

SB 2823 Testimony**Darryl Bardusch, Procurement Policy Board member**

I wish to express my support for this bill. During my short tenure as a Procurement Policy Board member, I have pushed for audits of various agencies. My efforts have met with resistance based on the arguments that audits have never been done or they are only warranted if there is a pattern of procurement violations in a given agency. I have voiced objection to this concept since I believe the power of the Procurement Policy Board to request an audit under HRS 103D-202 is not limited to investigating a pattern of abuses. I have proposed random audits based on my belief that individuals perform better if they know that their work is subject to review. My concept of random audits has gained some support on the Board. However, the board has not adopted this concept.

I believe this bill will end this deadlock and permit everyone, the legislature, the Board and the general public to have a clearer picture of how the various state agencies are spending their tax dollars. My constant position on the Board is that it is not enough for the State agencies to conduct their procurements properly but they must also do them openly so that the public can have faith that their tax dollars are being wisely spent.

I have attached two documents to support my request for targeted audits of two agencies at the next Procurement Policy Board meeting. Those agencies are DBEDT and The Hawaii Public Library System. I do not mean to imply that either agency has done anything wrong just that a review of their procurements indicates possible problems in the manner in which they are implementing the procurement code. The need for these targeted audits reinforces my belief that the random audits proposed by this bill are urgently required to bring an additional level of openness to State procurements.

DBEDT contracts	2007	% of total	2006	% of total
Exemption	87	64%	65	64%
Invitation for bids	13	10%	10	10%
Request for proposals	18	13%	12	12%
Small purchase 15-50,000	14 (9)	4%	5 (3)	2%
Sole source	11	8%	12	12%
Yearly total	135*		101*	

*In 2007, 9 of the sole source contracts were also listed as Small Purchase. IN 2006, 3 of the sole source contracts were also listed as Small Purchase

This information was compiled from the data provided by SPO. It reflects that in 2007 DBEDT awarded 72% of its contracts noncompetitively (sole source & exemption). In 2006 DBEDT awarded 76% of its contracts noncompetitively. This large number of noncompetitive awards indicates a possible pattern of misusing Exemptions and Sole Source authorities by DBEDT combined with the inconsistency in the use of procurement methods (see below) warrant an audit of DBEDT's contracting activities. Specific examples include:

Sole Source: 2007

1. Removal of coconut trees at Makai Gateway Park
2. Replace 4 water fountains Kakaako Waterfront
3. Repair and maintenance of computers

2006

4. Conducting survey of revenue and employment Hawaii ocean science
5. Catering Grand Opening Ceremony

Exemptions: 2007

1. Purchase of books for WUSATA workshops
2. Rental of Canopy for Ceremony
3. Refreshments for Ceremony
4. Surface Preparation for Ceremony
5. Tackcoat or primer for surface preparation for Ceremony
6. Photography services for Ceremony
7. Banner for Ceremony
8. Leis for Ceremony
9. Janitorial Services

2006

10. Safety inspection for electric vehicle
11. Replacement tires for Electric vehicles
12. Repair of Compressor at HCATT program
13. Janitorial Services
14. Janitorial Services

There also appears to be no consistency concerning when to use any of the procurement methods. This indicates a lack of understanding of the proper procurement method to use for a specific requirement.

1. In 2007 of the 87 Exemption procurements 53 were for 50,000.00 or less.
2. Using noncompetitive Exemption method for Janitorial services while also using IFB method for Janitorial services.
3. Surveys being conducted by RFP, Exemption and Sole Source methods.
4. Booth rentals at trade shows conducted by Exemption and Sole Source methods.

Library contracts

Of the 346 procurements listed for the Hawaii State Public Library System 6 were Small Purchase Method, 1 was IFB and 1 was RFP with the remaining 338 being Exempted under 103D-102 (4)(C) which permits the purchase of the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State: Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print video, audio, magnetic, or electronic form.

There appears to be the mistaken belief that (1) there is no need to make the threshold determination that competitive procurement is not practical or advantageous and (2) every item purchased qualifies as a research or reference material.

