



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Finance  
February 21, 2008 at 5:00pm

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawai'i

HB 2431 HD1 – RELATING TO THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

This Bill restores the University's ability to establish its own procurement policies in support of the widely accepted public policy of greater administrative flexibility for the University. The University was granted this flexibility by the Legislature in 1998 and had used it responsibly and to great benefit until its revocation as of January 1, 2005. The House Committees on Higher Education and Economic Development and Business Concerns amended the bill to require the BOR to file its procurement policy and any later changes in the policy with the Hawaii procurement institute.

**The first point we would like to make is that providing the University of Hawaii with administrative flexibility has been accepted public policy embraced by all branches of government and the general public.**

In 1997, the Governor, Senate President and Speaker of the House created an unprecedented blue ribbon Economic Revitalization Task Force composed of Hawaii's business, community and government leaders. Their objective was to develop recommendations on how to strengthen Hawaii's economy. Recognizing the importance of the University of Hawaii as a major economic engine for the State, one of the clear conclusions of the task force, accepted by all, was that autonomy for the university would materially enhance the university's performance of its constitutional responsibilities and allow it to contribute more meaningfully to the economic revitalization of the State of Hawaii. In 1998 the Legislature passed and the Governor signed Act 115 granting the University of Hawaii greater flexibility in managing its own affairs and, most notably, exempting the University of Hawaii from the State Procurement Code. This flexibility allowed the Board of Regents to adopt University procurement procedures consistent with State procurement law, but not dependent on the State governmental processes, procedures and resources. Taking this flexibility even further, in the 2000 legislative session a constitutional amendment was approved to provide the University of Hawaii with even greater autonomy. This constitutional amendment was overwhelmingly ratified by Hawaii's voters in the 2000 election.

**The second point we would like to make is that the University used this flexibility responsibly and effectively.**

As required by Act 115, the University developed and implemented its own internal procedures and policies for procurement. The University used its flexibility to create the most advanced and open electronic public sector procurement system in the State of Hawaii. An electronic sourcing system called "SuperQuote" was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including by enabling purchases over the Internet. Both SuperQuote and the PCard system have direct electronic interfaces to the University's financial management information system. This eliminates duplicate data entry in purchasing, which further reduces administrative costs and decreases a potential source of errors. The University developed comprehensive and thorough written policies and procedures appropriate for these modern practices. The University's Administrative Procedures on Procurement have been available online for many years and can be found at the following website: <http://www.hawaii.edu/apis/apm/a8200.html>. While the current versions of these procedures reflect the 2005 revocation of the University's Act 115 flexibility, the previous procedures that took advantage of the flexibility are also available in the online archives at <http://www.hawaii.edu/svpa/apm/archives/a8200.html>.

**Our third point is that the University remains fully committed to openness, appropriate public oversight and accountability.**

In improving its internal procurement system, the University of Hawaii fully honored the statutory requirement to comply with the intent of the State procurement code. While dramatically increasing open competition and improving operational efficiency, the University has also embraced applicable federal procurement guidelines in its new processes and systems. The University procedures developed to implement the flexibility granted by Act 115, as described above, were all reviewed, discussed and approved by the Board of Regents at duly noticed open public meetings conducted under the State "Sunshine" laws. In addition to a bevy of internal control processes, the University's procurement practices are independently audited each year to ensure fair and equitable treatment of vendors, to foster effective broad-based competition in order to secure best value in purchases, and to maintain the integrity of the procurement process.

**The public interest is best served by restoring the University's flexibility to establish its own procurement policies.**

The widely accepted movement to increase University flexibility has been widely supported by the Legislature over the last decade, by the last two Governors, by the business community and by the voting public. One of the most visible outcomes of this movement was the law passed by the 1998 Legislature granting the University an exemption from the state procurement processes. The University's own procurement system and processes streamlined purchasing to reduce administrative costs, increased competition, reduced the costs of goods and services procured, increased openness and auditability, and reduced the costs for vendors to do business with the University. Our faculty and staff used this

direct responsibility and accountability to help the University of Hawaii respond to changing conditions, new opportunities and Hawaii's needs in a more timely and effective manner. In addition, the University's flexibility reduced cost to State Government by relieving DAGS and other agencies of any responsibility for University procurement.

