

**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of  
**Barry Fukunaga**  
Chief of Staff to the Governor

Before the  
**HOUSE COMMITTEE ON FINANCE**  
March 25, 2009  
2:00 P.M.  
Room 308, State Capitol

**S.B.21, S.D.1 RELATING TO STATE GOVERNMENT**

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

The Administration strongly supports and advocates for measures that will provide temporary 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 (ARRA). The federal programs under the Act will offer benefits of the federal stimulus plan to the people of Hawaii and the legislation sought will allow this to occur at the earliest practicable time.

Specifically, we seek temporary adjustments 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 ARRA. The primary goal of ARRA is stimulation of the U.S. economy to counteract the present economic difficulties facing the country and it is therefore important that we have the ability to achieve this expectation.

These temporary allowances will ensure that state agencies have the flexibility to utilize federal funds in an expedient and timely manner so that the funds are put to their most effective use.

We therefore ask for several amendments to the measure before you that will revert provisions of this legislation to their original form. Changes to SB 21, SD1 are requested as follows:

Section 2 of this measure now requires that state agencies use 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 ARRA.

The Proposed SD1 of this measure granted state agencies the option of using the procurement procedures under Section 2 of this bill as an expedient alternative to the existing procurement code. The discretion given to state agencies to use either this legislation or the procurement code should be retained. There is no reason to bar agencies from using the existing procurement code in expending ARRA funds, as the rationale for this measure's alternative procurement procedures is principally the significant time constraints and deadlines imposed by ARRA. Agencies should be allowed and encouraged to use the existing procurement code where time and circumstances permit. As such, we request that the word "may" be reinserted on line 18, page 21 of the SD1 in place of the word "shall".

The Administration also requests that Section 5 of the Proposed SD1 be reinserted. Section 5 provided a temporary statutory exemption from chapter 76, HRS, giving agencies the ability to contract for private services and staffing assistance for a period of 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 ARRA. This exemption provides agencies with the necessary flexibility to meet additional staffing and personnel needs brought on by the expanded and time-sensitive workload associated with ARRA. Given ARRA's deadlines to expend funds and other programmatic requirements, present staffing methods are likely to prove insufficient and slow, and existing staff may be overwhelmed. The flexibility sought also alleviates the state from having to procure additional office space, equipment and other provisions that would be associated with expansion of existing staffing. Consequently, we respectively request that the committee reinsert this provision.

We also request that the exemption from section 103-55.5, HRS, be reinserted in Section 3 of this legislation. Section 103-55.5 requires certifications of compliance with the prevailing wage law on construction contracts and other applicable state and federal laws. This exemption does not exempt compliance with the underlying laws, but merely allows contracts to be awarded in advance of the receipt of the certification of compliance so the start of contract work will not be slowed. Certifications will still be required but will be allowed to be submitted later. As such, we request that the words "and 103-55.5," be inserted between "103-55," and "Hawaii Revised Statutes" on line 8, page 8 of the SD1, and the word "and" before "103-55," be deleted.

We additionally request that the original sunset dates in the Proposed SD1 be reinserted. The current draft has a defective sunset date of June 30, 2009. The Proposed SD1 had a repeal date of December 31, 2010, ensuring the temporary nature of these allowances for the ARRA funding opportunity. Section 6 (a typo as the reference should be to section 5) of the Proposed SD1 had a repeal date of December 12, 2012, to ensure that contracted services undertaken shortly prior to December 31,

2010 are able to complete their contracted services to the State. We respectively request that these repeal dates be reinserted.

The SD1 also adds a new subsection to Section 2 that provides for penalties under 103D-702 for bidders, offerors, contractors and providers who commit procurement fraud or abuse the expenditure of public moneys. We view this provision as a fair means of holding contractors accountable, and accept its inclusion in this legislation.

We believe that the public will benefit from the efficient and timely implementation of services, programs and benefits authorized and funded by ARRA. For this and the above stated reasons, the Administration urges this committee to pass S.B.21, SD1 with the amendments suggested.

Additionally, the Administration also offers testimony on H.B. 1184 HD2. In situations where the companion measures that affect important issues have both crossed over, the House and Senate have frequently replaced the contents of the companion bill that it received from the other body with the contents of the bill that it transmitted to the other body. In the event this Committee continues the Legislature's frequent prior practice of replacing the content of Senate bills with the contents of the House companion bills, we offer testimony on H.B. 1184, HD2.

Although the Administration supports H.B. 1184 HD2, we request several amendments to revert provisions of this legislation to their original form as introduced in the HD1.

First, Section 2 of H.B. 1184 HD2 mandates that contracts for goods, services, construction, or health and human services using ARRA funds are subject to the procurement code (chapters 103D and 103F, HRS) if not covered by an exemption provided by the procurement policy board or the chief procurement officer. The alternative, expedited procurement procedures offered in the HD2 may only be used if the relevant chief executive (Governor, Mayor, etc...) makes a finding that federal funding may lapse because of ARRA deadlines. The relevant chief executive must also provide written notice on the electronic procurement system identifying facts and information that demonstrate funding would lapse without expedited procedures.

We respectively request that the language in the first paragraph under Section 2 of H.B. 1184 HD1 be reinserted. This provision granted state agencies the option of using the procurement procedures under Section 2 of the HD1 as an expedient alternative to the existing procurement code. The discretion given to state agencies to use either this legislation or the procurement code should be retained. Only allowing use of the expedited procurement procedures upon a finding by a chief executive that ARRA funding may lapse is an unnecessary condition. Given the fast approaching ARRA deadlines, ARRA funding may lapse absent the use of expedited procedures. Additional steps in the procurement process that unnecessarily slow the execution of projects or the expenditure of funds is contrary to the purpose and intent of the legislative changes sought and not in the best interest of the State. State agencies must be given leeway to use the alternative procurement provisions of this legislation.

Second, We request that subparagraph (5)(E) of Section 2(b) of HB1184 HD2 be amended to remove any reference to the Department of Commerce and Consumer Affairs' hearings process for procurement protest appeals. Subparagraph (E) provides that the decision of the chief procurement officer shall be final and conclusive unless the party who is aggrieved by an award of contract submits a request for review under section 103D-709(a), HRS, within five working days of the written decision. Subparagraph (E) also appears to require that a decision by the DCCA hearings officer be rendered within ten working days from receipt of a request for review and that that decision is final and conclusive. This additional layer of protest appeals process is unnecessary and counterproductive.

