



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education
February 2, 2010 at 1:15 p.m.

by
Howard Todo
Vice President for Budget & Finance/CFO, University of Hawai'i

SB 2388 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Tokuda, Vice Chair Sakamoto and Members of the Committee:

Thank you for the opportunity to testify in strong support of this measure.

This Bill provides the University with flexibility in procurement. The University had this flexibility from 1998 through 2004 and used it responsibly and to great benefit during that period. The University has proven ourselves as the State's pioneer in improving practices, with innovations such as the first e-Procurement system in the public sector in Hawaii, the first P-Card system in the public sector in Hawaii, and implementation of increased small purchase limits not adopted by the State until years later. Especially at a time when the State has drastically reduced our operating budget, granting additional flexibility would allow us to become more efficient and effective which would maximize the impact of our scarce operating funds on our educational mission. There are many benefits achievable if we could adopt the most modern procurement practices widely applied in higher education and government around the country.

This measure would particularly assist us in implementing much needed deferred maintenance and capital renewal projects on all our campuses more quickly, shortening delays in the contracting and procurement process. The University's capital improvements budget request as approved by the Board of Regents includes approximately \$350 million in health and safety, capital renewal and deferred maintenance, and equipment as the top three priorities. These projects are already identified, involve little in the way of permitting and are ready to launch quickly. These projects would put people in the construction industry to work and help everyone through these difficult economic times.

In addition, please let me give you the following specific supporting points:

1. Providing the University of Hawaii with administrative flexibility has been accepted public policy embraced by all branches of government and the general public.

In 1997 the Governor, Senate President and Speaker of the House created an unprecedented blue ribbon Economic Revitalization Task Force composed of Hawaii's business, community and government leaders. Their objective was to develop recommendations on how to strengthen Hawaii's economy. Recognizing the importance of the University of Hawaii as a major economic engine for the State, one of the clear conclusions of the task force, accepted by all, was that autonomy for the university would materially enhance the university's performance of its constitutional responsibilities and allow it to contribute more meaningfully to the economic revitalization of the State of Hawaii. In 1998 the Legislature passed and the Governor signed Act 115 granting the University of Hawaii greater flexibility in managing its own affairs and, most notably, exempting the University of Hawaii from the State Procurement Code. This flexibility allowed the Board of Regents to adopt University procurement procedures consistent with State procurement law, but not dependent on the State governmental processes, procedures and resources. Taking this flexibility even further, in the 2000 legislative session a constitutional amendment was approved to provide the University of Hawaii with even greater autonomy. This constitutional amendment was overwhelmingly ratified by Hawaii's voters in the 2000 election.

2. The University has used this flexibility responsibly and effectively.

As required by Act 115, the University developed and implemented its own internal procedures and policies for procurement. The University used its flexibility to create the most advanced and open electronic public sector procurement system in the State of Hawaii. An electronic sourcing system called "SuperQuote" was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including enabling purchases over the Internet. Both SuperQuote and the PCard system have direct electronic interfaces to the University's financial management information system. This eliminates duplicate data entry in purchasing, which further reduces administrative costs and decreases a potential source of errors. The University developed comprehensive and thorough written policies and procedures appropriate for these modern practices. The University's Administrative Procedures on Procurement have been available online for many years and can be found at the following website: <http://www.hawaii.edu/apis/apm/a8200.html>. While the current versions of these procedures reflect the 2005 revocation of the University's Act 115 flexibility, the previous procedures that took advantage of the flexibility are also available in the online archives at <http://www.hawaii.edu/svpa/apm/archives/a8200.html>.

3. The University is fully committed to openness, appropriate public oversight and accountability.

In improving its internal procurement system, the University of Hawaii completely honored the statutory requirement to comply with the intent of the State procurement code. While dramatically increasing open competition and improving operational efficiency, the University has also embraced applicable federal procurement guidelines in its new processes and systems. The University procedures developed to implement the flexibility granted by Act 115, as described above, were all reviewed, discussed and approved by the Board of Regents at duly noticed open public meetings conducted under the State "Sunshine" laws. In addition to a bevy of internal control processes, the University's procurement practices are independently audited each year to ensure fair and equitable treatment of vendors, to foster effective broad-based competition in order to secure best value in purchases, and to maintain the integrity of the procurement process.

4. The public interest is best served by restoring the University's flexibility to establish its own procurement policies.

The widely accepted movement to increase University flexibility has been widely supported by the Legislature over the last decade, by the last two Governors, by the business community and by the voting public. One of the most visible outcomes of this movement was the law passed by the 1998 Legislature granting the University an exemption from the state procurement processes. The University's own procurement system and processes streamlined purchasing to reduce administrative costs, increased competition, reduced the costs of good and services procured, increased openness and auditability, and reduced the costs for vendors to do business with the University. Our faculty and staff used this direct responsibility and accountability to help the University of Hawaii respond to changing conditions, new opportunities and Hawaii's needs in a more timely and effective manner. In addition, the University's flexibility reduced cost to State Government by relieving DAGS and other agencies of any responsibility for University procurement.

