



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
HOUSE COMMITTEE ON FINANCE
March 2, 2009
Room 308, State Capitol

H.B. 1184 H.D. 1 RELATING TO STATE GOVERNMENT

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

The Administration strongly supports H.B. 1184, H.D. 1, which provides for expedited procedures to allow the State to immediately take full advantage of the funding for programs, services, and benefits authorized by the American Recovery and Reinvestment Act of 2009 (federal stimulus act) to bring the benefits of the federal stimulus plan to the people of Hawaii at the earliest practicable time.

Specifically, this bill provides temporary exemptions from current statutes relating to procurement, rule-making, and employment, to allow the State to expedite the implementation and expansion of programs, services, and benefits authorized by the federal stimulus act. The primary goal of this federal act is stimulation of the U.S. economy to counteract the present economic difficulties facing the country.

These temporary exemptions will ensure that state agencies have the flexibility to utilize federal funds in an expedited and timely manner and that the funds are put to their most effective uses.

Section 2 of this measure provides state agencies with the option of using expedited procurement procedures as an alternative to standard procurement procedures and provisions, including chapters 103D and 103F, Hawaii Revised Statutes, for any contracts for goods, services, construction, or health and human services that use federal funds (or required matching state funds) authorized by the federal stimulus act.

For procurements of less than \$150,000 for goods and services or health and human services, and procurements of less than \$250,000 for construction, Section 2 provides an alternative procurement process that is based on the simplified small purchase

source selection procedures found in chapter 103D, HRS. The elevated dollar ceilings of \$150,000 and \$250,000 (higher than present statutory levels) will enable these simplified procurement procedures to be used for larger procurements, expediting their execution.

Section 2 also provides an alternative procurement process for procurements of \$150,000 or more for goods, services, or health and human services, and of \$250,000 or more for construction. These procedures are similar to the source selection method for federal grants and will also expedite procurement implementation.

Section 2 additionally provides an expedited process for resolution of procurement protests. For example, if a protest is not resolved by mutual agreement, the head of the purchasing agency must issue a written decision within ten working days of receiving the protest. Also, for awards of health and human services contracts, a decision by the chief procurement officer to uphold or overturn a decision by the head of the purchasing agency must be rendered within ten days from receipt of the request for consideration, and such a decision is deemed final and conclusive. Additionally, any protest or request for reconsideration will not stay the award of any contract made under this act. These provisions providing for time limitations, the swift resolution of protests and requests for reconsideration, and no stays will further ensure that federal funds are used efficiently and that their expenditure is not delayed.

For procurement contracts using federal funds authorized by the federal stimulus act, Section 3 of this measure provides exemptions from the following: the mandatory transfer of 1% of all state fund appropriations for capital improvements designated for the construction cost element (103-8.5, HRS), initial tax clearance certifications (103-53(a), HRS), certifications of compliance with labor laws (103-55, HRS) and certifications of compliance with the prevailing wage law on construction contracts and other applicable state and federal laws (103-55.5, HRS). Tax clearance certifications will still be required prior to final payment. These certification exemptions will ensure that projects begin promptly. The exemption from 103-8.5, HRS, will ensure that all funds for capital improvement construction costs are used for the specified capital improvement projects.

Section 4 of this measure provides state agencies with the option of using an expedited rule-making process (interim rules) for implementation of programs, services or benefits authorized or funded by the federal stimulus act. Adopted interim rules will be exempt from the requirements of chapter 91, HRS, and take effect upon filing with the Lieutenant Governor. These interim rules will only be effective through December 31, 2010. Beyond this date, responsible agencies will need to adopt rules in compliance with chapter 91, HRS, in order to continue programs services or benefits implemented with interim rules. This temporary expedited rule-making process will enable agencies to promptly lay the groundwork for the expenditure of funds and the implementation or expansion of associated programs authorized under the federal stimulus act.

The public will benefit from the efficient and timely implementation of services, programs and benefits authorized and funded by the American Recovery and Reinvestment Act of 2009.

Section 5 of this measure temporarily amends section 76-16 to provide a civil service exemption for positions or contracts for services with private persons or entities lasting two years or less, where the DHRD director has certified that the service is necessary to the efficient and timely implementation of programs authorized or funded by the federal stimulus act. This exemption will provide agencies with the necessary flexibility to meet additional staffing and personnel needs brought on by the expanded and time-sensitive workload associated with the federal stimulus act.

Section 6 of this measure provides that the expenditure ceiling placed on the use of Temporary Assistance for Needy Families (TANF) funds in the Supplemental Appropriations Act of 2008, and any other expenditure limits placed on the use of TANF funds, shall be raised or waived to the extent necessary for the department of human services (DHS) to utilize the funds provided under the federal stimulus act. Budget Director Georgina Kawamura would like to offer an amendment to this section which we fully support.

This measure has a repeal date of December 31, 2010, ensuring the temporary nature of these exemptions and expedited procedures. Section 6 (this is a typo as the reference should be to section 5) of this measure has a repeal date of December 12, 2012, to ensure that private persons or entities hired prior to December 31, 2010 (potentially only shortly prior), are able to complete their contracted services to the State.

