



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT AFFAIRS
SENATE COMMITTEE ON LABOR
SENATE COMMITTEE ON WAYS AND MEANS

March 5, 2009
10:00 A.M.
Room 211, State Capitol

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

Chair Kim, Chair Takamine, Chair Taniguchi, and Members of the Committee:

The Administration strongly supports S.B.21, S.D. 1, which provides temporary procedures that will 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), that will bring the benefits of the federal stimulus plan to the people of Hawaii at the earliest practicable time.

Specifically, this bill provides 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.

Section 2 of this measure grants state agencies 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 ARRA.

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 allows use of 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 to expedite larger procurements.

Section 2 also offers the opportunity to employ an alternative procurement process for purchases 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. As an 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. 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 no stays will further ensure that federal funds are used efficiently and that their expenditure is not delayed.

Section 3 of this measure removes 1) the requirement for the mandatory transfer of 1% of all state fund appropriations for capital improvements (works of art) designated for the construction cost element (103-8.5, HRS), 2) the requirement for submission of 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) prior to the award of contracts. However, these provisions will not alleviate the responsibility to observe these requirements. All certifications will still be required and all state and federal laws will continue to be observed. By alleviating the need for advanced certifications the time needed to award contracts will be shortened and permit projects to begin promptly. Certifications will still be required but will not be the basis for slowing the start of contract work as they will be allowed to be submitted later.

Section 4 of this measure grants state agencies the option of using an expedited rule-making process (interim rules) for implementation of provisions necessary to establish programs, services or benefits authorized or funded under the ARRA. The interim rules process will allow rules to be promulgated quickly while the lengthier formal process prescribed under chapter 91, HRS is preserved. The interim rules provision will only be effective through December 31, 2010.

Section 5 of this measure permits the ability to contract for 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 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 ARRA.

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 waived or raised to the extent necessary for the Department of Human Services (DHS) to utilize the funds provided under ARRA.

Overall, this measure has a repeal date of December 31, 2010, ensuring the temporary nature of these allowances to coincide with the ARRA funding opportunity. 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 contracted services undertaken shortly prior to December 31, 2010 are able to complete their contracted services to the State.

We believe that 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 passage of S.B.21, S.D.1.

LINDA LINGLE
GOVERNOR



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

AARON S. FUJIOKA
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 COMMITTEES
ON
JUDICIARY AND GOVERNMENT OPERATIONS,
LABOR,
AND
WAYS AND MEANS

March 5, 2009

10:00 AM

SB 21, SD 1 Proposed

RELATING TO STATE GOVERNMENT.

Chairs Taniguchi, Takamine, and Kim, and committee members, thank for the opportunity to testify on proposed 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.

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 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 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.

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"> • Requires minimum three written quotes for: <ul style="list-style-type: none"> ○ less than \$150,000 for good, services, health & human services, and ○ less than \$250,000 for construction. Award to the lowest responsible, responsive offeror; and when not practicable, award to best value • Request for interest for: <ul style="list-style-type: none"> ○ \$150,000 or more for good, services, health & human services; and ○ less than \$250,000 for construction; HOPA designates a committee of three persons; award to the lowest responsible, responsive offeror and evaluation of criteria 	<ul style="list-style-type: none"> • Electronic procurement system; • Definition for “electronic procurement system” and “best value”; • HOPA designates committee of three <u>governmental employees</u>; • Award to the lowest responsible, responsive offeror; when not practicable, award to best value based on <u>quantitative</u> criteria
<ul style="list-style-type: none"> • Protest by a person • For 103D awards - Protest to HOPA; • For 103F awards – Protest to HOPA; and reconsideration to CPO • Protest shall not stay the award 	<ul style="list-style-type: none"> • Protest limited to <u>any actual or prospective vendor, contractor, or service provider</u>. • Requires electronic posting within five working days of notice of award;

SECTION 3.

SB 21, SD1	SPO recommendation
<ul style="list-style-type: none"> • HRS sections not applicable: <ul style="list-style-type: none"> §103-8.5 Works of art special fund §103-53(a) Contracts with the State or counties: tax clearances, assignments §103-55 Wages, hours, and working conditions of employees of contractors performing services §103-55.5 Wages and hours of employees on public works construction contracts 	Adds: <ul style="list-style-type: none"> §103D-310(c) Responsibility of offerors, to ensure compliance with statutes prior to award for – <ul style="list-style-type: none"> Chapter 237 – Tax clearance Chapter 383 – Unemployment insurance Chapter 386 - Workers’ compensation Chapter 392 – Temporary disability insurance Chapter 393 - Prepaid health care
<ul style="list-style-type: none"> • Requires tax clearance prior to final payment. 	