The protest process should end with the appeal to the Chief Procurement Officer, whose decision should be final and conclusive. As written, the DCCA hearings officer would only provide a denovo cursory review of the protest under 103D-709(a), HRS, would not have any hearings on the matter, and would have to issue a decision within ten working days. The hearings officers' role in this protest review is unclear. Without hearings, which are lengthy and time-consuming, there is no point in involving the DCCA hearings officer in this expedited protest process. This extra layer of review is superfluous and merely wastes valuable time. We ask that this language be stricken and the deletion of the language starting on line 10 of page 9 of the HD2 from the word "unless" to the word "conclusive" on line 21 of page 9.

Subparagraph (2)(F) of Section 2(b) of H.B. 1184 HD2 should also be amended to replace the words "government employees" with the word "persons" on line 16 of page 6. Agencies need the discretion to include individuals with expertise from outside government to assist on selection committees.

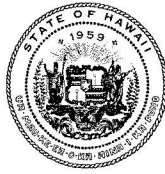
Finally, we request that the exemption from section 103-55.5, HRS, be reinserted in Section 3 of this legislation. Section 103-55.5 requires certifications of compliance with the prevailing wage law on construction contracts and other applicable state and federal laws. This exemption does not exempt compliance with the underlying laws, but merely the certification of compliance with these laws so the start of contract work will not be slowed. Certifications will still be required but will be allowed to be submitted later.

As stated above, we believe that the public will benefit from the efficient and timely implementation of services, programs and benefits authorized and funded by ARRA. For this and the above stated reasons, the Administration urges this committee to pass S.B. 21, SD1 with the amendments and provisions suggested.

Thank you for the opportunity to testify.



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  
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TESTIMONY  
OF  
RUSS K. SAITO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEE  
ON  
FINANCE  
ON  
March 25, 2009  
S.B. 21, S.D. 1

RELATING TO GOVERNMENT

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on S.B. 21, S.D. 1.

The Department of Accounting and General Services (DAGS) supports S.B. 21, S.D.1, if it is amended by replacing, on page 2, line 18, the phrase “shall be subject to the following requirements:” with the phrase “may be subject to the following requirements:”. With this minor change, S.B. 21, S.D. 1 will help the State obtain the maximum benefit from funds that are made available through the American Recovery and Reinvestment Act of 2009 (ARRA).

It will do so by allowing agencies to use two methods for procuring contracts for goods, services, construction, or health and human services when necessary to meet the stringent deadlines required for contracts that are authorized by the ARRA.

One of the methods involves small contracts similar to the procurement code's small purchase source selection method. The other method involves larger contracts and

is similar to the source selection method for federal grants. These methods would be used when necessary to award contracts or perform work under the time frames required by the ARRA. When the ARRA time frames can be met by following the procurement code, agencies can do so.

Other provisions of this Act are also aimed at enabling State agencies to fulfill the contract award and performance requirements of ARRA grants the State will be seeking from Federal agencies. These special provisions will expedite the procurement process and shorten protest intervals and minimize their prolonged delaying effect on contract execution. To ensure that these special provisions are employed only for the ARRA requirements, this bill will keep them in effect only as long as necessary for the State to obtain and expend funds it qualifies for under the ARRA.

Thank you for the opportunity to testify on this matter.

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

SANDRA L. YAHIRO  
DEPUTY DIRECTOR

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**HOUSE COMMITTEE ON FINANCE  
TESTIMONY REGARDING SB 21 SD 1  
RELATING TO GOVERNMENT**

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

**DATE: MARCH 25, 2009**

**TIME: 2PM**

**ROOM: 308**

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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.

LINDA LINGLE  
GOVERNOR OF HAWAII



MARIE C. LADERTA  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

March 25, 2009

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on SB 21, SD 1, March 25, 2009  
2:00 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

AMENDED TESTIMONY

**Senate Bill No. 21, SD1  
Relating to Government**

TO CHAIRPERSON OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of Senate Bill No. 21, SD1 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 and rule-making statutes.

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

The temporary exemptions in procurement and rule-making 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.

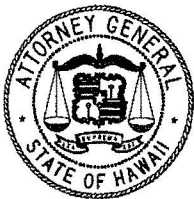
We recommend the reinsertion of the earlier proposed amendment to Section 76-16, Hawaii Revised Statutes, which would provide an additional exemption from civil service to perform temporary and immediate services that may not be in place under the civil service system. The foresight to install this temporary 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.

(28) Positions or contracts for services with private persons or entities for services lasting no more than two years where the director of human resources of the respective jurisdiction has certified that the service is necessary for the efficiency and timely implementation of programs authorized or funded by the federal American Recovery and Reinvestment Act of 2009, and provided that federal and matching state funds under this Act are encumbered no later than September 30, 2010.

We also recommend a sunset date of December 31, 2012 (Section 6), as recommended earlier by the Department of the Attorney General.

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



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 21, S.D. 1, RELATING TO GOVERNMENT.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, March 25, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 308

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

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Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this bill and provides the following comments to clarify some sections. This bill would create exceptions to certain procurement, civil service, and rule-making laws, as well as changing restrictions on expenditures of Temporary Assistance for Needy Families (TANF) funds, 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 (ARRA) of 2009 in an expedited manner.

Section 1 of the bill, on page 1, line 17, refers to exemptions from employment laws as one of the purposes of this bill. This draft of the bill does not appear to actually have any substantive provisions for making exemptions from state employment laws, so any references to that could be deleted. On the other hand, it may be helpful to include a provision for streamlining the hiring process in situations where ARRA funds are available for only a limited period and it would be advantageous for the state to fill a position quickly using those funds.

Section 2, which creates an expedited procurement procedure, provides, on page 2, lines 9-18, that contracts for good, services,



construction, or health and human services using federal funds authorized by the ARRA "shall be subject to" the procurement process created by this bill. The wording appears to make this expedited process mandatory, rather than discretionary. We believe that making this expedited process a permissive alternative may provide more flexibility and allow the state agencies to utilize the existing procurement procedures when the circumstances and timing permit.

In addition, section 2 appears to create two different procedures for protests of awards of contracts pursuant to this bill, one for procurements of health and human services, and one for all other types of procurements. It may be more consistent and better practice to have one process that applies to all procurements made pursuant to section 2 of the bill. Therefore, we would recommend removing the phrase "Except for awards of health and human services contracts," from section 2(d), on page 5, lines 11-12, and removing the phrase, "For awards of health and human services contracts," from section 2(e), on page 6, line 14. We would also suggest that the reference to the chief procurement officer in section 2(e), on page 6, be amended to include the chief procurement officer's designee. These changes would provide a two-part process for all protests, in which a person aggrieved by the award of a contract would first seek review from the head of the purchasing agency, or a designee, and then have the opportunity to submit a request for reconsideration to the chief procurement officer, or a designee.