5. This flexibility is needed now to help the economy.

With \$350 million in capital renewal and deferred maintenance projects, the University can be a significant part of the solution to Hawaii's current economic downturn by directly creating or preserving several thousand jobs. Now is the moment for bold action. This measure will help the University to address its deferred maintenance needs and assist the people and businesses of Hawaii to weather these difficult economic times.

We ask your support for the passage of this bill, which has both operational and economic importance in helping the University of Hawaii achieve the flexibility it needs to be the major engine for the economic diversification of Hawaii.

Thank you for this opportunity to testify in support of this measure.

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
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**TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE
SENATE COMMITTEE
ON
HIGHER EDUCATION**

February 2, 2010

1:15 PM

SB No. 2388

RELATING TO EDUCATION.

Chair Tokuda, Vice-Chair Sakamoto, and committee members, thank you for the opportunity to testify on SB 2388.

The State Procurement Office's (SPO) does not support the language to exempt the University (UH) from HRS chapter 103D, the Hawaii Public Procurement Code (Code).

As an alternative to totally exempting the UH from the Code, we offer SB 2659 that streamlines the Code for the benefit of all government jurisdictions. We welcome the identification of any additional sections to be repealed or amended to expedite the procurement process to be included in SB 2659 for UH's benefit as well as others. This approach will confirm the legislature's intent for the Code to be the single source of public procurement policy. Any statutes to expedite procurement and contracting requirements should be afforded to all government jurisdictions bound by the Code and not limited to the UH.

The SPO is against statutorily exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process.

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The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic and confusing to vendors, contractors and service providers that must comply with a variety of different processes and standards. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

Any governmental entity with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement. There needs to be one single source of public procurement policy.

Thank you.

**Testimony Submitted by:
James J. Donovan, III**

Senate

Committee on Higher Education

Hearing: Tuesday, February 2, 2010 1:15 p.m.

SB 2388

February 1, 2010

Senator Jill Tokuda, Chair, and Members
Committee on Higher Education
Senate
State Capitol
Honolulu, HI 96813

Dear Chair Tokuda and Members:

Subject: S.B. No. 2388, relating to exempting the University of Hawaii from Hawaii public procurement requirements.

I am Jim Donovan, Director of Athletics for the University of Hawaii at Manoa.

I strongly support S.B. No. 2388 relating to exempting the University of Hawaii from Hawaii public procurement requirements.

This Bill restores the University's ability to establish its own procurement policies in support of the widely accepted public policy of greater administrative flexibility for the University. The University was granted this flexibility by the Legislature in 1998 and had used it responsibly and to great benefit until its revocation as of January 1, 2005.

The University of Hawaii at Manoa Athletics Department was exempt from the procurement code prior to 1998 and we had a track record of acting in the best interest of all our constituencies to order items in a timely and cost effective manner.

During the past few years we have experienced situations where we couldn't do a cash and trade agreement with certain vendors due to the procurement code. Cash and trade agreements allow us the flexibility to reduce overall costs. The procurement code requires that the cash part be competitively bid which often precludes vendors from providing a trade component.

The procurement code also provides a challenging timeline. Having to begin the procurement process often times six to nine months in advance for items such as media guides and athletic supplies does not allow us the flexibility to reduce potential costs by having additional time for the vendor to "sharpen the pencil."

If the procurement exemption is restored the University of Hawaii at Manoa Athletics Department will use this flexibility responsibly and effectively. We will continue to work within all University of Hawaii purchasing policies including an electronic sourcing system

called "SuperQuote" that was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including by enabling purchases over the Internet.

The University of Hawaii at Manoa Athletics Department remains fully committed to openness, appropriate public oversight and accountability and will honor the statutory requirement to comply with the intent of the State procurement code.

I ask your support for the passage of this bill, which is important in helping the University of Hawaii Athletics Department have the facilities and processes to compete in the national marketplace of Colleges and Universities.

Thank you for this opportunity to testify in support of this measure.

Sincerely,

Jim Donovan
Director of Athletics

SAH - Subcontractors Association of Hawaii

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February 2, 2010

Testimony To: Senate Committee on Higher Education
Senator Jill N. Tokuda, Chair

Presented By: Tim Lyons
President

Subject: S.B. 2388 - RELATING TO THE UNIVERSITY OF HAWAII

Chair Tokuda and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. Our testimony today represents the collective thoughts of nine separate and distinct subcontracting associations:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

HAWAII FLOORING ASSOCIATION

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

We are opposed to this bill. Prior to the establishment of the procurement code for all state agencies, contractors lived daily with a "mixmash" of rules and regulations on how to do business with the State. Some contractors gave up doing state work because it was so confusing going from one agency to the other. The rules were different, the procedures were different and the requirements were different. This bill set us on the path of potentially nineteen (19) different sets of rules to do business with the government.