ATTACHMENT

OPTION A (as submitted to the House Committee on Finance on March 2, 2009)

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 of less than \$150,000 for goods and services or health and human services, and procurements of less than \$250,000 for construction, shall be made through an electronic procurement system to obtain price quotations based on specifications, ~~and no less than three written quotes shall be solicited. Only 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 ~~quotation~~ 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. ~~Considering the criteria, including but not limited to quality, warranty, and delivery,~~ Award shall be made to the lowest responsive, responsible offeror. When award to the lowest responsive and responsible offeror is not

ATTACHMENT

OPTION A (as submitted to the House Committee on Finance on March 2, 2009)

practicable, award shall be made to the offeror whose ~~quotation~~ offer provides the best value to the State. “Best value” is defined as the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the State is selected. These 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. Written determination for the selection shall be placed in the procurement file; and

- (2) For procurements of \$150,000 or more for goods, services, or health and human services, and of \$250,000 or more for construction, purchasing agencies, with the approval of the head of the purchasing agency, may issue a request for interest to select a contractor or contractors through an electronic procurement system. The request for interest shall include but not be limited to the following:
 - (A) Identification and purpose of the federal funding, and matching state funds, if applicable;
 - (B) Target population or clients to be served;
 - (C) A description of the goods, services, health and human services, or construction;

ATTACHMENT

OPTION A (as submitted to the House Committee on Finance on March 2, 2009)

(D) The evaluation criteria and their relative weights, including the relative importance of price, for selecting a contractor or contractors;

(E) The format, if any, and procedure for submitting responses to the request; and

(F) The deadline for submittal of written responses to the request.

~~(b) The selection of a contractor or contractors shall be based on the criteria established in the request for interest. The relative priority to be applied to each evaluation factor shall also be set out in the request for interest. Evaluation factors not specified in the request for interest may not be considered.~~

(e) The head of the purchasing agency shall designate a committee consisting of a minimum of three ~~persons~~ governmental employees with sufficient and relevant qualifications related to the procurement. ~~education, training, and licenses or credentials for each type of procurement.~~ In designating the members of the committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. Award shall be made to the lowest responsive, responsible offeror. When an award to the lowest responsive, responsible offeror is not practicable, the award shall be made to the offeror whose offer provides the best value to the State.

The committee shall review and evaluate all submissions, including references, and considering the quantitative criteria, the committee shall determine the lowest responsive and responsible offeror and provide that information to the head of the purchasing agency. ~~The head~~

ATTACHMENT

OPTION A (as submitted to the House Committee on Finance on March 2, 2009)

~~of the purchasing agency shall award the contract or contracts based upon the information provided by the committee.~~ Written determination for the selection shall be placed in the procurement file.

(b) Awards made pursuant to this Act shall be posted electronically within five working days of the notice of award to an internet site designated by the Chief Procurement Officer.

~~(c)(d) Except for awards of health and human services contracts, a person~~ 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 head of the purchasing agency, in writing, within five working days after posting of the notice of award. The head of the purchasing agency, or a designee, may settle and resolve a protest by one or more of the following means:

- (1) Amending or canceling a request for interest;
- (2) Terminating the contract that was awarded;
- (3) Initiating a new process to award a contract;
- (4) Declaring the contract null and void from the time of its award; or
- (5) Affirming the purchasing agency's contract award decision.

If the protest is not resolved by mutual agreement, the head of the purchasing agency, or a designee, shall issue a decision in writing within ten working days of receipt of the protest.

ATTACHMENT

OPTION A (as submitted to the House Committee on Finance on March 2, 2009)

The decision shall state the reasons for the action taken. A copy of the written decision shall be mailed or otherwise furnished to the person who initiated the protest.