Section 2 also provides, on page 6, line 21, to page 7, line 2, that "[a] request for reconsideration may only be made to correct a purchasing agency's failure to comply with the procedures of this Act and any applicable rules adopted to implement this Act." (Emphasis added.) It is unclear whether this reference means rules adopted pursuant to section 4 of this bill, or whether it is intended to apply to any rules adopted to implement the parts of the act related to procurement. If it is the latter, there should be some general authority provided in the bill for the State Procurement Office to

adopt rules to implement the act in regard to the procurement provisions.

Section 2(g) provides, on page 7, lines 14-18, that "[a] bidder, offeror, contractor, or provider, as applicable, who commits fraud or misrepresentation in the procurement of contracts or commits abuse in the expenditure of public moneys, or both, shall be subject to debarment or suspension under section 103D-702, Hawaii Revised Statutes, if the contract or procurement is subject to chapter 103, 103D, or 103F, Hawaii Revised Statutes." It is unclear how this provision would apply, because it does not specify how a contract or procurement would be subject to those chapters if the contract or procurement was made pursuant to the exemptions created by this bill.

In addition, there is no standard or definition provided for what constitutes "misrepresentation" and the definitions of "fraud" and "abuse in the expenditure of public moneys" on page 8, lines 2-7, are unclear and confusing. The definition of "abuse in the expenditure of public moneys" is vague and ambiguous because there are no standards for what may be considered unrelated or what may constitute a tangential relationship to a contract, and it is unclear how a failure to spend money would constitute abuse. The definition of "fraud" is vague and ambiguous because there is no standard of intent specified, which means, for example, that even when a person mistakenly or unknowingly provides incorrect information, or the person provides the information without the intent to defraud, the person still may be found liable for "fraud" under this definition.

Section 5 of this bill would raise or waive expenditure limits on TANF program funds to the extent funds are received in fiscal year 2008-2009 as part of the ARRA. Section 901 of the federal Personal Responsibility and Work Opportunities Reconciliation Act (Public Law No. 104-193) provides that TANF funds are subject to appropriation by the State Legislature. In addition, section 346-51.5, Hawaii Revised Statutes, similarly provides that TANF funds shall be subject to appropriation by the Legislature, and further provides that TANF funds

shall not be expended by the Department of Human Services without a legislative appropriation. Therefore, even with the reference in section 5 to raising the expenditure ceiling, the expenditure of TANF funds would still be limited by the total amount of TANF funds appropriated by the Legislature for that time period, although the restrictions placed by the Legislature in fiscal year 2008-2009 on the use of the funds for a particular purpose would be waived. A separate appropriation for fiscal year 2008-2009 would be required in order for the Department of Human Services to expend more than the amount already appropriated.

LINDA LINGLE  
GOVERNOR



DARWIN L.D. CHING  
DIRECTOR

COLLEEN Y. LaCLAIR  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 25, 2008

To: The Honorable Marcus R. Oshiro, Chair  
and Members of the House Committee on Finance

Date: Wednesday, March 25, 2008

Time: 2:00 p.m.

Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director  
Department of Labor and Industrial Relations

**Testimony in Strong Support  
of  
S.B. 21 SD 1 - Relating to State Government**

**I. SENATE BILL**

The Department of Labor and Industrial Relations **strongly supports** S.B. 21, SD 1 and the amendments proposed by the Governor's Chief of Staff, Mr. Barry Fukunaga, for the following reasons:

1. Given current economic conditions, we cannot afford to have any delays in administering the funds of the American Recovery and Reinvestment Act of 2009 (ARRA). The Department finds the bill's temporary exemptions from current statutes relating to procurement, rule-making, and employment, will greatly expedite the implementation and expansion of programs, services, and benefits authorized by the ARRA.
2. Under administrative practice and interpretation, the Procurement Officer has consistently viewed the Department's activities as falling within the contracts for goods, services, construction, and health and human services definitions in this bill. Therefore, the labor force of our State will benefit from this legislation, as the Department's activities in vital areas such as workforce development and unemployment insurance can be fortified, or in some cases expanded to meet growing needs.

LINDA LINGLE  
GOVERNOR



PROCUREMENT POLICY BOARD  
DARRYL W. BARDUSCH  
LEELIE S. CHINEN  
DARYLE ANN HO  
KEITH T. MATSUMOTO  
RUSS K. BAITO  
PAMELA A. TORRES

AARON S. FUJIOKA  
ADMINISTRATOR

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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
FINANCE

March 25, 2009

2:00 PM

SB 21, SD 1

RELATING TO GOVERNMENT.

Chair Oshiro, Vice-Chair Lee and committee members, thank for the opportunity to testify on SB 21, SD1. The State Procurement Office's (SPO) testimony is limited to SECTIONS 2 and 3 as it relates to procurement.

The SPO understands the purpose of SB 21, SD1 is to provide a temporary measure to assist the State in expediting the implementation of the American Recovery and Reinvestment Act of 2009 (ARRA) as envisioned by President Obama. Part of the vision on the effects to the economy the act proposes to bring to the States, is the underlining need for transparency and accountability to the people. In reviewing the proposed SB 21, SD1, and on the assumption that the intent of this bill meets the requirements of the ARRA, the SPO recommends several amendments as attached.

The amendments proposed in SECTION 2 are to ensure reasonable transparency and accountability in this modified procurement process. All awards using the ARRA funds should be solicited on an electronic procurement system to ensure all registered vendors, contractors, and service providers have equal opportunity to receive request for quotes or solicitations for the request for interest.

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Solicitations shall be conducted on an electronic procurement (eProcurement) system that, at a minimum has the functionality of electronic notification of registered vendors, contractors, and service providers, electronic receipt of responses and electronic notification of award. Electronic procurement is an efficient process that ensures openness and transparency of the solicitation process, increases competition resulting in competitive pricing and the most return on funds expended ensuring the fair use and distribution of ARRA funds. An eProcurement system facilitates accountability in that the activity is documented, such as recording release date and time, vendors to whom notice was sent, vendors responses and awards. The results from Hurricane Katrina taught that even when there are exemptions from normal procurement processes, accountability is still required and an important factor in ensuring federal funds are spent appropriately and documented.

The SPO's Hawaii eProcurement system (HePS) currently in place has the capacity to accommodate and can be modified to identify ARRA funds. Reports may be generated identifying ARRA funds awarded, the purchasing agency making the award, awardee, and description of what was awarded. Further, HePS maintains a permanent record of all vendors, contractors, and service providers who applied for a solicitation and their responses, and documents justifications for award selection entered by the agency. Should the committee deem it appropriate and allowable, the HePS provides purchasing agencies the option of releasing solicitations to Hawaii vendors, contractors, and service providers only, thus facilitating funds remain in Hawaii.