The public will benefit from the efficient and timely implementation of services, programs and benefits authorized and funded by the American Recovery and Reinvestment Act of 2009. For this and the above stated reasons, the Administration urges this committee to pass H.B. 1184 H.D. 1.



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
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LAWRENCE M. REIFURTH
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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

MONDAY MARCH 2, 2009
4:44 P.M.

**TESTIMONY ON HOUSE BILL NO. 1184, H.D. 1
RELATING TO STATE GOVERNMENT.**

WRITTEN ONLY

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, MARILYN B. LEE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence M. Reifurth, and I am the Director of the Department of Commerce and Consumer Affairs ("Department"). The Department strongly supports this bill, which would be instrumental in bringing, as soon as possible, additional federal financial assistance and other social services to Hawai'i residents who have been affected by the current economic climate as well as improving and expanding benefits to our already neediest individuals and families.

Thank you for the opportunity to submit testimony on H.B. No. 1184, H.D. 1.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
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DEPUTY DIRECTOR

STATE OF HAWAII
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March 1, 2009

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on HB 1184, HD1, March 2, 2009
4:44 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 1184, HD1
Relating to Government**

TO CHAIRPERSON OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of House Bill No. 1184, HD1 is to enable the State to expedite the implementation of new programs, services and benefits authorized by the American Recovery and Reinvestment Act of 2009, by creating temporary exemptions in procurement, rule-making and employment statutes.

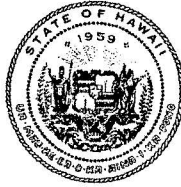
The Department of Human Resources Development **strongly supports** this bill.

The temporary exemptions in procurement, rule-making and employment will facilitate administrative procedures to expend public funds in order for State agencies to move swiftly and take advantage of the Federal government's assistance to our State. As an example, the proposed amendment to Section 76-16, Hawaii Revised Statutes, provides an additional exemption from civil service to perform temporary and immediate services that may not be in place under the civil service system. The foresight to install this temporary measure will position the State to provide the services on a timelier basis, create more jobs, infuse the additional resources into our economy, and prevent lost opportunities to take full advantage of the federal funds.

Thank you for the opportunity to provide testimony on this important measure.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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**HOUSE COMMITTEE ON FINANCE
TESTIMONY REGARDING HB 1184 HD 1
RELATING TO STATE GOVERNMENT**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 2, 2009

TIME: 4:44PM

ROOM: 308

This measure creates temporary exemptions in procurement, rulemaking, and employment for purposes of implementing the State's interests in the American Recovery & Reinvestment Act of 2009.

The Department of Taxation (Department) supports the tax provision in this measure.

The Department supports the provision in this measure that exempts persons contracting with the State for purposes of the 2009 Stimulus Act from obtaining an upfront tax clearance. Under current law, a contractor cannot begin performing services until a tax clearance from the State and Internal Revenue Service has been received. Under this bill, the tax clearance requirement still remains; however only at the backend. As proposed under the bill, the contractor will be able to begin working for the State to carry out the provisions of the 2009 Stimulus Act; however they will not get paid until a tax clearance is issued.

Due to the urgency in implementing the State's interest in the 2009 Stimulus Act, the Department supports clearing contractors for taxes prior to their payment, rather than prior to their beginning services.

Ultimately, a contractor still must obtain a tax clearance before they are paid, which the Department believes is sufficient motivation under the circumstances.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 1184, H.D. 1, RELATING TO STATE GOVERNMENT.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Monday, March 2, 2009 **TIME:** 4:44 PM

LOCATION: State Capitol, Room 308

TESTIFIER(S): Lisa M. Ginoza, First Deputy Attorney General,
or James W. Walther, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this bill. This bill would create exceptions to certain procurement, civil service, and rule-making laws in order to allow State agencies to make use of federal funds authorized for the State as part of the American Recovery and Reinvestment Act of 2009 in an expedited manner.

We have two comments on the sunset dates. Section 7 of the bill includes a sunset date of December 31, 2010, which is when much of the federal funding must be obligated, except that section 6 of the bill is to be repealed on December 31, 2012.

First, the general sunset date is intended to limit the provisions of this bill to just the period during which the federal funds are available, which is for the most part until September 30, 2010, and in one case December 31, 2010. There may be exceptions, however, to the availability of funds provided in the Act for specific programs that may require the Legislature to extend the deadlines in the future.

Second, the sunset date specific to section 6 of this bill should actually refer to section 5, which would amend section 76-16(b), Hawaii Revised Statutes, pertaining to civil service. This later sunset date makes clear that any positions created or contracts entered into prior

to September 30, 2010, when the relevant funds must be obligated, are valid for two years under the civil service exemption created in section 5, but provides an additional period of time for unforeseen circumstances.

Upon further review, we believe that it would be simpler to have a single sunset date, and to use the later date alone, because the availability of federal funds will be set by federal provisions, and the interim rules are already limited to the period specified in section 4 of the bill. We suggest that section 7 of the bill be amended to read as follows (with the additional reenactment wording included):

"SECTION 7. This Act shall take effect upon its approval and shall be repealed on December 31, 2012; provided that section 76-16(b), Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the effective date of this Act."