~~(e) (d) For awards of health and human services contracts, The decision of the head of the purchasing agency, or a designee, shall be final and conclusive. unless a person who is aggrieved by an award of a contract submits a request for reconsideration to the chief procurement officer within five working days of the receipt of the written decision. The request shall contain a specific statement of the factual and legal grounds upon which reconsideration is sought. 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. The chief procurement officer may uphold or overturn the previous decision of the head of the purchasing agency. A decision by the chief procurement officer shall be rendered within ten working days from receipt of the request for consideration and shall be deemed final and conclusive. The procedures and remedies provided for in this Act shall be the exclusive means available for persons vendors , contractors, or service providers aggrieved in connection with the award of a contract under this subsection to resolve their concerns.~~

(f) The fact that a protest ~~or a request for reconsideration~~ is filed shall not stay the award of any contract made under this Act.

SECTION 3. Sections 103-8.5, 103-53(a), 103-55, and 103-55.5, Hawaii Revised Statutes, shall not apply to contracts for goods, services, construction, or health and human

SB 21, SD 1 Proposed
March 5, 2009
10:00 AM
Page 6 of 6

ATTACHMENT

OPTION A (as submitted to the House Committee on Finance on March 2, 2009)

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; provided section 103D-310(c) , HRS, is applicable. ~~that tax clearances from the director of taxation and the Internal Revenue Service shall be received prior to final payment certifying that all tax returns due have been filed, and all taxes, interest, and penalties levied against the contractor or accrued under title 14 of the Hawaii Revised Statutes, that are administered by the department of taxation and under the Internal Revenue Code have been paid.~~

ATTACHMENT

OPTION B

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

ATTACHMENT

OPTION B

sufficient and relevant qualifications related to the procurement. In designating 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

ATTACHMENT

OPTION B

the notice of award. The chief procurement officer or designee may settle and resolve a protest by one or more of the following means:

- (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.

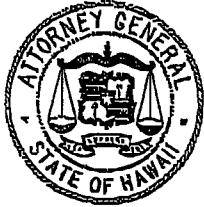
ATTACHMENT

OPTION B

SECTION 3. (a) Sections 103-8.5, 103-53(a), 103-55, and 103-55.5, 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.

(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.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND GOVERNMENT OPERATIONS
AND ON LABOR AND ON WAYS AND MEANS

DATE: Thursday, March 5, 2009 TIME: 10:00 AM

LOCATION: State Capitol, Room 211

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

Chairs Taniguchi, Takamine, and Kim, and Members of the Committees:

The Department of the Attorney General supports this bill and provides the following comments to help 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 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 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. 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 generally until September 30, 2010. There are 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.

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. The later date was suggested to

make 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, providing an additional period of time for unforeseen circumstances.

Whatever the sunset date is, wording needs to be added to reenact section 76-16(b), Hawaii Revised Statutes, in its original form; otherwise the entire subsection may disappear upon repeal of this measure. We suggest that section 7 of the bill be amended to add the following additional reenactment wording: ". . . ; 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."

Section 6 of this bill would raise or waive expenditure limits on Temporary Assistance for Needy Families (TANF) program funds to the extent funds are received in fiscal year 2009 as part of the ARRA. We would note that section 901 of the federal Personal Responsibility and Work Opportunities Reconciliation Act (Public Law 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 proposed wording of section 6, 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 on the use of the funds for a particular purpose would be waived.

Finally, a balance should be struck between expeditious utilization of ARRA funding and accountability for utilization of funds. Therefore, proposals that help with that balance are worthy of consideration.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

**SENATE COMMITTEE ON WAYS & MEANS
TESTIMONY REGARDING SB 21 SD 1
RELATING TO GOVERNMENT**

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

DATE: MARCH 5, 2009

TIME: 10:20AM

ROOM: 211

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 BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON JUDICIARY AND GOVERNMENT
OPERATIONS, LABOR, AND WAYS AND MEANS
ON
SENATE BILL NO. 21, PROPOSED S.D. 1

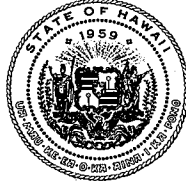
March 5, 2009

RELATING TO GOVERNMENT

Senate Bill No. 21, Proposed S.D. 1, creates temporary exemptions from current statutes pertaining to procurement, rule-making, and employment, to allow the State to expedite the implementation or expansion of programs, services, and benefits authorized by the American Recovery and Reinvestment Act of 2009.