Since January 2007, there are 1142 HePS trained purchasing staff. All Executive branch agencies are trained and using HePS for small purchase request for quotes. These State agencies, the Office of Hawaiian Affairs, Department of Education - Office of School Facilities and Support Services (OSFSS), Hawaii State Public Library System, and Judiciary are able to use HePS immediately to expend ARRA funds.

To meet the accountability and transparency requirements of the ARRA, all notice of awards for contracts for goods, services, construction or health and human services procured using ARRA funds, and matching state funds, shall be posted electronically on an internet website. Information to be posted shall meet the ARRA requirements and serve to foster public confidence in the procurement system by ensuring fair and equitable treatment of all.

The amendment proposed for SECTION 3 is to require application of HRS 103D-310(c). Upon award, the HePS verifies through electronic means via the Hawaii Compliance Express (HCE) that a vendor is registered in HCE and indicates whether it is compliant with those requirements. HCE is the one stop shop that enables vendors, contractors, and service providers to register in one place and obtain compliance documents electronically. Requiring vendors, contractors, and service providers be registered in HCE will facilitate compliance with Hawaii labor laws, Hawaii and Internal Revenue Service tax requirements, and is duly registered with DCCA to conduct business in Hawaii, in an efficient and expedient manner.



SB 21, SD 1

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**SUMMARY OF SB 21, SD1 and SPO Recommendations**

HRS Chapter 103D – Hawaii Public Procurement Code (goods, services, and construction)  
 HRS Chapter 103F – Purchase of Health and Human Services (health and human services)

**Comparison of SPO recommendations –**

**SECTION 2.**

SB 21, SD1	SPO recommendations
<ul style="list-style-type: none"> <li>• Page 2, line 18, "... 2009, shall be subject..."</li> <li>• Requires <b>minimum three written quotes</b> for:                             <ul style="list-style-type: none"> <li>○ less than \$150,000 for good, services, health &amp; human services, and</li> <li>○ less than \$250,000 for construction.</li> </ul>                             Award to the lowest responsible, responsive offeror; and when not practicable, award to best value                         </li> <li>• <b>Request for interest for:</b> <ul style="list-style-type: none"> <li>○ \$150,000 or more for good, services, health &amp; human services; and</li> <li>○ less than \$250,000 for construction;</li> </ul>                             HOPA designates a committee of three persons; award to the lowest responsible, responsive offeror and evaluation of criteria                         </li> </ul>	<ul style="list-style-type: none"> <li>• Page 2, line 18, "... 2009, <u>may</u> be subject...";</li> <li>• No dollar limit;</li> <li>• Electronic procurement system;</li> <li>• Definition for "electronic procurement system" and "best value";</li> <li>• HOPA designates committee of three <u>governmental employees</u>;</li> <li>• Award to the lowest responsible, responsive offeror; when not practicable, award to best value based on <u>quantitative</u> criteria.</li> </ul>
<ul style="list-style-type: none"> <li>• Protest by a person</li> <li>• For 103D awards - Protest to HOPA;</li> <li>• For 103F awards – Protest to HOPA; and reconsideration to CPO</li> <li>• Protest shall not stay the award</li> <li>• Bidder, offeror, contractor, or provider is subject to debarment/suspension for fraud or misrepresentation</li> </ul>	<ul style="list-style-type: none"> <li>• Protest limited to <u>any actual or prospective vendor, contractor, or service provider</u>.</li> <li>• Requires electronic posting within five working days of notice of award.</li> </ul>

**SECTION 3.**

SB 21, SD1	SPO recommendation
<ul style="list-style-type: none"> <li>• HRS sections not applicable:                             <ul style="list-style-type: none"> <li>§103-8.5 Works of art special fund</li> <li>§103-53(a) Contracts with the State or counties: tax clearances, assignments</li> <li>§103-55 Wages, hours, and working conditions of employees of contractors performing services</li> </ul> </li> </ul>	Adds: <ul style="list-style-type: none"> <li>§103D-310(c) Responsibility of offerors, to ensure compliance with statutes prior to award for –                             <ul style="list-style-type: none"> <li>Chapter 237 – Tax clearance</li> <li>Chapter 383 – Unemployment insurance</li> <li>Chapter 386 - Workers' compensation</li> <li>Chapter 392 – Temporary disability insurance</li> <li>Chapter 393 - Prepaid health care</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Requires tax clearance prior to final payment.</li> </ul>	

SB 21, SD 1  
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## ATTACHMENT

SECTION 2. (a) To the extent not covered by any exemptions adopted by the procurement policy board or the respective chief procurement officers, and any law to the contrary notwithstanding, including chapter 103D and chapter 103F, Hawaii Revised Statutes, contracts for goods, services, construction, or health and human services using federal funds authorized by the American Recovery and Reinvestment Act of 2009, and matching state funds, if any, required to access the federal funding in the American Recovery and Reinvestment Act of 2009, may be subject to the following requirements:

- (1) Procurements for goods, services, construction or health and human services, shall be made through an electronic procurement system to obtain price quotations based on specifications; and registered vendors, contractors, and service providers that supply the goods, services, construction, or health and human services shall be solicited and considered to meet the minimum requirements. An "electronic procurement system" means a system with minimum functionality of electronic notification to registered vendors, contractors, and service providers, electronic receipt of responses and electronic notification of award.
- (2) Award shall be made to the lowest responsive and responsible offeror, using fixed-price contract. "Fixed-price contract" means a contract providing for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of contract price under stated circumstances.
- (3) Prior to the issuance of the solicitation, the chief procurement officer or designee shall determine in writing that award to the lowest responsive and responsible offer is not practicable or not advantageous to the State.
  - (A) The chief procurement officer or designee shall designate an evaluation committee consisting of a minimum of three governmental employees with sufficient and relevant qualifications related to the procurement. In designating

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#### ATTACHMENT

- the members of the evaluation committee, the chief procurement officer or designee shall ensure the impartiality and independence of committee members.
- (B) When award to the lowest responsive and responsible offeror is not practicable, award shall be made to the offeror whose offer provides the best value to the State. "Best value" is defined as the most advantageous offer determined by evaluating and comparing all relevant evaluation criteria, in addition to price, so that the offer meeting the overall combination that best serves the State and rated the highest, is selected. The quantitative criteria may include, in addition to others, the total cost of ownership, performance history of the vendor, contractor, and service provider, quality of goods, services, construction, or health and human services, delivery, and proposed technical performance.
- (C) If only one responsive and responsible offeror submits an acceptable offer, award may be made to the single offer provided the chief procurement officer, or designee, determines in writing the price submitted is fair and reasonable; or
- (D) If no offers are received, direct negotiations may be conducted provided the chief procurement officer or designee determines in writing, the need for the good, service, construction, or health and human service.
- (E) The chief procurement officer or designee shall award the contract or contracts based upon the information provided by the evaluation committee. Written determination for the selection shall be placed in the procurement file.
- (4) Any actual or prospective vendor, contractor, or service provider aggrieved by an award of a contract pursuant to this Act may protest a purchasing agency's failure to follow procedures established by this Act. The protest shall be submitted to the chief procurement officer or designee in writing, within five working days after posting of the notice of award. The chief procurement officer or designee may settle and resolve a protest by one or more of the following means:

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- (A) Amending or canceling the solicitation;
- (B) Terminating the contract that was awarded;
- (C) Declaring the contract null and void from the time of its award; or
- (D) Affirming the purchasing agency's contract award decision.

