection when it is determined that award to the lowest responsive, responsible bidder is desired, but it is not practical to initially prepare a definitive purchase description which will be suitable to permit an award based on price, and it is desirable, prior to soliciting priced bids, to:

- (1) Invite and evaluate technical proposals to determine their acceptability to fulfill the purpose of the procurement; and
- (2) Conduct discussions pursuant to section 3-122-53. [Eff and comp MAR 21 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-302)

\$3-122-61.06 Preparing a multi-step invitation for bids. (a) The multi-step sealed bidding process uses an invitation for bids consisting of two phases, and combines the receipt of technical proposals of the competitive sealed proposals process and the low priced bid award of the competitive sealed bidding process.

- (1) Phase one is composed of one or more steps in which bidders submit unpriced technical proposals to be evaluated based on criteria set forth in the invitation for bids; and
- (2) Phase two is to consider the priced bids from bidders whose unpriced technical proposals are determined to be acceptable in phase one, and award is made to the lowest responsive, responsible bidder.

JAN 18 2008

SENATE RESOLUTION

ESTABLISHING A SENATE SPECIAL INVESTIGATIVE COMMITTEE TO CONDUCT AN INVESTIGATION OF THE AWARD OF A CONTRACT BY THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM TO H2 ENERGY LLC TO MANAGE THE HYDROGEN INVESTMENT CAPITAL SPECIAL FUND IN 2007, WHICH WAS SUBSEQUENTLY ORDERED TO BE RESCINDED.

1 WHEREAS, the hydrogen investment capital special fund,
2 section 211F-5.7, Hawaii Revised Statutes, was created by Act
3 240, Session Laws of Hawaii 2006, to provide seed capital for
4 and venture capital investments in private sector and federal
5 projects for research, development, testing, and implementation
6 of the Hawaii renewable energy program; and
7

8 WHEREAS, the hydrogen investment capital special fund was
9 provided with an appropriation of \$10,000,000, pursuant to Act
10 240, Session Laws of Hawaii 2006, section 10, and was placed
11 under the jurisdiction of the Hawaii strategic development
12 corporation, chapter 211F, Hawaii Revised Statutes, which is
13 administratively attached to the Department of Business,
14 Economic Development, and Tourism; and
15

16 WHEREAS, Act 240, Session Laws of Hawaii 2006, established
17 the Hawaii renewable hydrogen program, codified as section
18 196-10, Hawaii Revised Statutes, which relates to the hydrogen
19 investment capital special fund; and
20

21 WHEREAS, the Department of Business, Economic Development,
22 and Tourism issued a request for proposals for potential
23 managers of the hydrogen capital investment special fund and
24 established an evaluation committee to review bids submitted and
25 to make a recommended on which bidder should be awarded the
26 contract; and
27

28 WHEREAS, the evaluation committee reviewed submitted bids
29 and ranked three bidders, based on criteria established in the
30 request for proposals, from highest to lowest as follows: (1)
31 Kolohala Holdings LLP (score of 255); (2) Enterprise Honolulu
32 (score of 243); and (3) H2 Energy LLC (score of 234.5); and



1
2 WHEREAS, in August 2007, in spite of the evaluation
3 committee's recommendation, the Director of Business, Economic
4 Development, and Tourism selected an entity known as H2 Energy
5 LLC to manage the hydrogen investment capital special fund; and
6

7 WHEREAS, H2 Energy LLC was the lowest ranking bidder for
8 the contract; and
9

10 WHEREAS, the Senate Committee on Tourism and Government
11 Operations held an informational briefing on September 4, 2007,
12 to review the procurement procedures of the request for
13 proposals for the awarding of the contract that was awarded to
14 H2 Energy LLC; and
15

16 WHEREAS, by letter dated September 25, 2007, the State
17 Procurement Office ordered the Director of Business, Economic
18 Development, and Tourism, who is the procurement officer of the
19 Department of Business, Economic Development, and Tourism, to
20 "rescind" the selection of H2 Energy LLC, based on its review of
21 the procurement process, which concluded that the contract
22 should have been awarded to the highest-ranking bidder based on
23 the internal evaluation committee's evaluation; and
24

25 WHEREAS, the informational briefing, though resulting in
26 the rescinding of the selection of H2 Energy LLC, also uncovered
27 possible procurement improprieties that warrant legislative
28 investigation in order to determine whether administrative
29 malfeasance or misfeasance occurred and whether proposed
30 legislation is necessary thereto; and
31

32 WHEREAS, there may be other contracts executed by the
33 Department of Business, Economic Development, and Tourism that
34 may have involved the same parties which may provide relevant
35 information concerning possible procurement improprieties; and
36