**This will allow the University to get repairs and renovations done more quickly and reduce costs while maintaining appropriate controls.**

We appreciate the Legislature's desire to assist the University in addressing its deferred maintenance needs and the deteriorating condition of its facilities. Restoring the flexibility in procurement will allow the University to be more efficient and timely in the use of funds provided by the Legislature to deal with the backlog of repairs and renovations needed at all of our ten campuses. It will allow us to get projects started and completed more quickly and reduce costs for the University and its vendors while providing for open competition and auditability.

We ask your support for the passage of this bill, which is important in helping the University of Hawaii have the facilities and processes to compete in the national marketplace of Colleges and Universities and to be the major engine for the economic diversification of Hawaii.

Thank you for this opportunity to testify in support of this measure.

LINDA LINGLE  
GOVERNOR

AARON S. FUJIOKA  
ADMINISTRATOR



PROCUREMENT POLICY BOARD  
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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
FINANCE

February 21, 2008

HB 2431, HD 1

RELATING TO THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII.

Chair Oshiro, Vice Chair Lee and committee members, thank you for the opportunity to testify on HB 2431, HD 1.

The State Procurement Office (SPO) does not support the proposed language to amend section 304A-105, to allow the board of regents to develop procurement practices exempt from chapter 103D, the Hawaii Public Procurement Code (Code). The designated chief procurement officer, the President of the University of Hawaii, has the autonomy and independence to direct its own procurement program. There is no advantage in independence gained by exempting the University of Hawaii (UH) from the code since the code already provides independence and flexibility in the procurement process.

Statutory exemptions are contrary to the Code, section 103D-102, HRS, on the applicability of the chapter that states in part "... shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, ..." Any governmental agency with the authority to expend funds should be in compliance with Chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly to obtain its requirements. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic for the administration and vendors/contractors that must comply with a variety of processes. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

The Code provides consistency in the manner in which purchasing agencies procure goods, services, and construction. Although an exempted agency may develop their own procurement source selection methods, it was the intent and goal of the legislature to have a single source of policy and procedures to ensure consistency and continuity in the application of the procurement process among government agencies throughout the State and counties.

Exempting agencies from the Code will jeopardize uniform and consistent protections against waste, fraud, and abuse the legislature placed in the Code; and will potentially hinder the legislature in promoting and supporting specific segments of the Hawaii economy through preferences allowed by the Code. "Preferences" permit the legislature to promote specific segments of the state's economy and encourage the development of new products and technologies. However, preference programs apply only to agencies subject to the Code, and exempt agencies are not subject to the legislature's designated preferences.

The Code enables the legislature to impose specific requirements to eliminate practices that are detrimental to the public's perception of government procurement. The legislature passed and the governor signed into law, Act 52(2003), amending Section 103D-304 to require that all contract awards to professional service providers be made based upon the merits of the provider, and not upon any other factors; thereby reaffirming the public's understanding that professional service contracts are not awarded to companies based on political affiliation or amount of political contributions.

To provide fairness and consistency, and due process for vendors/contractors, the Code offers a legal and contractual remedy process to resolve protested solicitations and awards, which includes impartial reviews by the Department of Commerce and Consumer Affairs administrative hearings process and the ability to request judicial review. The protest process also protects agencies and taxpayers from onerous and baseless protests, minimizes delays and disruptions in the award of contracts, and supports a prompt resolution.

To insure all vendors/contractors who seek public contracts compete on equal footing they are required to demonstrate compliance with Hawaii laws. The Code requires potential vendors/contractors to comply with Hawaii laws prior to award of a contract, i.e. DOTAX Tax Clearance Certificate including IRS certification, DLIR Certificate of Compliance; DCCA Certificate of Good Standing. Upon completion of goods provided or services performed, and before final payment is made, a vendor/contractor is again required to demonstrate compliance with Hawaii laws, thereby assuring that public funds are paid to compliant vendors/contractors.

The Code contains a provision (§103D-102(b)(4)(L)) that allows a purchasing agency to request an exemption when it has been determined that procurement by competitive means is either not practicable or not advantageous to the State, thereby providing flexibility, but within the requirements of the Code.