If the protest is not resolved by mutual agreement, the chief procurement officer or designee shall issue a decision in writing within ten working days of receipt of the protest. The decision shall state the reasons for the action taken. A copy of the written decision shall be mailed or otherwise furnished to the vendor, contractor, or service provider who initiated the protest.

- (5) The decision of the chief procurement officer or designee shall be final and conclusive. The procedures and remedies provided for in this Act shall be the exclusive means available for vendors, contractors, or service providers aggrieved in connection with the award of a contract under this Act.
- (6) The fact that a protest is filed shall not stay the award of any contract made under this Act.

(b) The chief procurement officer may be more restrictive in their jurisdiction procedures, and impose any other requirement, as applicable, to ensure compliance with this Act.

SECTION 3. (a) Sections 103-8.5, 103-53(a), and 103-55, Hawaii Revised Statutes, shall not apply to contracts for goods, services, construction, or health and human services using federal funds authorized by the American Recovery and Reinvestment Act of 2009, and matching state funds required to access the federal funding in the American Recovery and Reinvestment Act of 2009.

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(b) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393. To demonstrate compliance, offerors shall be registered on the Hawaii Compliance Express; the procurement officer shall verify compliance for all contracts awarded. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards.

(c) Upon award, information shall be posted on each respective governmental jurisdiction's website, except information determined subject to chapter 92F, HRS.

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA  
IN REPLY REFER TO:

March 25, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

COMMITTEE ON FINANCE

SENATE BILL NO. 21, S.D.1, RELATING TO GOVERNMENT.

The Department of Transportation ("DOT") **supports** this bill.

This bill will allow the State to obtain the maximum amount of federal funds available through the recently enacted American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA is intended to stimulate Hawaii's economy by allowing the State Government to use these federal funds to procure health and human services, initiate construction and capital improvement projects, and procure general goods and services. For the past several months, the DOT has been positioning itself to be ready to utilize these federal funds. This bill will assist the DOT in achieving the purposes of the ARRA on an expedited basis.

Accordingly, the DOT respectfully requests your favorable consideration of this bill.



LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## House Committee on Finance

### S.B. 0021, SD1 RELATING TO GOVERNMENT

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

March 25, 2009  
2:00 PM

1 **Department's Position:** The Department of Health joins with the Administration and our sister  
2 agencies in our full support of the collective efforts by both the Executive and the Legislature to address  
3 these unprecedented turbulent economic times. The American Recovery and Reinvestment Act of 2009  
4 (ARRA) is a multi-billion dollar federal effort to provide economic stimulus to the States and will affect  
5 about 50 state formula and discretionary grants as well as about 15 entitlement and other federally  
6 funded programs. In many instances, the ARRA requires funds to be obligated quickly and contains  
7 several "use it or lose it" provisions which would allocate unobligated funds to other states.

8 This measure seeks to temporarily modify or suspend current statutes that deal with procurement,  
9 rule-making and employment to facilitate timely implementation of the stimulus package for Hawaii to  
10 realize the maximum benefit possible from the ARRA.

11 The Department of Health strongly supports the suggested amendments to SB 21, SD 1 offered  
12 by the Governor's Office which would allow departments flexibility and latitude as we seek to diligently  
13 and responsibly navigate the ARRA. We will continue to monitor and analyze the provisions in the  
14 ARRA as they pertain to health and wellness, health information technology, and the environment.

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

LINDA LINGLE  
GOVERNOR



LILLIAN B. KOLLER, ESQ.  
DIRECTOR

HENRY OLIVA  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 25, 2009

MEMORANDUM

TO: Honorable Marcus R. Oshiro, Chair  
House Committee on Finance

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 21, S.D. 1 – RELATING TO GOVERNMENT  
Hearing: Wednesday, March 25, 2009, 2:00 p.m.  
Conference Room 308, State Capitol

PURPOSE: This bill creates temporary exemptions in procurement, rule-making, and employment statutes for programs, services, and benefits using funds allocated to the State by the American Recovery and Reinvestment Act of 2009 (ARRA).

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this bill.

This bill will allow the State to expend Federal funds provided through the ARRA and/or expend matching State funds, if any, that may be required to access the Federal funding in the ARRA.

The intent of the ARRA is to expeditiously provide much-needed stimulus, including additional aid to needy families during these tough economic times.

In order to position ourselves to take full advantage of the ARRA, DHS will need to procure services, amend administrative rules and outsource both administrative functions as

well as direct client services, in an expeditious manner. New programs will need to be established to provide the services that are authorized in the ARRA..

For example, the new TANF Contingency Fund created by the AARA, provides extra TANF funds for sheltered employment for TANF recipients. There are already services for DD-MR adults to receive sheltered employment services but not TANF recipients. There is also additional emergency assistance funding for persons who have lost their jobs, have exhausted their unemployment insurance and are on the verge of entering the welfare system. These individuals are not eligible for TANF because they are above the asset eligibility limits for TANF. The AARA provides a non-recurring short-term benefit for these individuals to be used for such items as mortgage assistance, extending unemployment benefits, and rental assistance, in order to prevent them from having to enter into welfare. Currently, our programs are not designed for this population so we will need to establish new programs to do the eligibility determination, outreach, issuing payments, and any direct services that may need to be provided.

To establish these new programs, DHS will need to contract for the administrative functions and to provide direct client services and will need the flexibility that the exemptions in this bill would provide to meet additional staffing and personnel needs to take advantage of the new Contingency Fund in the ARRA. DHS would need to establish contracts for administrative functions such as outreach, eligibility determination and payment authorization, data entry, issuance of notifications to clients and service providers, data collection, quality assurance and monitoring and reporting. DHS will also need to expedite procurement of goods and services to provide direct client services for new or expanded programs, services or benefits under the ARRA. Also, DHS will need to expedite the promulgation of administrative rules affecting eligibility for the benefits, programs and services in order to ensure that the benefits, programs

and services are made available to needy families in an expeditious manner and as provided by the ARRA.

