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# 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  
18 paid under the contract during the fiscal year or remaining



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

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

21 (c) In any contract pursuant to section 264-33 involving  
22 not only state or county funds but supplemental funds from a



1 utility, this section shall be applicable to that portion of the  
2 contract price payable out of state or county funds as well as  
3 that portion of the contract price payable out of funds from a  
4 utility, or payable out of state or county funds paid to a  
5 utility. The State or county may certify that there are  
6 sufficient funds for the utility's portion of the contract price  
7 if the amounts that a utility is obligated to pay under a legal  
8 agreement between the utility and the State, or a county, are  
9 sufficient to pay that portion of the contract price and the  
10 legal agreement:

- 11 (1) Includes a specific description of the utility's share  
12 of the payment and terms of that payment;  
13 (2) Allows the State, county, or utility to provide  
14 progress payments or final payment based on the actual  
15 cost after a project is completed; and  
16 (3) Provides that in the event the State, county, or  
17 utility is delinquent in payments under the legal  
18 agreement, the State, county, or utility shall be  
19 responsible for any and all additional costs  
20 attributable to such late payment.



1 Any such legal agreement shall be executed prior to the  
2 execution of the state or county contract and shall not  
3 jeopardize any federal, state, or county funds.

4 For the purposes of this subsection:

5 "Legal agreement" includes a utility agreement, memorandum  
6 of understanding, or memorandum of agreement.

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

8 SECTION 2. New statutory material is underscored.

9 SECTION 3. This Act shall take effect on July 1, 2010.

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**Report Title:**

Procurement; Highway Construction Affecting Utilities

**Description:**

In procurements contracts payable by the State or a county and a utility, provides that the utility's share of contract costs is subject to certification as to sufficiency of funds, and certification is to be based on amounts to be paid by a utility under a legal agreement with the State or county. (CD1)

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