We support this bill as it will allow the State to expend federal Temporary Assistance for Needy Families program funds in Fiscal Year 2009 provided through the American Recovery and Reinvestment Act of 2009 and/or expend matching State funds, if any, that may be required to access the federal funding in the American Recovery and Reinvestment Act of 2009.

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 5, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION
COMMITTEE ON JUDICIARY & GOVERNMENT OPERATIONS
COMMITTEE ON LABOR
COMMITTEE ON WAYS & MEANS

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

The Department of Transportation ("DOT") **supports** the proposed S.D.1 to amend this bill.

The proposed S.D.1 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. The proposed draft will assist the DOT in achieving the purposes of the ARRA on an expedited basis.

Accordingly, the DOT respectfully requests that the presiding Committees adopt and approve the proposed S.D.1 and pass it out of committee.

Thank you for considering this testimony.

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

March 4, 2008

To: The Honorable Brian T. Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Government Operations

The Honorable Dwight Y. Takamine, Chair
and Members of the Senate Committee on Labor

The Honorable Donna Mercado Kim, Chair
and Members of the Senate Committee on Ways and Means

Date: Thursday, March 5, 2008

Time: 10:00 a.m.

Place: Conference Room 308, State Capitol

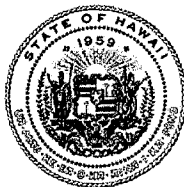
From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

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

I. SENATE BILL

The Department of Labor and Industrial Relations **strongly supports** S.B. 21, SD 1 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
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON
JUDICIARY AND GOVERNMENT OPERATIONS
LABOR
WAYS AND MEANS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, March 5, 2009
10:00 a.m.

**TESTIMONY ON SENATE BILL NO. 21, PROPOSED S.D. 1
RELATING TO GOVERNMENT.**

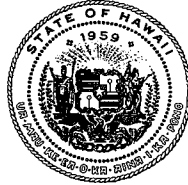
WRITTEN ONLY

TO THE HONORABLE BRIAN T. TANIGUCHI, DWIGHT Y. TAKAMINE, AND DONNA MERCADO KIM, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Lawrence M. Reifurth, and I am the Director of the Department of Commerce and Consumer Affairs ("Department"). The Department strongly supports the proposed S.D. 1 of 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 the proposed S.D. 1 of S.B. No. 21.

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:

Senate Committee on Judiciary and Government Operations

Senate Committee on Labor

Senate Committee on Ways and Means

S.B. 0021, RELATING TO GOVERNMENT

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

March 5, 2009

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

8 The two measures being simultaneously considered by the Senate and the House of Representatives,
9 S.B. 0021 and H.B.1184, seek to temporarily modify or suspend current statutes that deal with procurement,
10 rule-making and employment to facilitate timely implementation of the stimulus package for Hawaii to
11 realize the maximum benefit possible from the ARRA.

12 The Department of Health will continue to monitor and analyze the provisions in the ARRA as they
13 pertain to health and wellness, health information technology, and the environment.

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

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 4, 2009

TESTIMONY TO THE
SENATE COMMITTEES ON
JUDICIARY AND GOVERNMENT OPERATIONS
LABOR
AND
WAYS AND MEANS

For Hearing on SB 21, SD 1, March 5, 2009
10:00 a.m., Conference Room 211

BY

MARIE C. LADERTA, DIRECTOR

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

TO CHAIRPERSONS TANIGUCHI, TAKAMINE AND MERCADO KIM AND MEMBERS
OF THE COMMITTEES:

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, 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

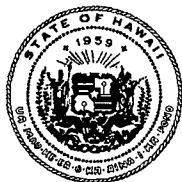
Senate Bill No. 21, SD1
March 4, 2009
Page 2

lost opportunities to take full advantage of the federal funds.

We defer to the sunset date recommended by the Department of the Attorney General.

Thank you for the opportunity to provide testimony on this important 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 5, 2009

MEMORANDUM

TO: Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Government Operations

Honorable Dwight Y. Takamine, Chair
Senate Committee on Labor

Honorable Donna Mercado Kim, Chair
Senate Committee on Ways and Means

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 21, Proposed S.D. 1 – RELATING TO GOVERNMENT
Hearing: Thursday, March 5, 2009, 10:00 a.m.
Conference Room 211, 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.