The proposed S.D. 1 submitted by the Administration included a section (proposed Section 5) which provided a temporary statutory exemption from chapter 76, HRS, giving agencies the ability to contract for private services and staffing assistance for a period of two years or less upon certification by Director of the Department of Human Resources Development (DHRD) that the contracted service is necessary for the efficient and timely implementation of programs authorized or funded by the ARRA.

DHS will need the flexibility that this exemption would provide to meet the additional staffing and personnel needs to take timely advantage of the new and expanded services and benefits in the ARRA and respectfully requests that this exemption be included in S.B. 21. The workload to meet the ARRA deadlines to expend funds and programmatic requirements will likely overwhelm current staffing. Without this exemption, it is unrealistic to expect that new staff can be hired and trained in time to use the ARRA funding. In addition, the State will incur overhead costs such as space and equipment costs, to support the expanded State staffing. The AARA does not guarantee that future funding beyond the current time limits for the ARRA will continue for the expanded or new services and benefits that are being established.

If we are unable to procure services, amend administrative rules and outsource both administrative functions as well as direct client services, in an expeditious manner, DHS will be hamstrung in its efforts to ensure that our most vulnerable and needy families get the benefits available in the ARRA.

DHS also respectfully requests that language be added to Section 6 of S.B. 21, S.D. 1, to also waive or increase the ceiling for the Child Care Development Fund (CCDF) because there are additional moneys in the ARRA that the State can access for FY 2009. The authorization of this ceiling by the Legislature is also needed for CCDF for the same reason as for TANF, to

meet the requirements of the Brown amendment for the federal Personal Responsibility and Work Opportunity Act of 1996 (PRWORA).

The Department also respectfully submits the following comments on the House companion bill, H.B. 1184, H.D. 2.

First, H.B.1184, H.D.2, would require the use of the State electronic procurement system for purchases and contracting for both chapters 103F and 103D, HRS. We have a concern that DHS staff on the Neighbor Islands have not had the training necessary to use the system for chapter 103F and now also for chapter 103D.

Second, H.B. 1184, H.D. 2, doubles the time for the appeals process by allowing the aggrieved party to appeal the decision made by the chief procurement officer on the original appeal with an additional 5 day appeal period and then another 10 days for a decision. This is a total of 30 working days before there is a final decision on the protest or motion for reconsideration. This will affect the State's ability to issue contracts timely.

Lastly, language for the raising or waiver of the ceiling for the Child Care Development Fund also needs to be included to take advantage of additional funds available in the ARRA as explained above.

Thank you for this opportunity to testify on this bill.

# HAWAII COUNCIL OF MAYORS



Testimony of

**Hawaii Council of Mayors**  
 Bernard P. Carvalho, Jr., Mayor of Kauai  
 Mufi Hannemann, Mayor of Honolulu  
 Billy Kenoi, Mayor of Hawaii  
 Charmaine Tavares, Mayor of Maui

Before a Hearing of  
**House Committee on Finance**

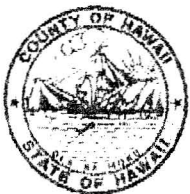
March 25, 2009

## **Senate Bill 21, S.D. 1, Relating to Government**

The Hawaii Council of Mayors supports the intent of Senate Bill No. 21, S.D. 1, which would create temporary exemptions in procurement and rule-making statutes to facilitate the use of funds from the American Recovery and Reinvestment Act of 2009. However, the Hawaii Council of Mayors requests that the bill be amended to extend the temporary exemptions to the counties and that exemptions from civil service laws be added.

All counties anticipate receipt of stimulus funds. The procurement section of the measure appears to cover the state and counties. However, the rule-making section of the bill should be amended to cover the counties by enabling the county rules adopted under this law to become effective upon filing with the respective county clerk, and by not requiring county laws to be posted on the lieutenant governor's website.

We also request that the provisions to allow for exemptions from civil service (that were included in the House version of this measure) be added to this bill in a manner that covers the counties. These provisions are necessary to ensure that contracts and staffing for ARRA-funded projects may be handled in an expeditious and efficient manner as required under the stimulus bill. The exemption for the counties may be easily done by adding a new section to this measure to read as follows:



Mayor Billy Kenoi  
 County of Hawaii  
 25 Aupuni Street  
 Hilo, Hawaii 96720



Mayor Mufi Hannemann  
 City and County of Honolulu  
 530 South King Street  
 Honolulu, Hawaii 96813



Mayor Bernard Carvalho, Jr.  
 County of Kauai  
 444 Rice Street  
 Lihue, Hawaii 96766



Mayor Charmaine Tavares  
 County of Maui  
 200 South High Street, 9th Floor  
 Wailuku, Hawaii 96793



Any law to the contrary notwithstanding, including, but not limited to 76-16, 76-77, and other law, an exemption from civil service shall apply to positions or contracts for services with private persons or entities for services lasting no more than two years, where the director of human resources development for the state or the respective director of human resources for the county has certified that the service is necessary to the efficient and timely implementation of programs authorized or funded by the federal American Recovery and Reinvestment Act of 2009, and provided that the federal and state matching funds under the act are encumbered no later than September 30, 2010.

We note that the need for the special provisions created under this bill will continue for the life of the ARRA-funded projects. Accordingly, we request that the provisions of this bill be permitted to continue for the life of ARRA-funded projects.

The Hawaii Council of Mayors urges you to pass this measure with amendments.

Mahalo.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**  
*Executive Director*  
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*Deputy Executive Director*  
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**The Twenty-Fifth Legislature, State of Hawaii  
House of Representatives  
Committee on Finance**

**Testimony by  
Hawaii Government Employees Association  
March 25, 2009**

**S.B. 21, S.D. 1 – RELATING TO  
GOVERNMENT**

The Hawaii Government Employees Association supports the intent of S.B. 21, S.D. 1, but recommends an amendment to Section 3 of the bill which exempts public works projects funded through the federal economic stimulus package from Section 103-55, HRS.

The Davis-Bacon Act, at both the federal and state levels, is designed to outlaw wage exploitation in public construction contracts by preventing the undercutting of local standards. Because public works contracts usually go to the lowest bidder, lawmakers decided it was in the best interests of the government and the general public to make sure that tax dollars are not spent on contractors that pay substandard wages to obtain contracts. "Prevailing wage" standards were established, which are set by surveys of actual wages paid in local communities, and anyone awarded a government contract must pay at least the prevailing wages.

If our reading of the bill is correct, the exemption from Section 103-55, HRS, would mean that prior to a bidder entering into a contract for construction of a public work project, they would not have to certify existing labor law requirements before a contract is even awarded. These include prevailing wage, overtime compensation and full compliance with the applicable laws of the state and federal governments related to workers' compensation, unemployment compensation, payment of wages and safety.