The failure to identify what items were purchased beyond the simple description of "Library Materials" used of all 338 purchases deprives the public and any other entity of any meaningful oversight of these procurements.

There is no doubt that the misclassification of all the items purchased as "research and reference material" allows the agency to use the Exemption to procure popular fictional reading material. It would be difficult to say that the competitive procurement of fictional reading material would not be practical or advantageous to the State. The large number of purchases from Amazon, Borders and Barnes and Noble indicate that competition exists. The agency would be hard pressed to demonstrate how using either the IFB or RFP Method or even the Small purchase Method would not be practical or advantageous when the Agency knows the Title and number of the books it wants to purchase.

There numerous examples of multiple purchases being made to the same contractor on the same day. The reasons for these multiple purchases needs to be examined to determine if they represent inappropriate splitting of requirements, simply poor procurement practices in failing to consolidate procurements or a valid reason exists.

1. Contract numbers 1569 through 1588 totaling 19 separate awards to EBSCO Publishing were all awarded on 7/28/2006 by the same individual.
2. Ingram Library Services was awarded 6 separate contracts on 1/24/06, 3 separate contracts on 1/30/2006, 2 separate contracts on 1/31/06, and 2 separate contracts on 2/1/06 by the same individual.
3. Amazon.com Credit was awarded 4 separate contracts on 1/24/06 by the same individual.

There is no information provided for any purchases made in FY07.

GUY TOYAMA
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Wednesday, January 30, 2008

Ladies and gentlemen:

I hereby submit the following testimony regarding SB2823, 2824, 2825, 2826, 2827. The SENATE Tourism and Government Operations Committee is set to hear this bill on Thursday, January 31, 2008 at 1:15 pm in Senate Conference Room 229.

I would appreciate if you would make and deliver 25 copies of my testimony to Room 213 for this hearing. Thank you.

TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: GUY TOYAMA, H2 TECHNOLOGIES, INC

SUBJECT: Testimony relating to SENATE PROCUREMENT PACKAGE (SB2823, 2824, 2825, 2826, 2827) - Relating To Procurement, set to be heard on 1/31/2008 at 1:15 pm in Conference Room 229

Successful economic development, especially in the areas of innovation and high technology require strong public-private sector partnerships and collaborations based on trust and fairness. Public-private collaboration in Hawaii has been essential for the growth of Hawaii's technology sector and is exemplified by federal and state programs such as the Hawaii Technology Development Venture, the State Small Business Innovation Research matching grants and programs such as the Center for Excellence for Research in Ocean Science. In 2007 with the Hydrogen Fund procurement, we saw how a dispute over interpretation of procurement laws by administration officials has denied qualified companies the opportunity to do business with the State resulting in wasted tax payer dollars, time, and resources.

State level public-private collaboration takes place continually in the context of State procurement for goods and services and must set the highest standards of objectivity and fairness by government officials administering the procurement process. Senate Bills 2823, 2824, 2825, 2826 and 2827 strive to ensure compliance with chapter 103D, HRS and assure that State administrators are fully cognizant of the procurement laws.

I support each of these five bills, which promote appropriate audits and oversight of state agencies in the procurement process, provide sanctions and penalties to enforce corrective action and provide for procurement law education of State employees. Such measures are essential to the involvement of Hawaii's best and most qualified companies in conducting business with the State and will help avoid the loss of trust in government by discouraging government employees from exercising unfair or uneducated acts.

I encourage this committee to approve SB 2823, 2824, 2825, 2826 and 2827 and hasten their passage.

Thank you very much for your consideration of my views and my testimony on this bill.

Respectfully submitted,

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MIKE LARRATT
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Wednesday, January 30, 2008

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TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: MIKE LARRATT

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Thank you very much for your consideration of my views and my testimony on this bill.

Respectfully submitted,

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Wednesday, January 30, 2008

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TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: ROBERT ROBINSON, HAWAII ANGELS

SUBJECT: Testimony relating to SENATE PROCUREMENT PACKAGE (SB2823, 2824, 2825, 2826, 2827) - Relating To Procurement, set to be heard on 1/31/2008 at 1:15 pm in Conference Room 229

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Respectfully submitted,

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Wednesday, January 30, 2008

Ladies and gentlemen:

I hereby submit the following testimony regarding SB2823, 2824, 2825, 2826, 2867. The SENATE Tourism and Government Operations Committee is set to hear this bill on Thursday, January 31, 2008 at 1:15 pm in Senate Conference Room 229.