For example, 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.

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.

Thank you for this opportunity to testify on this bill.

Testimony in Strong Support of
SB21 SD1 Proposed
Relating to Government

Thursday, March 5, 2009
10:00 a.m.
Conference Room 211
State Capitol

To the
Senate
Committee on Judiciary and Government Operations,
Committee on Labor,
Committee on Ways and Means

Honorable Chairs Brian Taniguchi, Dwight Takamine, and Donna Mercado Kim; Honorable Vice Chair Shan Tsutsui and Members of the joint committee:

The Laborers' International Union of North America, Local 368 strongly supports SB21 SD1 proposing to create temporary exemptions in procurement, rule making, and public employment statutes for programs, services and benefits utilizing funds allocated to the State by the American Recovery and Reinvestment Act of 2009.

This bill is a good start to comply with the ARRA requirements especially for infrastructure with some \$236 million allocated to highways, sewer systems, mass transit and other construction projects. There is a "use it or lose it" requirement that compels us to move quickly.

The ARRA 2009 also requires the government entities to obligate one-half of the above amount for construction within 120 days after the law was enacted. Clearly, government, contractors, suppliers, engineering and architectural firm and others, must move with deliberate speed. By reducing the procurement rules temporarily, this speed can be achieved.

Thank you for the opportunity to submit this supporting testimony for this necessary bill.

SAH - Subcontractors Association of Hawaii

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

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

March 5, 2009

Testimony To: Senate Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair

Senate Committee on Labor
Senator Dwight Y. Takamine, Chair

Senate Committee on Ways and Means
Senator Donna Mercado Kim, Chair

Presented By: Tim Lyons
President

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

Chair Taniguchi, Chair Takamine, Chair Mercado Kim and Members of the Joint 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 with one (1) modification.

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, speeding 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 1 and we would hope that you would continue to regard it as such. Our only request for amendment is a short sentence on page 6 of the bill, at the very end of Section 2 which says that if there is a protest or a request for reconsideration, that act does not stay the award of any contract.

While we realize that the purpose of this bill is to expedite work, we also believe it is very important to know that it is typical that the number 2, 3 and 4 bidder typically act as "watch dogs" to the process because if something has been handled unfairly they will provide a protest. In this bill we are short fusing the protest procedure so that the protest is handled first internally, and then goes to the Chief Procurement Officer for possible reconsideration. While this voids the Administrative Hearing Process at the Department of Commerce and Consumer Affairs we still think it is a fair manner in which to handle protests however, we must tell you that we can think of a number of situations where while the protest was being considered, the contract was awarded, and at that point the State indicated it was in their best interest that they continue to let this illegal awardee handle

the contract. Therefore, we would suggest deletion of the sentence immediately proceeding Section 3 that says that the award of the contract will not be stayed as a result of a protest. We think that this is highly unfair and not in the best interest of taxpayers.

Based on the above and in consideration of the alternative light that this bill is cast in, we can support it with the amendment that we have requested.

Thank you.

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 Website: www.hawaiidisabilityrights.org

TESTIMONY TO THE TWENTY-FIFTH STATE LEGISLATURE, 2009 SESSION

To: Senate Committee on Judiciary and Government Operations
Senate Committee on Labor
Senate Committee on Ways and Means

From: Hawaii Disability Rights Center

Re: Senate Bill 21, Proposed SD1
Relating to Government

Hearing: Thursday, March 5, 2009 10:00 A.M.
Conference Room 211, State Capitol

Members of the Committee on Judiciary and Government Operations:
Members of the Committee on Labor:
Members of the Committee on Ways and Means:

Thank you for the opportunity to provide testimony supporting the intent of SB 21, Proposed SD1, while proposing an amendment to 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 recently attended a roundtable discussion where the Director of Health and the Director of Human Services expressed their understanding of the need to ensure that certain processes of government do not interfere with or impede the success of this effort. 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.

For those reasons, we caution the legislature against awarding such sensitive contracts, which serve a fragile population, to merely the lowest bidder. The factors taken into account by the current law need to be considered in the expenditure of these stimulus funds as well. Moreover, there is no reason why current law needs to be altered to comply with the timelines required for spending the stimulus money. The proper criteria can be considered within the same time frames. If there is any question as to that, then the solution would be to amend 103 F HRS to reflect that, rather than lowering the standards of services.