We appreciate the Senate Committee on Ways and Means removing the exemption from Section 103-55.5, HRS, which pertains to prevailing wages. However, we believe the exemption from Section 103-55, HRS, in Section 3 of the bill should also be removed.

Thank you for the opportunity to provide testimony on this measure with the suggested amendment.

Respectfully submitted,

Nora A. Nomura  
Deputy Executive Director

**HAWAII DISABILITY RIGHTS CENTER**

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: [info@hawaiidisabilityrights.org](mailto:info@hawaiidisabilityrights.org) Website: [www.hawaiidisabilityrights.org](http://www.hawaiidisabilityrights.org)**TESTIMONY TO THE TWENTY-FIFTH STATE LEGISLATURE, 2009 SESSION**

**To:** House Committee on Finance

**From:** Hawaii Disability Rights Center

**Re:** Senate Bill 21, SD1  
Relating to Government

**Hearing:** Wednesday, March 25, 2009 2:00 P.M.  
Conference Room 308, State Capitol

Members of the Committee on Finance:

Thank you for the opportunity to provide testimony supporting the intent of SB 21, SD1, while supporting language previously adopted in the House companion which will better protect the recipients of health and human services.

The Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A) is the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We certainly support the overall concept of this bill because it is imperative that funds disbursed under the American Recovery and Reinvestment Act of 2009 be expended promptly. We applaud the recognition that while rulemaking and procurement have their appropriate place in the normal functioning of government, there are exigent circumstances present which may require some adjustments.

Having stated that, we are very concerned with the provision in Section 2, Paragraph 1 of the bill which goes far beyond the stated intent of merely expediting the procurement process. Under current law, 103 F-404 HRS, "treatment" services are defined as those services provided by health or social work professionals which attempt to alleviate physical or mental illnesses or behavioral problems. It includes medical treatment, counseling, physical, occupational and other therapeutic services. The current law sets out a procedure whereby a review committee with sufficient training to properly evaluate proposals prepares a list of qualified providers. As services need to be purchased, the head of the purchasing agency selects the provider most qualified to provide the needed treatment.

This bill fundamentally changes the process so that the recipient of the contract to provide these services will be lowest bidder, rather than the most qualified bidder. While that might make sense in the context of a construction contract where the subject matter is a commodity and the suppliers are all essentially offering the same materials, it does not equally apply in the context of health or human services where the nature of the contract is the offering of a medically necessary, highly individualized service.

If the goal of the bill is to expedite and streamline the process of purchasing government services, it can surely be done without altering or compromising the qualitative standards. Our clients are frequently the recipients of services pursuant to these contracts and their medical and behavioral well being depends upon proper service delivery.

In contrast to this approach, we support the position taken by the House Finance Committee in its House Draft Two version of HB 1184, reported out by this Committee in Standing Committee Report 762. In that bill, the Committee provided that the current law would be followed, unless doing so would jeopardize the ability to spend stimulus funds. We believe that is a much sounder approach and suggest that the Committee replace the language in this Senate bill with that provision previously inserted into HB 1184.

Thank you for the opportunity to provide testimony on this bill.



To: House Committee on Finance  
Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

Date: March 25, 2009 - Conference Room 308 – 2:00 p.m.

Re: **SB 21, SD1, RELATING TO GOVERNMENT**

Chair Oshiro and Committee Members:

My name is Barbara Kim Stanton, State Director of AARP Hawaii. AARP is a membership organization of people 50 and older with nearly 160,000 members in Hawaii. We are committed to championing access to affordable, quality health care for all generations, providing the tools needed to save for retirement, and serving as a reliable information source on issues critical to Americans age 50+.

AARP supports the intent of SB 21, SD1 which creates temporary exemptions in procurement, rule making, and public employment statutes for programs, services and benefits using funds allocated to the State by the American Recovery and Reinvestment Act (ARRA) of 2009.

We believe this legislative vehicle is urgently and immediately needed to expedite access to these time-limited funds by allowing the State greater administrative flexibility for the specific purpose of ARRA. At the same time, there must be transparency and accountability mechanisms to assure Hawaii consumers that stimulus funds are being used appropriately and effectively.

As stated in [www.hawaii.gov/recovery](http://www.hawaii.gov/recovery), "*An overriding principle of the ARRA is that every taxpayer dollar spent on our economic recovery must be subject to unprecedented levels of transparency and accountability.*" Consequently, all states have established websites for this purpose and a number of states have created oversight entities for monitoring the implementation of ARRA and how funds are spent.

We support the passage of SB 21, SD1 as a means to allow the State to take full advantage of ARRA funds---to stimulate the economy, preserve and create jobs, and support our most vulnerable citizens.

Thank you for the opportunity to testify.

**AUTISM SOCIETY OF HAWAI'I  
P.O. BOX 2559  
HONOLULU, HAWAI'I 96802  
808 228-0122**

**HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009  
COMMITTEE ON FINANCE  
SB 21, SD 1  
TESTIMONY IN OPPOSITION**

March 25, 2009

**SB 21, SD1 Proposed, Relating to Government**

**Wednesday, March 25, 2009, 2 p.m.**

**Conference Room 308**

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

My name is Naomi Grossman, and I am the president of the Autism Society of Hawai'i. The Autism Society of Hawai'i is an affiliate chapter of the Autism Society of America. Its members are composed of families who deal with living with the effects of autism and the professionals and paraprofessionals who serve them.

The Autism Society of Hawai'i will provide leadership in the field of autism dedicated to supporting families who advocate on behalf of their children and are committed to reducing the consequences of autism through education, research and advocacy.

The Autism Society of Hawai'i appreciates the opportunity to comment on the proposed SB 21, SD 1. As parents and friends of children with autism and other related disorders, we know that our children have the potential and hunger to learn. Research shows that autism is treatable. States where parents are involved in their children's

individualized educational program promotes positive change and outcomes for children. These children have the potential to become contributing, competent and caring citizens.

Under the federal Individuals with Disabilities Education Act (IDEA), children and their families need to access appropriate service programming in order to meet the mandates of a free appropriate public education (FAPE). Many of our special needs children are served under the State's health and human Services procurement *request for proposal* process.

This bill would require state agencies to award contracts for health and human services to the low bidder, instead of to the most qualified provider at a reasonable cost, as required by Chapter 103F of the Hawai'i Revised Statutes. By contrast, HB 1184, HD 2, would require agencies to procure services in accordance with Chapter 103F **unless** following those procedures would jeopardize Hawai'i's right to spend stimulus funds.