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TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: DR. SANFORD W. FRIEDMAN, GLOBAL EDUCATION TRUST

SUBJECT: Testimony relating to SENATE PROCUREMENT PACKAGE (SB2823, 2824, 2825, 2826, 2867) - Relating To Procurement, set to be heard on 1/31/2008 at 1:15 pm in Conference Room 229

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Thank you very much for your consideration of my views and my testimony on this bill.

Respectfully submitted,

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TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: JOE COOPER, ARCHINOETICS, LLC

SUBJECT: Testimony relating to SENATE PROCUREMENT PACKAGE (SB2823, 2824, 2825, 2826, 2867) - Relating To Procurement, set to be heard on 1/31/2008 at 1:15 pm in Conference Room 229

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Respectfully submitted,

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BILL SPENCER
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TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: BILL SPENCER, HAWAII VENTURE CAPITAL ASSOCIATION

SUBJECT: Testimony relating to SENATE PROCUREMENT PACKAGE (SB2823, 2824, 2825, 2826, 2827) - Relating To Procurement, set to be heard on 1/31/2008 at 1:15 pm in Conference Room 229

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Respectfully submitted,

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TO: THE SENATE TOURISM AND GOVERNMENT OPERATIONS COMMITTEE, Senator Clarence K. Nishihara, Chair (telefax - (808) 586-6659)

FROM: ERIC CARLSON, PRODUCED BY YOU.COM, LLC

SUBJECT: Testimony relating to SENATE PROCUREMENT PACKAGE (SB2823, 2824, 2825, 2826, 2867) - Relating To Procurement, set to be heard on 1/31/2008 at 1:15 pm in Conference Room 229

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Respectfully submitted,

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January 30, 2008

To: testimony@capitol.hawaii.gov

*Testimony for Hearing before the
Senate Committee on Tourism and Government Operations
Thursday, January 31, 2008, 1:15 pm*

*State Capital, Conference Room 229
415 South Beretania Street
Honolulu, Hawaii 96813*

Re: Testimony in Support of SB 2823, SB 2824, SB 2825, SB 2826 and SB 2867

Chair Nishihara, Vice Chair Kim, and Committee Members:

Thank you for the opportunity to submit testimony in support of SB 2823, SB 2824, SB 2825 and SB 2826, each Relating to Procurement, as well as SB 2867 Relating to the Hawaii Public Procurement Code.

I am Jeff Au, Managing Director and General Counsel of PacificCap, Hawaii's largest locally based venture capital firm. Since 2000, PacificCap affiliates have invested in more than two dozen Hawaii companies, and we have led or co-invested in financing rounds totaling more than \$400 million. Our investor base of more than 100 institutional, corporate and high net worth individual investors from Hawaii demonstrates the widespread support that innovation, capital formation and economic diversification have across our community.

As a fourth generation kamaaina, at a very personal level, issues of innovation and economic diversification have always remained very close to my heart, to continue the precious legacies of economic opportunity and social mobility that our grandparents worked so very hard to provide for us.

We at PacificCap support these bills, which seek to restore trust, credibility and fairness in the State's procurement process. We believe that instituting required checks and balances for procurement oversight and audits of State agencies, providing sanctions and penalties to enforce corrective action, as well as requiring procurement law education for State employees, as prescribed by these bills, are critical for promoting innovation and economic development in our State, as well as for restoring Trust in Government.

While many of you may have read in the papers about the Office of Procurement's findings of procurement law violations by the Department of Business Economic Development and

Tourism ("DBEDT") in connection with the State Hydrogen Fund, for the record, our firm did not respond to the RFP or any way apply for any funds under that program.

Our support for these bills results from our deep concern over the broader policy implications and damage inflicted by procurement law violations on our efforts to promote innovation and economic diversification in Hawaii that many of us, in both the Legislature and business community, have worked very hard to nurture and support for many years now.

