



GOV. MSG. NO. 661

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 6, 2010

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB2441 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB2441 HD2 SD2 CD1

A BILL FOR AN ACT  
RELATING TO PROCUREMENT.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2441

Honorable Members  
Twenty-Fifth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2441, entitled "A Bill for an Act Relating to Procurement."

The purposes of this bill are to (1) require the Department of Hawaiian Home Lands and the Department of Transportation, to award project contracts within thirty days of the bid opening date; and (2) provide that a gift to the State shall not be deemed to constitute a procurement contract but the agency accepting the gift must report the gift to the State Procurement Office.

Although the intentions of this measure are understandable, I must object to this bill because the rigid award deadlines are counterproductive, unrealistic, and violate procurement rules. The gifts exemption is not conducive to transparency in government.

Part I of this measure would require the Department of Hawaiian Home Lands and Department of Transportation to award contracts within thirty days of the bid opening date. This provision may work against efforts to speed up awards and is unrealistic for certain kinds of procurements. Complex project bids can require hundreds of hours of staff time to review and verify the documentation. If a department was not able to meet the new statutory timeline, the solicitation would be invalid, requiring a repeat solicitation that would further delay the procurement process. The review process could also be delayed by

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the offeror not furnishing the necessary documentation in a timely manner, or by protests of an award. If an award was made after the imposed statutory deadlines, it would likely result in a procurement violation.

In addition, this bill would require an award within forty-five days of the bid opening for contracts for design professional services. However, procurement of professional services is qualification-based and does not involve a bid opening. Statements of qualifications are requested by an agency and a review committee places the qualified applicants on a listing. When a need or project arises, a selection committee reviews the statements of qualifications, ranks the submittals, and begins negotiations with the first-ranked provider. A time limitation is therefore not conducive to the professional services procurement method and also would likely constitute a procurement violation.

Part II of this bill specifies that gifts made to the State shall not be deemed to constitute or require a procurement contract. I have concerns that gifts to the State of certain types of material, labor or equipment could influence the procurement of future projects that involve these same or similar materials, labor, or equipment. Exempting gifts from procurement contracting might encourage a 'donate to play' arrangement where the donor subsequently receives residual compensation for equipment, parts, service, repair, maintenance or other realizations, "locking-in" the donor to future contracts. For example, a donor might give free materials to the State, but those materials could require maintenance or further equipment or upgrades at a cost. Rather than eliminate procurement contracting for all gifts to the State, it is better for certain

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gifts to go through the transparent process under the Procurement Code that clearly delineates the benefits to the donor, and gives other parties an opportunity to gift the same materials or equipment to the State.

For the foregoing reason, I am returning House Bill No. 2441 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 PART I

2 SECTION 1. The legislature finds that in this period of  
3 high economic turmoil, procedural changes are necessary to  
4 enable the State to achieve a quick recovery and to provide  
5 effective economic stimulation. The legislature further finds  
6 that Hawaii's public procurement process is inefficient and  
7 antiquated. Procedures require protracted periods of time  
8 between each procurement step. Currently, the awarding of a  
9 contract is subject to prolonged review, thereby preventing  
10 government projects from proceeding in a timely manner.

11 Senate Concurrent Resolution No. 132, S.D. 1, regular  
12 session of 2009, established a task force to determine the  
13 economic contributions of the construction industry in Hawaii.  
14 As directed in the concurrent resolution, the task force has  
15 developed a series of proposals for state actions to preserve  
16 and create new jobs in the local construction industry. This  
17 part implements one of the task force's proposals.



1           Accordingly, the purpose of this part is to amend  
2 chapter 103D, Hawaii Revised Statutes, to require certain state  
3 and county agencies to award public contracts on bid proposals  
4 within thirty days of the bid opening date. In doing so,  
5 however, it is also the purpose of this part to strike a balance  
6 between expedited procedures and necessary accountability and  
7 transparency.

8           SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11           "§103D-       Contract award deadlines. Notwithstanding any  
12 other statute or administrative rule relating to procurement,  
13 contracts for projects of the department of Hawaiian home lands  
14 and department of transportation that are awarded after bidding  
15 shall be awarded within thirty days of the bid opening date;  
16 provided that:

- 17           (1) An extension, not exceeding 14 business days, shall be  
18 permitted if it will provide the opportunity for  
19 further negotiations with the lowest responsible  
20 bidder relating to considerations that could result in  
21 benefits to the public;