Open bidding procedures assure that the State obtains value, and potential vendors/contractors are treated fairly. The SPO believes that it is vital to good government to have a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions.

The SPO is against exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts.

In conclusion, there is no compelling reason to statutorily exempt agencies from the Code. The SPO recommends this bill be held.

Thank you.

**COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL  
PROFESSIONALS**

Email to: FINtestimony@capitol.hawaii.gov

Hearing Date: Thursday, February 21, 2008 5:00pm, CR 308

Honorable Representative Marcus R. Oshiro, Chair, Representative Marilyn B. Lee, Vice Chair and Members of the House Committee on Finance

**Subject: HB 2431, HD1 - Relating to the Board of Regents of the University of Hawaii**

Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; American Institute of Architects; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers.

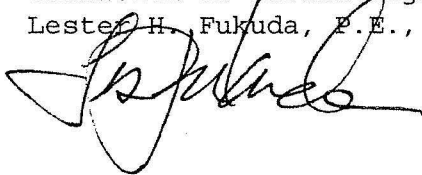
Our coalition is OPPOSED to HB 2431, HD1 Relating to the Board of Regents of the University of Hawaii. This bill proposes to exempt the University of Hawaii, Board of Regents from following the State Procurement Code (HRS 103D-304). It took many years to ensure that the State Procurement Code for professional services models the federal government procurement code (Public Law 92-582). The State currently must procure professional services based on qualification based selection procedures and ensure that the process is open and transparent. We take exception to any entity requesting an exemption from the current code.

**We urge you to Oppose HB 2431, HD1 - Relating to the Board of Regents of the University of Hawaii.** Mahalo for this opportunity to express our business concerns.

Sincerely,

Coalition of Hawaii Engineering & Architectural Professionals

Lester H. Fukuda, P.E., FACEC



# ***SAH - Subcontractors Association of Hawaii***

*820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938*

*Phone: (808) 537-5619 + Fax: (808) 533-2739*

February 21, 2008

Testimony To: House Committee on Finance  
Representative Marcus R. Oshiro, Chair

Presented By: Tim Lyons, CAE  
President

Subject: H.B. 2431, HD 1 - RELATING TO THE BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAII.

Chair Oshiro Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The Subcontractors Association of Hawaii represents the following nine separate and distinct associations that are listed below.

HAWAII FLOORING ASSOCIATION  
ROOFING CONTRACTORS ASSOCIATION OF HAWAII  
HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION  
TILE CONTRACTORS PROMOTIONAL PROGRAM  
PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII  
SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII  
PAINTING AND DECORATING CONTRACTORS ASSOCIATION  
PACIFIC INSULATION CONTRACTORS ASSOCIATION  
PACIFIC ELECTRICAL CONTRACTORS ASSOCIATION



We are opposed to this bill.

It is extremely difficult for contractors to keep up to date as to what the rules of procurement are when you have several different sets of those rules. One of the things that we have always endorsed about the State of Hawaii Procurement Code is that it applies to all government purchases and the administration of their contracts. An exception to that code is likely to lead to other agencies requesting exemptions and eventually we will be back to where we were many years ago with several different sets of rules and regulations to play by.

We are also concerned about the fact that the bid protest process may be vacated and although we don't think it is a perfect process, it does provide for a timely and less inexpensive way to resolve alleged problems.

We also object as this legislature was very helpful in requiring a demonstration of compliance with Hawaii's laws prior to the award of the contract by passing legislation to that effect several years ago. Additionally, before final payment is made that compliance must also again be substantiated. The vacating of the code for the University of Hawaii would allow these kinds of projects to slip through. We would anticipate that if UH is exempted from the code they would be even more difficult to deal with.

Lastly, there are bonding, prompt payment and other protections that assure transparency and we are not confident that any of these would be included in a UH devised system.

Based on the above, we are opposed to this exemption.

Thank you.