37 WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes
38 the establishment of a legislative investigative committee by a
39 single house resolution, and Rule 14(3) of the Rules of the
40 Senate allow for the establishment of special investigative
41 committees; now, therefore,
42



1 BE IT RESOLVED by the Senate of the Twenty-fourth
2 Legislature of the State of Hawaii, Regular Session of 2008,
3 that there is established a Senate special investigative
4 committee, pursuant to chapter 21, Hawaii Revised Statutes, to:

- 5
6 (1) Investigate the selection of a manager for the
7 hydrogen investment capital special fund in 2007; and
8
9 (2) Inquire into, gather, and analyze information,
10 including other contracts, that may provide relevant
11 information concerning procurement improprieties
12 relating to paragraph (1); and
13

14 BE IT FURTHER RESOLVED that the Senate special
15 investigative committee to investigate the selection of a
16 manager for the hydrogen investment capital special fund shall
17 be chaired by the Vice Chair of the Senate Committee on Tourism
18 and Government Operations; and
19

20 BE IT FURTHER RESOLVED that the membership of the Senate
21 special investigative committee to investigate the selection of
22 a manager for the hydrogen investment capital special fund be
23 composed of four members, including the Chair, to be appointed
24 by the President of the Senate; and
25

26 BE IT FURTHER RESOLVED that the Senate special
27 investigative committee to investigate the selection of a
28 manager for the hydrogen investment capital special fund shall
29 have every power and function allowed to an investigating
30 committee by law, including without limitation the power to:

- 31
32 (1) Adopt rules for the conduct of its proceedings;
33
34 (2) Issue subpoenas requiring the attendance and testimony
35 of witnesses and subpoenas duces tecum requiring the
36 production of books, documents, records, papers, or
37 other evidence in any matter pending before the
38 investigative committee;
39
40 (3) Hold hearings appropriate for the performance of its
41 duties, at such times and places as the investigative
42 committee determines;
43



- 1 (4) Administer oaths and affirmations to witnesses at
- 2 hearings of the investigative committee;
- 3
- 4 (5) Report or certify instances of contempt as provided in
- 5 section 21-14, Hawaii Revised Statutes;
- 6
- 7 (6) Determine the means by which a record shall be made of
- 8 its proceedings in which testimony or other evidence
- 9 is demanded or adduced;
- 10
- 11 (7) Provide for the submission, by a witness's own counsel
- 12 and counsel for another individual or entity about
- 13 whom the witness has devoted substantial or important
- 14 portions of the witness's testimony, of written
- 15 questions to be asked of the witness by the chair; and
- 16
- 17 (8) Exercise all other powers specified under chapter 21,
- 18 Hawaii Revised Statutes, with respect to investigative
- 19 committees; and
- 20

21 BE IT FURTHER RESOLVED that the Senate President from time
 22 to time, may refer to the Senate special investigative committee
 23 to investigate the selection of a manager for the hydrogen
 24 investment capital special fund specific matters that are within
 25 the scope of the investigative committee's jurisdiction; and

26
 27 BE IT FURTHER RESOLVED that the Senate special
 28 investigative committee shall submit its written findings and
 29 recommendations to the Legislature prior to the convening of the
 30 Regular Session of 2009; and

31
 32 BE IT FURTHER RESOLVED that certified copies of this
 33 Resolution be transmitted to the Governor, the President of the
 34 Senate, the Director of Business, Economic Development, and
 35 Tourism, and the Administrator of the State Procurement Office.

36
 37
 38 OFFERED BY: *Anna Mercedes K...*

RULES OF THE SENATE SPECIAL INVESTIGATIVE COMMITTEE TO CONDUCT AN INVESTIGATION OF THE AWARD OF A CONTRACT BY THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM TO H2 ENERGY LLC TO MANAGE THE HYDROGEN INVESTMENT CAPITAL SPECIAL FUND IN 2007, WHICH WAS SUBSEQUENTLY ORDER TO BE RESCINDED.

Preface

The purpose of these rules is to enable the Senate special investigative committee to perform properly the powers and duties invested in the committee, including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

Part I. Definitions

1.1 Definitions. (a) As used in these rules, and unless a different meaning is clearly intended by the context in which the word is used:

"Authorized Membership" means the total number of members appointed to the committee.

"Chair" means the chair of the special investigative committee or in the absence of the chair, the member who is selected by the majority of the authorized membership who are present at the meeting.

"Committee" means the Senate Special Investigative Committee to Conduct an Investigation of the Award of a Contract by the Department of Business, Economic Development, and Tourism to H2 Energy LLC to Manage the Hydrogen Investment Capital Special Fund in 2007, which was Subsequently Ordered to be Rescinded, adopted by the Senate of the Legislature of the State of Hawaii, Regular Session of 2008, as an investigating committee pursuant to chapter 21, Hawaii Revised Statutes.