Public-private sector partnerships and collaboration have been essential to successful economic development around the world, particularly in the areas of innovation and high technology. In Hawaii, such public-private sector collaboration has been critical for the growth of Hawaii's tech sector at the federal level and could potentially yield substantial benefits at the State level as well.

However, a prerequisite to successful public-private sector collaboration at the State level is the need for our business community to have a level of fundamental trust in the objectivity and fairness of State officials and the procurement process.

The damage to our State from violations of procurement laws goes far beyond wasting taxpayer dollars and being unfair to participants in an RFP process. Even more significant is the chilling effect that such violations has on other private sector companies in undermining their trust in government and discouraging the best and most qualified companies from wanting to even apply to do business with the State.

Procurement law violations create a lose-lose propositions for all RFP applicants. For an applicant who is improperly denied an award, the result is a waste of time, money and resources, in addition to potentially compromising confidential business plans, ideas and intellectual property. But even for legitimate winners, reputations can become tainted, both in the business community and among State officials, for being perceived as associated with a procurement process and/or state agency that has a reputation for procurement law violations.

Some may think that procurement law violations over the State Hydrogen Fund are a thing of the past. However, Winston Churchill once said,

Those that fail to learn from history, are doomed to repeat it.

Unfortunately, if these bills do not become law and if our State officials do not learn from the procurement history of the State Hydrogen Fund, history can, and may, very likely be repeated.

Consider, for example, HB 3074/SB 2996 introduced just last week to both the House and Senate, by request, as part of the Governor's legislative package. This bill proposes to:

Appropriate \$100,000 to the department of business, economic development, and tourism to enter into a partnership with a qualified private entity to assist the office of technology transfer and economic development to accelerate commercialization of University of Hawaii discoveries.

Of course, there is the obvious policy question of if the Legislature wants to appropriate \$100,000 to OTTED to enter into a partnership with a "qualified private entity" to help commercialize UH technologies, why is it that OTTED cannot directly contract with such "qualified private entity," without a second State agency, such as DBEDT, serving as the "middleman?"

But from a procurement process standpoint, we must ask the question of what does "qualified private entity" mean, who this might be, and who is going to define and select such "qualified private entity," and what new legal checks and balances have been instituted to prevent the procurement process for this OTTED UH technology transfer partnership from repeating the problems found by the State Procurement Office with respect to the State Hydrogen Fund?

Thank you very much for the opportunity to submit this testimony.

Respectfully submitted,


Jeffrey K. D. Au
Managing Director and General Counsel
PacifiCap Group, LLC

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

Barbara A. Annis
Deputy Comptroller

**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119**

**TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
TOURISM AND GOVERNMENT OPERATIONS
ON
January 31, 2008**

S.B. 2823

RELATING TO PROCUREMENT

Chair Nishihara and members of the Committee, thank you for the opportunity to testify on S.B. 2823.

The Department of Accounting and General Services (DAGS) opposes S.B. 2823. The policy board already has the power to perform the kinds of audits this bill proposes. Furthermore, it has asked the State Procurement Office to recommend audit methods to the board for its consideration and implementation. Therefore, this bill is unnecessary.

Besides being unnecessary, this bill is discriminatory. It directs the policy board to only conduct audits of the executive branch. Even here, the bill appears to single out the cabinet level departments. These cabinet level departments are under the jurisdiction of a chief procurement officer who also happens to be the administrator of the State Procurement Office. There are 19 other chief procurement officers and jurisdictions: 1 for the Senate, 1 for the House, 1 for the Judiciary, 1 for OHA, 1 for Hawaii Health Systems Corporation, 1 for the University of Hawaii, 1 for the DOE, 4 for the County

administrations, 4 for the County Councils, and 4 from the County Boards of water supply. There is no basis for singling out only 1 of 20 jurisdictions.

Finally, the bill is overly prescriptive. The procurement policy board should be allowed to exercise its power to perform audits in a manner directly related to its performance of its responsibilities for assuring compliance with the procurement code.

DAGS recommends that this bill be held.

Thank you for the opportunity to testify on this matter.