HRS Chapter 103F protects vulnerable individuals by improving the quality of services they receive while the federal stimulus bill would deny funds that are not spent quickly. There is no reason why the procurement laws should be overridden, however, if adherence to them would not jeopardize stimulus funds. In such cases, health and human services should be purchased from the most qualified provider at a reasonable cost, not simply the low bidder.

Under section 103F-404 of the Hawai'i Revised Statutes, "treatment services" designed to alleviate physical or mental illness or behavioral problems are purchased from the provider who is the "most qualified" on a list of pre-qualified providers. This bill would require State agencies to select the low bidder, who may not be appropriately qualified. Chapter 103F contains other provisions for the crisis purchase of services and the restrictive procurement of services that focus on the needs of the beneficiary and reasonable costs, rather than the automatic selection of a low bidder.

Autism is a mystifying and complex disorder. Children and their families need contract providers who are specialized, experienced and trained in autism and other related disorders in order to meet the individuals-in-need's unique neurological, behavioral and learning needs on a day-to-day basis. Inadequate procurement process can lead to hiring staff less specialized in treating these behaviors to a point where behaviors are exacerbated requiring to multiple placements and restrictive placements and potential chemical restraints. With appropriate intervention, these individuals-in-need become caring, competent and contributing members of society.

We strongly oppose using the "low bidder" standard and the "best value to the State" standard to purchase services. Awarding contracts to the lowest bidder will affect the quality of services and the level of credentialing of staff who serve our most vulnerable children, and in this case, children and individuals with autism and other related disorders.

Children dealing with behaviors that are not served properly by experienced, trained and credentialed staff can experience an escalation of behaviors when their behaviors become exacerbated and crucial windows of development are put further on

hold. It takes credentials, experience and a properly trained eye to understand the disability and know how to intervene appropriately. Staff also needs day-to-day specialized staff/service development training to meet the needs of each individual-in-need.

Hiring staff procured by the "low bidder" standard will not accomplish the objectives needed to serve the appropriate mix/match/fit of services for this population.

WE respectfully request that the committee to reject SB 21 SD1 and follow HB 1184 HD 2 within which balances the conflicting interests by waiving procurement requirements only when they would result in the forfeiture of federal funds. SB 21 SD 1 overrides procurement law protections unnecessarily, and should be rejected.

Through the IDEA, Congress has acted to improve the lives of children and their families through education provided to children with disabilities and to ensure that they receive the needed services. Please don't place our children at risk

Thank you for the opportunity to testify on SB 21, SD 1 funded under the American Recovery and Reinvestment Act of 2009.

Sincerely,

Naomi Grossman

Autism Society of Hawai'i, president



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

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

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

March 25, 2009

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

Presented By: Tim Lyons  
President

Subject: S.B 21, SD 1 – RELATING TO GOVERNMENT

Chair Oshiro and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The Subcontractors Association of Hawaii is composed of the following eight separate and distinct subcontracting trade associations:

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

We support this bill but far prefer the House version as contained in H.B. 1184, HD 2.

There has been a great deal of discussion regarding the expeditious contracting of work as a result of any federal stimulus money that Hawaii might get its hands on. In those discussions, we have heard a lot of whining from State agencies complaining about the procurement code. We think that this bill attempts to strike a balance at providing for outright exemptions from the procurement code, yet at the same time, speeds up the awarding of contracts by disregarding normal, traditional and transparent procurement laws.

We would ask the Committee to make particular note of the use of the word "temporary" in the purpose section of this bill on page 2 of H.B. 1184, HD 2 and we would hope that you would continue to regard it as such.

Based on the above and in consideration of the better draft contained in H.B. 1184, HD 2 we can support it with the insertion of this Committee's draft.

Thank you.

To: The Honorable Marcus Oshiro, Chair  
The Honorable Marilyn Lee, Vice Chair  
House Committee on Finance

From: Laura Robertson, President/CEO  
Goodwill Industries of Hawaii, Inc.

Date: March 25, 2009

Re: **Comments Concerning S.B. 21 SD1 – Relating to Government**

We applaud the legislature for its leadership in the area of supporting human services, and its effort to facilitate and expedite the implementation of American Recovery and Reinvestment Act funds.

However, Section 2 of this measure states (1) Procurements of less than \$150,000 for goods and services or health and human services shall be based on specification and no less than three written quotes shall be solicited." This creates a situation in which there may be multiple providers of services, however, it is left up to the purchasing agency to determine which three will be selected to provide a written quote. We would like to suggest that all vendors that supply health and human services in the program area that is being solicited be permitted to provide a written quote. This would promote a fair and equitable opportunity for any current vendor to access the opportunity to provide services under these ARRA funds.

Goodwill Industries of Hawaii is a 501(c)3 non-profit organization providing educational and career development programs. Goodwill works with people who have employment barriers, including welfare dependency, economic and resource barriers, lack of education/work experience, illiteracy and disadvantaged youth. Last year, Goodwill served more than 9,400 individuals throughout the state in its career development and training programs and placed over 1,800 into jobs.

Thank you for this opportunity to provide testimony on this matter.

**HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009**

**Committee on Finance**

**Testimony in Opposition to S.B. No. 21, SD 1, Relating to Government**

**Wednesday, March 25, 2009, 2:00 p.m.  
Conference Room 308**

Chair Oshiro and Members of the Committee:

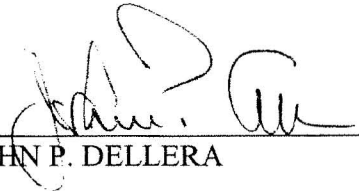
My name is John P. Deller. I have helped to care for a boy with autism for the past thirteen years, and as an attorney for the States of New York and Hawaii, I have had substantial experience in the field of procurement, government contracting, and disabilities issues. I am testifying as a private citizen against this bill but in favor of the companion measure, H.B. No. 1184, HD2.

This bill would require state agencies to award contracts for health and human services to the low bidder, instead of to the most qualified provider at a reasonable cost, as required by Chapter 103F of the Hawaii Revised Statutes. By contrast, H.B. No. 1184, HD2, would require agencies to procure services in accordance with Chapter 103F **unless** following those procedures would jeopardize Hawaii's right to spend stimulus funds.

HRS Chapter 103F protects vulnerable individuals by improving the quality of services they receive while the federal stimulus bill would deny funds that are not spent quickly. There is no reason why the procurement laws should be overridden, however, if adherence to them would not jeopardize stimulus funds. In such cases, health and human services should be purchased from the most qualified provider at a reasonable cost, not simply the lowest bidder.

House Bill 1184, H.D. 2 balances the conflicting interests by waiving procurement requirements only when they would result in the forfeiture of federal funds. Senate Bill 21, S.D. 1 overrides procurement law protections unnecessarily, and it should be rejected.

Thank you for your consideration of this important measure.



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JOHN P. DELLERA