"Executive session" means a session at which only members of the committee, staff personnel, the witness, and counsel for the witness are permitted to be present. An executive session may be convened by two-thirds vote of the authorized membership.

"Hearing" means any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by the committee for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.

"Interested person" means any person whose name is mentioned or who is otherwise identified during a hearing of the committee, and who, in the opinion of the committee, may be adversely affected thereby.

"Member" means any member of the Senate appointed to serve on the committee.

"Public hearing" means any hearing open to the public, or the proceedings of which are made available to the public.

"Quorum" means a majority of the authorized membership.

(b) Unless otherwise specifically stated, the terms used in these rules shall have the meanings ascribed to them under chapter 21, Hawaii Revised Statutes.

Part II. Rules of Procedure

2.1 Committee Action. No action shall be taken by the committee at any meeting unless notice of the meeting was duly given and a quorum is present. The committee may act by a majority vote of the members present, constituting a quorum, except as otherwise provided by these rules or by any statute requiring an affirmative vote by a larger number or proportion of the members of the committee.

2.2 Issuance of Subpoena. (a) The investigative committee may issue, by majority vote of all its members, subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of books, documents, or other evidence, in any matter pending before the committee.

(b) The form of subpoenas, the manner of service, and witness and service fees shall be as provided in section 21-8, Hawaii Revised Statutes.

(c) Every subpoena and subpoena duces tecum authorized to be issued by the committee shall be issued under the signature of the chair and shall command each person to whom it is directed to attend and give testimony at a time and place thereon specified, and if requested by the committee, to produce the books, papers, documents, or tangible things designated therein.

(d) The committee may delegate to the chair the authority to specify the time and place at which the person subpoenaed is to attend and give testimony and to designate the books, papers, documents, or tangible things required by the committee to be produced.

2.3 Hearings. The committee may hold hearings appropriate to the performance of its duties at such times and places as the committee determines. The committee shall not conduct a hearing unless the appropriate notice of the meeting is given and a quorum is present.

2.4 Notice Requirements. (a) All notices of meetings shall be in writing and shall include a brief statement of the subject matter of the hearing, and the date, time and place of the meeting.

(b) Notice to members of hearings and of executive sessions shall be given to each member at least three days before any hearing or executive session to be held while the Legislature is in session, and at least seven days before any hearing or executive session to be held while the Legislature is not in session; provided that the time periods of this rule may be waived by the chair, and such waivers shall not invalidate any action taken by the committee.

(c) Notice to witnesses shall be given by service of a subpoena requiring the attendance of the person at a hearing of the committee at least five days prior to the date of the hearing. The chair may waive the five days notice if the witness so agrees, or if the giving of five days notice is not practicable, and the agreement of the witness cannot be obtained, the committee, by majority vote may authorize a shorter time period, provided that the person so subpoenaed shall be given reasonable notice of the hearing, consistent with the particular circumstances involved.

(d) Any person served with a subpoena requiring attendance at a hearing of the committee shall also be served with a copy of the resolution establishing the committee, a copy of these rules, a general statement informing the person of the subject matter of the committee's investigation or inquiry, a list of or copies of the principal documents about which that witness may be questioned, and a notice that the person may be accompanied at the hearing by counsel of the person's own choosing.

(e) Notice of public hearings shall be given by publicly posting the notice at least three days before any public hearing to be held while the Legislature is in session, and at least seven days before any public hearing to be held while the Legislature is not in session, provided that the time periods of this rule may be waived by the Chair for good cause shown, and such waivers shall not invalidate any action taken by the committee.

2.6 Conduct of Hearing. (a) All hearings of the committee shall be public unless the committee, by two-thirds vote of all its members, determines that a hearing should not be open to the public in a particular instance and should be held in executive session.

(b) To avoid confusing a witness by being asked questions simultaneously by members, the chair shall preside at all hearings of the committee and shall conduct the examination of witnesses or supervise the examination by other members of the committee, the committee's counsel, or members of the committee's staff who are so authorized. Any official position or statement of the committee shall be made by the chair or have received approval from the chair prior to its issuance.

2.7 Oath or Affirmation. (a) All testimony given or adduced at a hearing shall be under oath or affirmation unless the requirement is dispensed with in a particular instance by a majority vote of the committee members present at the hearing. The chair shall, or any other member authorized to do so by the committee may administer the oath or affirmation to a witness at a hearing of the committee.

(b) The form of the oath or affirmation shall be: "Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"

2.8 Records. (a) The committee shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record shall include rulings of the chair, questions of the committee and its own staff, the testimony or responses of witnesses, sworn written statements submitted to the committee, and such other matters as the committee or its chair may direct.

(b) For the purpose of recording its proceedings, the committee may contract video recording services and utilize the recordings as a record of its proceedings.