## FINtestimony

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**From:** Jon Nishimura (fainc) [jnishimura@fainc.org]  
**Sent:** Wednesday, February 20, 2008 5:52 PM  
**To:** FINtestimony  
**Subject:** Testimony Opposing HB 2431, HD1 - Relating to the Board of Regents of the University of Hawaii

Testimony Opposing HB 2431, HD1 - Relating to the Board of Regents of the University of Hawaii  
Hearing: Thurs Feb 21, 5:00pm Conf Rm 308

**ACEC**

AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Hawaii

February 20, 2008

EMAIL TESTIMONY TO: [FINtestimony@capitol.hawaii.gov](mailto:FINtestimony@capitol.hawaii.gov)

**Hearing Date: Thursday, February 21, 5:00 p.m., Conference Room 308**

**Honorable Representative Marcus Oshiro, Chair, Representative Marilyn Lee, Vice Chair, and Members of the House Committee on Finance**

**Subject: HB 2431, HD1 – Relating to the Board of Regents of the University of Hawaii**

Dear Chair Oshiro, Vice Chair Lee, and Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH), representing more than 70 consulting engineering firms in Hawaii, **opposes HB 2431, HD1 – Relating to the Board of Regents of the University of Hawaii.**

HB 2431 attempts to exempt the University of Hawaii Board of Regents from Hawaii Revised Statutes (HRS) Chapter 103D, the State procurement code.

ACECH believes that the State procurement code is the best means for procuring services and products, and should be used by all entities that procure services and products on behalf of the State. The procurement code provides for fair and proper award of State contracts, in a manner open and transparent to the public. ACECH worked for many years with other groups to enact Qualification-based selection and an open and transparent procurement process, to move this State away from the perception of procurement irregularities. We believe exempting UH from the procurement code sets a dangerous precedent, and is poor public policy.

We appreciate your time and the opportunity to present our case in opposition of HB 2431. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

American Council of Engineering Companies of Hawaii  
Jon Nishimura, P.E.  
President

2/20/2008

## FINtestimony

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**From:** John Wendell [john.wendell@earthlink.net]  
**Sent:** Wednesday, February 20, 2008 3:23 PM  
**To:** FINtestimony  
**Subject:** 2/21/2008 HB2431Agenda #8

Testimony to be presented regarding HB 2431, HD 1, Thursday, February 21, 2008, 5:00 p.m. Conference Room 308, State Capital by John Wendell.

Chair Oshiro, Vice Chair Lee, and the members of the House Finance Committee I appreciate the opportunity to comment on HB 2431, HD1. I am opposed to the passage of HB 2431, HD1, however, if the committee feels inclined to exempt the University from the provisions of the state procurement code, I provide an amendment to the bill for their consideration to mitigate the risk that the University will use this opportunity to improperly expend the public's money.

My name is John Wendell. I am a Professor of Accountancy at UH Mānoa where I have taught since 1989 and where I currently teach auditing. I have extensive experience as an auditor both for the State of New York and for General Electric Company. I have both a Ph.D. and a CPA (New York). The views that I am expressing are not those of the University but I am speaking from the sense of obligation that I feel as a state employee to my legislature to advise them on a policy matter where I have some expertise.

Preventing the abuse of the procurement process for personal gain by employees is one of the most difficult objectives to obtain in any internal control system. What distinguishes procurement abuse from other types of malfeasance, such a simple theft or embezzlement, is that the payoff for the crook, in the form of kick-backs and "favors," is completely off the books making such abuses difficult to prevent and to detect. The only way to prevent such abuses is through a procurement process that ensures that only the vendors providing the best product for the best price are selected. While the concept is simple, experience has shown that this is an extraordinarily difficult task to achieve in practice. While procurement abuse is a problem for every entity, the pressures of the bottom line and the market place serve to help keep the problem in check in a business environment. Unfortunately, in the government sector the economic checks are not as strong, making the potential for large-scale abuse greater. Worse, as we have seen repeatedly in Hawai'i, abuses in the procurement area erodes the public's confidence in the integrity of their government which reflects poorly on all of us in government service.