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

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

**Committee on Judiciary and Government Operations
Committee on Labor
Committee on Ways and Means**

**Comments to S.B. No. 21, SD 1 Proposed, Relating to Government
Thursday, March 05, 2009, 10:00 a.m.
Conference Room 211**

Chairs Taniguchi, Takamine, Kim, and Members of the Committees:

My name is John P. Deller. I have helped to care for a young man with autism for the past thirteen years, and as an attorney, I have had substantial experience in the fields of special education and the rights of individuals with disabilities. I am testifying to request an amendment to this bill that would exempt the procurement of health and human services from contract awards to the lowest bidder.

Section 2 paragraph (1) of this bill is intended to expedite contract awards of less than \$150,000 for health and human services by requiring that awards be made to the “lowest responsive, responsible offeror” or, if that is not practicable, “to the offeror whose quotation provides the best value to the State.”

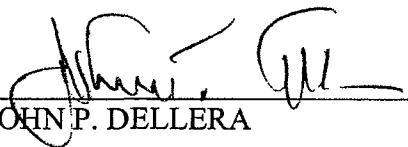
Under section 103F-404 of the Hawaii Revised Statutes, “treatment services” designed to alleviate physical or mental illness or behavioral problems are purchased from the provider who is the “most qualified” on a list of pre-qualified providers. This bill would require State agencies to select the low bidder, who may not be most 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.

I strongly oppose using the “low bidder” standard and the “best value to the State” standard to purchase services where the lives and welfare of individuals are at stake. This bill would place some of our most vulnerable citizens at risk by threatening the quality of services they receive through therapeutic aides, speech therapists, occupational therapists, psychologists, private special education teachers and schools, and all other providers selected under Chapter 103F.

There is no reason why purchases made under Chapter 103F cannot be made to the most qualified bidder within the time required by the American Recovery and Reinvestment Act of 2009. If there is a question about that, then the legislature may amend Chapter 103F to require that awards be made within those time limits.

I respectfully request that the committee amend this bill by (1) exempting Chapter 103F purchases from Section 2 and (2) amending Chapter 103F to require that contracts funded under the American Recovery and Reinvestment Act of 2009 be entered into within the time required by such Act.

Thank you for the opportunity to testify on this important matter.



JOHN P. DELLERA



Testimony of C. Mike Kido
External Affairs
Pacific Resource Partnership

Before the Committee on Judiciary and Government Operations,
Before the Committee on Labor, and
Before the Committee on Ways and Means

Thursday, March 4, 2009
10:00 a.m.
Conference Room 211

SB 21 SD1 Proposed – Relating to Government

The Pacific Resource Partnership is supportive of the intent of the draft legislative proposal to “create temporary exemptions in procurement, rule making, and public employment statutes” to expedite the execution of federal funds under the American Recovery and Reinvestment Act of 2009.

Though it is laudable to engage in the prompt receipt of these Federal funds, we believe several sections of the proposed legislation runs counter to the language embodied within the American Recovery and Reinvestment Act of 2009. In particular, PRP recommends that section 3 references be deleted as it runs counter to the proscribed parameters of the federal legislation - American Recovery and Reinvestment Act of 2009, H.R. 1-189, Wage Rate Requirements, Sec. 1606 states:

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Therefore we believe that Section 3 is preempted.

Further, PRP cannot support any language that would serve to eliminate or exclude HRS Chapter 104 or HRS Chapter 103-55.5 from projects related to American Recovery and Reinvestment Act of 2009.

Testimony of C. Mike Kido
SB21 SD1 Proposed – Relating to Government
Page 2

In addition, we would ask for close scrutiny of the other Sections, such that on its face would seem to provide government the necessary administrative tools to get the projects that qualify to fulfill the definition of "shovel ready" yet may forsake transparency of public dollars in its wake. In that light, PRP believes strongly that Chapter 104 should not be superseded under that pretext.

Thank you for your thoughtful consideration of our comments as it relates to the specifics of the drafted proposal.

This is directly from the stimulus bill regarding the Davis-Bacon provisions:

TITLE XVI--GENERAL PROVISIONS--THIS ACT

WAGE RATE REQUIREMENTS

SEC. 1606. Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.