(c) All records of the committee shall be maintained by the Clerk of the committee.

(d) The committee shall make available to all those entities or persons who were the subjects of or who were witnesses who testified at any hearing a draft report of the committee's findings and/or conclusions concerning any matter that is the subject of its hearings.

(e) Any person or entity to whom a draft report is made available shall be given a period of not less than fourteen days within which to make written responses to the draft findings and/or conclusions. The written responses, if any, shall be included as an appendix to the final report of the committee.

2.9 Contempt. (a) A person shall be in contempt if the person:

- (1) Fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;
- (2) Fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper, or other document subpoenaed by or on behalf of the committee; or
- (3) Commits any other act or offense against the committee, which, if committed against the Legislature or either house thereof, would constitute contempt.

(b) The committee may, by majority vote of its authorized membership, report to the Senate any instance of alleged contempt. The President of the Senate shall certify the report of such contempt, under the President's signature to the attorney general who shall prosecute the offender in any court of the State. If the Legislature is not in session, a statement of the alleged contempt shall be certified by the chair. An instance of alleged contempt shall be considered as though committed in or against the Senate.

(c) A person guilty of contempt shall be fined not more than \$1,000 or imprisoned not more than one year or both.

Part III. Rules Governing Rights of Witnesses

3.1 Right to Counsel. Every witness at a hearing of the committee may be accompanied by counsel of the witness' own choosing, who may advise the witness as to his or her rights, subject to reasonable limitations which the committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

3.2 Compelling Testimony. The chair may order a witness to answer any relevant question or furnish any relevant book, paper or other document, the production of which has been required by subpoena duces tecum. Unless the order is overruled by majority vote of the committee members present, disobedience shall constitute contempt.

3.3 Statements and Proposed Questions. (a) A witness at a hearing or the witness's counsel, with the consent of a majority of the committee members present at the hearing, may file with the committee for incorporation into the record of the hearing sworn written statements relevant to the purpose, subject matter, and scope of the committee's investigation or inquiry.

(b) A witness at a hearing or the witness's counsel may submit to the committee proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the committee shall ask those questions that the committee determines to be appropriate to the subject matter of the hearing.

3.4 Transcript. A witness at a hearing, upon advance request and at the witness's expense, shall be furnished with a certified transcript of his or her own testimony; provided that no witness shall be entitled to the executive session testimony of any other witness.

3.5 Privileges. The rules of evidence shall not apply at proceedings of the committee, except that a witness may claim any privilege provided by the state or federal constitution.

3.6 Rights of Interested Persons. (a) Any interested person may, upon the person's request or upon the request of any member of the committee, appear personally before the committee and testify in the person's own behalf, or, with the committee's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record.

(b) With the consent of a majority of its authorized membership, the committee may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record; provided that no request to appear, appearance, or submission of evidence shall limit in any way the committee's power of subpoena.

(c) Any person who appears before the committee pursuant to this rule shall have all the rights, privileges, and responsibilities applicable to a witness under these rules.

Part IV. Rules Governing Disclosure

4.1 Disclosure of Proceedings in Executive Session. Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by majority vote of the authorized membership, which authorization shall also specify the form and manner in which the testimony or other evidence may be released.

4.2 Disclosure of Proceedings by Staff. No staff member of the committee shall disclose information regarding testimony given or adduced at any proceeding unless otherwise authorized by the committee.

4.3 Television, Films, Radio. Hearings may be televised, filmed or otherwise recorded and made public, unless otherwise determined by majority vote of the authorized membership.

4.4 Confidential Information. All information of a defamatory or highly prejudicial nature received by or for the committee other than in an open or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by majority vote of the authorized membership for legislative purposes, or unless its use is required for judicial purposes.

4.5 Disclosure of Committee Activities to the Public and the Media. All information of official actions, statements, or positions of the committee shall be made by the chair.

Part V. Rules of General Applicability

5.1 Powers of Presiding Officers of the Senate. The Senate President shall have administrative authority over the activities and operations of the committee to: (a) assign appropriate staff and to direct appropriate services to assist the committee in accomplishing its mandated purpose; (b) adjust the membership of the committee as the Senate President deems necessary; and (c) in the absence of the chair, sign hearing notices or subpoenas and subpoena duces tecum, as the case may be, as authorized to be issued by the committee.

5.2 Rules Consistent with Applicable Laws and Rules; Severability. These rules govern procedure in and before the committee, and are adopted pursuant to section 21-4, Hawaii Revised Statutes. If any provision of these rules or the application thereof to any person or circumstances is determined to be invalid, the invalidity does not affect other provisions or applications of these rules that can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

5.3 Limitations. Nothing in these rules shall be construed to limit or prohibit the acquisition of evidence or information by the committee through any lawful means.