I have reviewed the testimony before the Higher Education Committee regarding HB 2431 of both the state procurement office and the University. The procurement office makes a compelling case for the need for consistency in the procurement practices across state agencies and the University makes various claims regarding the superiority of their purchasing system while they were exempt from the procurement code in the period 1998 to 2005. While I am not in a position to attest to the University's claims if they were successfully able to improve on the State's procurement system the obvious solution to adopt these improvements via appropriate amendments to §103D. This should satisfy the University since they will then be able to use those better practices, it should satisfy the procurement office since consistency between agencies would be preserved, and it will benefit the other agencies because they will also be able to utilize the improved procedures. Consequently, I recommend that this committee hold off on taking any action regarding exempting the University from §103D and instead direct the State Auditor to evaluate the performance of the University's procurement practices during the period for which they were exempt from §103D. The legislature can then use the State Auditor's report as the basis for amending the procurement code so that the all state agencies can benefit from the University's innovations.

If you do decide, against my recommendation and the state procurement office's recommendation, to go ahead with allowing the University to once again design and implement its own procurement code then HB 2431, HD1 needs to be amended to provide for the proper oversight. Currently the University is subject to audit by the compliance audit unit as provided by in §103D-108 but HB 2431, HD1 would exempt the University from

this oversight. To remedy this HB 2431, HD 1 should be amended so that the University continues to be under the oversight of the audit compliance unit. I suggest the following language to accomplish this:

"The compliance audit unit established in §103D-107 shall be responsible for evaluating the University's procurement process for fairness, efficiency, and accountability including the review of selected purchases and contracts made by the University. The compliance audit unit will prepare an annual report for the regents, the governor, and the legislature regarding the fairness, efficiency, and economy of the University's procurement process. This report shall identify any areas of non-compliance found by the compliance audit unit as well as instances where the unit finds that State resources were misused. The officers and employees of the University shall cooperate with this unit and furnish to them such information related to procurement activities as may be called for in connection with the research activities of this unit. The information shall be provided in a timely manner and shall be free of charge."

It is also prudent to require that the University's procurement policies be subject to review before implementation to ensure that they do not compromise state resources. The following language should be added to HD 2431 HD1 to accomplish this:

"Prior to implementation of any new internal policies and procedures for the procurement of goods, services, and construction by the University, these policies shall be subject to review and approval by the procurement policy board established in §103D-201 to ensure that they are consistent with the goals of public accountability and public procurement practices."

In conclusion, for the reasons stated above, the University should not be exempted from the provisions of the state procurement code, HRS §103D. If however, the legislature believes it is in the best interests of the State to allow the University to abandon the procurement code, HD 2431 needs to be amended to provide for the proper oversight and I hope you will consider the amendments that I have proposed above to accomplish this. The best solution however, is to incorporate the best practices used by the University in their previous experiment with a §103D exemption into a revised §103D.

Sincerely,

John P. Wendell

## FINtestimony

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**From:** Joel Fischer [jfischer@hawaii.edu]  
**Sent:** Wednesday, February 20, 2008 11:34 AM  
**To:** FINtestimony  
**Subject:** HB2431; FIN; 2/21; 5PM; Rm 308

**Importance:** High

HB2431, HD1, Relating to the BOR of UH  
FIN; Chair, Rep Oshiro

PLEASE KILL THIS BILL.

I understand the motivation behind this bill. The Legislature always has the best interests of UH in mind. But I do not believe this is the best way to do help us.

Unfortunately, the UH under this Board of Regents and the current President have demonstrated themselves to be incompetent at handling the needs of the University. This is never more obvious than in the casual, bordering on corrupt, handling of money. The current antics remind me of the bad old days of Evan Dobbelle! My comments are verified by the multiple, negative reviews of UH conducted by the State Auditor.

So, to actually REMOVE the safeguards of the public procurement code requirements is probably the OPPOSITE of what needs to be done.

Until a new BOR and President come on board, I ask that your committees not only kill this bill, but institute as many safeguards and as much monitoring of UH appropriations as possible.

Please leave the procurement codes in place for UH!

Thank you.

Aloha, joel

Dr. Joel Fischer, ACSW  
President, 19-3, Democratic Party

Professor  
University of Hawai'i, School of Social Work Henke Hall Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."  
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."  
Dr. Martin Luther King, Jr.

"Never, never, never quit."  
Winston Churchill