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ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

**TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
SENATE COMMITTEE
ON
TOURISM AND GOVERNMENT OPERATIONS**

January 31, 2008

SB 2825

RELATING TO PROCUREMENT.

Chair Nishihara, Vice Chair Kim and committee members, thank you for the opportunity to testify on SB 2825. This bill allows the administrator of the State Procurement Office (SPO) to determine corrective actions, and assess an administrative fine when a governmental body has not complied within thirty days.

The SPO supports the intent of the bill, with the following changes for your consideration, to clarify that administrative fines be assessed to the appropriate procurement officer and not a governmental body. "Governmental body" is defined in §103D-104 as any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, government corporation, or other establishment or office of the executive, legislative, or judicial branch of the State, including the office of Hawaiian affairs, and the several counties of the State. "Procurement officer" is defined as any person authorized to enter into and administer contracts and make written determinations with respect thereto.

- (2) Assist, advise, and guide governmental bodies in matters relating to procurement [;], including determinations of corrective actions; provided that if a governmental body procurement officer fails to comply with any determination rendered by the administrator within thirty days, the governmental body procurement officer shall be subject to an administrative fine under section 103D-106, for every day of noncompliance;

Thank you.

GUY TOYAMA
H2 Technologies, Inc
73-4347 Malie Pl, Kailua-Kona, Hawaii 96740
Phone (808) 938-6325

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.

MIKE LARRATT
413B Kaelepu Drive, Kailua, Hawaii 96734
Phone (808) 263-5998

Wednesday, January 30, 2008

Ladies and gentlemen:

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

FROM: MIKE LARRATT

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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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,

Mike Larratt
larrattme@msn.com

ROBERT ROBINSON
Hawaii Angels
900 Fort Street Mall, Suite 1800 Pioneer Plaza, Honolulu, Hawaii 96813
Phone (808) 447-9247

Wednesday, January 30, 2008

Ladies and gentlemen:

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

Respectfully submitted,

Robert Robinson
Hawaii Angels
rob@hawaiiangels.org

DR. SANFORD W. FRIEDMAN
Global Education Trust
3717 Old Pali Rd., Honolulu, Hawaii 96817
Phone (808) 595-8866

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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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,

Dr. Sanford W. Friedman
Global Education Trust
friedman@lava.net

JOE COOPER
Archinoetics, LLC
700 Bishop, Suite 2000, Honolulu, Hawaii 96813
Phone (808) 741-1684 Fax (888) 279-0289

Wednesday, January 30, 2008

Ladies and gentlemen:

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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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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,

Joe Cooper
Archinoetics, LLC
joe@archinoetics.com

BILL SPENCER
Hawaii Venture Capital Association
805 Kainui Dr., Honolulu, Hawaii 96734
Phone (808) 262-7329 Fax (808) 263-4982

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.

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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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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,

Bill Spencer
Hawaii Venture Capital Association
bspencer@hawaii.rr.com

ERIC CARLSON
Produced By You.com, LLC
2800 Woodlawn Dr., Suite 262, Honolulu, Hawaii 96822
Phone (808) 258-0491 Fax (808) 395-7625

Wednesday, January 30, 2008

Ladies and gentlemen:

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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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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,

Eric Carlson
Produced By You.com, LLC
eric@producedbyyou.com



PACIFICAP GROUP, LLC
415 South Beretania Street, Suite 600
Honolulu, HI 96813
Phone: 808.287.5388 Fax: 808.537.3488

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 Capitol, 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 PacifiCap, Hawaii's largest locally based venture capital firm. Since 2000, PacifiCap 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 PacifiCap 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:

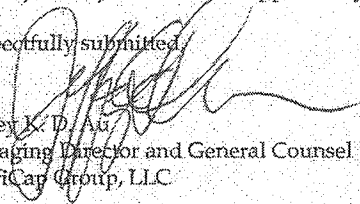
Appropriate \$100,000 to the department of business, economic development, and tourism to enter into a partnership with a qualified private entity to assist the office of technology transfer and economic development to accelerate commercialization of University of Hawaii discoveries.

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

We submit the following testimony to THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON TOURISM AND GOVERNMENT OPERATIONS

Senator Clarence K. Nishihara, Chair
Senator Donna Mercado Kim, Vice Chair

HEARING

DATE: Thursday, January 31, 2008
TIME: 1:15 P.M.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

On SB 2825

RELATING TO PROCUREMENT.

Requires that any determination of corrective action by the administrator of the state procurement office to a governmental body shall be complied with within 30 days or the governmental body shall be subject to an administrative fine under section 103D-106, HRS, for every day of noncompliance.

Testimony in support of SB 2825: As a small Hawaii business, we support this bill's intent to place controls on a State procurement process that is currently one-sided and open-ended. We also support the concept of enforcing the state procurement office's directives and deadlines through the use of administrative fines or similar penalties.

We also request that bidders be notified when a bid file is opened and available for review after an award has been made, and that correspondence pertaining to a disputed RFP be issued to bidders after an award with the same timeliness and impartiality given to communications prior to the award.

In our experience, the requirements placed by the procurement code on the various parties are very one-sided:

- 1) The bidder has only a few working days to seek explanation or to dispute a result, while the government office that issued the RFP has no time limit and is able to delay action indefinitely.
- 2) The bidder must constantly and randomly file freedom of information requests to learn of correspondence related to a disputed RFP they have bid upon, while the governmental body automatically receives all related correspondence.

In addition, the months of delay and uncertainty after a disputed bid award have several negative consequences for the state:

- 1) Tarnishing the business reputations of all bidders regardless of whether they were the winner or loser.
- 2) Depriving the state of the services it needed and originally issued an RFP for.
- 3) Removing the desire of small businesses to bid on any future government contracts.

Respectfully,

Joelle Simonpietri
Chenoa Farnsworth
Michael T. Pfeffer
Robert J. Robinson

Kolohala Holdings LLP
Pioneer Plaza, Suite 1800
900 Fort Street Mall
Honolulu HI 96813
Phone: 808-447-9247
www.kolohala.com

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. 2825

RELATING TO PROCUREMENT

Chair Nishihara and members of the Committee, thank you for the opportunity to testify on S.B. 2825.

The Department of Accounting and General Services opposes this bill because it is unnecessary. First, there are already provisions in the law for administrative fines for violations of the procurement code. In addition, the wording on page 1, lines 10-12 suggests that the administrator, who is just 1 of 20 Chief Procurement Officers, is making determinations in the other jurisdictions as well. This undermines the authority of the other Chief Procurement Officers.

DAGS recommends that this bill be held.

Thank you for the opportunity to testify on this matter.