
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 103D-309, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-309 Contract not binding unless funds available.**

4 (a) Contracts awarded pursuant to section 103D-302, 103D-303,
5 or 103D-306, shall neither be binding nor have any force and
6 effect of law unless the comptroller, the director of finance of
7 a county, or the respective chief financial officers of the
8 department of education, the judiciary, or the legislative
9 branches of the State or county, as the case may be, endorses
10 thereon a certificate that there is an appropriation or balance
11 of an appropriation over and above all outstanding contracts,
12 sufficient to cover the amount required by the contract;
13 provided that if the contract is a multi-term contract, the
14 comptroller, director of finance, or chief financial officer
15 shall only be required to certify that there is an appropriation
16 or balance of an appropriation over and above all outstanding
17 contracts, that is sufficient to cover the amount required to be



1 paid under the contract during the fiscal year or remaining
2 portion of the fiscal year of each term of the multi-year
3 contract; provided further that the administrator of the state
4 procurement office shall attest in writing to any recommendation
5 or solicitations. This section shall not apply to any contract
6 under which the total amount to be paid to the contractor cannot
7 be accurately estimated at the time the contract is to be
8 awarded, or to any contract for which consideration is in kind
9 or forbearance, or to any contract awarded pursuant to section
10 103D-306 that is a one-time payment through a purchase order.

11 (b) In any contract involving not only state or county
12 funds but supplemental funds from the federal government, this
13 section shall be applicable only to that portion of the contract
14 price as is payable out of state or county funds. As to the
15 portion of the contract price as is expressed in the contract to
16 be payable out of federal funds, the contract shall be construed
17 to be an agreement to pay the portion to the contractor, only
18 out of federal funds to be received from the federal government.
19 This subsection shall be liberally construed so as not to hinder
20 or impede the State in contracting for any project involving
21 financial aid from the federal government.



1 (c) In any contract involving not only state or county
2 funds but supplemental funds from a utility, this section shall
3 be applicable to that portion of the contract price payable out
4 of state or county funds as well as that portion of the contract
5 price payable out of funds from a utility, or payable out of
6 state or county funds paid to a utility. The state or county
7 may certify that there are sufficient funds for the utility's
8 portion of the contract price if amounts that a utility is
9 obligated to pay under a legal agreement between the utility and
10 the State or a county are sufficient to pay that portion of the
11 contract price, and the agreement:

- 12 (1) Includes a specific description of the utility's share
13 of the payment and terms of that payment;
14 (2) Allows monthly or other progress payments; and
15 (3) Provides that in the event the utility is delinquent
16 in payments under the legal agreement, the utility
17 shall be responsible for any and all additional costs
18 attributable to such late payment.

19 Any such agreement shall be executed prior to execution of the
20 state or county contract and shall not jeopardize any federal,
21 state, or county funds.

22 For the purposes of this subsection:



1 "Utility" means a utility company or entity."

2 "Legal agreement" includes a utility agreement, memorandum
3 of understanding, and memorandum of agreement."

4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Procurement; Sufficiency of Government and Utility Funds

Description:

In procurement contracts payable by the State or a county and a utility, provides that the portion to be paid by the utility is subject to certification as to the sufficiency of funds to pay contract costs, and certification is to be based on amounts to be paid by a utility pursuant to a legal agreement with the State or county. (PROPOSED SB506 HD2)

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