It was based on that then we endorsed the establishment of the Hawaii Procurement Code. Over the years there have been a number of protections built into the Public Procurement Code which protects subcontractors and those who do business with the government. We are, after all, talking about taxpayer money and it is important that it be spent correctly.

On previous occasions when this subject has arisen, the communication offered by the University of Hawaii officials as to why they wanted to get out of the procurement code was that they were tired of protests and that the procedure lengthened the time of the projects. We think that it is important to remember that a protest is filed because the unsuccessful contractor feels as if the successful contractor did not play by the same rules that he had to play by. In most cases they tell us that if they were able to do the same things that the successful bidder was to do, then they could have gotten the job. All the Procurement Code does is make sure that everybody is playing on a level playing field and if in fact they are not, you need to have a provision that allows people to protest. We do not believe that it is enough to provide in this bill that the Board "encouraged" to use the provisions of the procurement code as "guidelines". This doesn't even call for them to use it. They

are only encouraged to use it, and then when they do, it is only a guideline. UH is already one of the worst offenders of the procurement code. This bill allows them to get out of the prompt payment provision, deletes protections for subcontractors including bonding claims and encourages bid shopping by general contractors.

In conclusion, we do not feel the University of Hawaii should be exempt from the procurement code and if there are problems with the procurement code, that detract from having a smooth, transparent and fair system then we should be addressing that for the benefit of all agencies not just the University of Hawaii.

Based on the above, we oppose this bill.

Thank you.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

February 1, 2010

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EMAILED TESTIMONY TO: HRETestimony@Capitol.hawaii.gov

**Hearing Date: Tuesday, February 2, 1:15 p.m., Conference Room 225
(Committee on Higher Education)**

Honorable Senators Jill Tokuda, Chair, Norman Sakamoto, Vice Chair, and
Members of the Senate Committee on Higher Education

Subject: SB 2388, Relating to the University of Hawaii

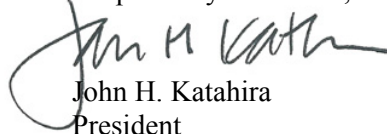
Dear Chair Tokuda, Vice Chair Sakamoto, and Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH),
representing more than 60 consulting engineering firms and 1,300 employees,
opposes SB 2388 in its current form. ACECH is strongly committed to the use of
“Qualifications-Based Selection”, which is the nationally recognized best method
for the procurement of professional services. Hawaii Revised Statute 103D-304
provides for qualification-based selection and also includes public disclosure of
procurement information to ensure a fair and transparent process.

**We respectfully request that your committee pass SB 2388 only with
amendment to require HRS 103D-304 procedures for procurement of
professional services.** Our proposed revision to Section 2 of the bill is attached.

We appreciate the opportunity to provide testimony regarding SB 2388. Please do
not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,



John H. Katahira
President

SECTION 2. Section 304A-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board of regents shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, which shall be subject to section 103D-304~~[- subject to chapter 103D]~~. Notwithstanding any other law to the contrary and pursuant to section 302D-102(b)(5), chapter 103D shall not apply to any actions or activities undertaken, conducted, or performed under the authority of the board of regents or the university, except as provided in this subsection.

The board of regents is encouraged to use where possible the provisions of chapter 103D as guidelines; provided that in using one or more provisions of chapter 103D as guidelines, neither the board nor the university shall be:

- (1) Deemed to have waived in any way the exemption from the requirements and applicability of chapter 103D granted in this subsection to the board and the university; or
- (2) Subject to any of the provisions or requirements of chapter 103D, other than those found in section 103D-304."

**COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL
PROFESSIONALS**

February 1, 2010

EMAILED TESTIMONY TO: HRETestimony@Capitol.hawaii.gov

**Hearing Date: Tuesday, February 2, 1:15 p.m., Conference Room 225
(Committee on Higher Education)**

Honorable Senator, Chair, Jill Tokuda, Vice Chair, Norman Sakamoto and Members of the Senate
Committee on Higher Education

Subject: SB 2388, Relating to the University of Hawaii

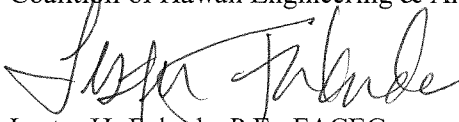
Honorable Chair Tokuda, Vice Chair Sakamoto, and Committee Members,

The Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; American Institute of Architects; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers.

SB 2388 seeks to provide an overall procurement exemption for the University of Hawaii to allow for more flexibility and speed in contracting. We strongly believe that the State procurement code under 103D – 304 utilizing Qualification Based Selection procedures for the selection of design professionals is the best means for procuring professional services. QBS procurement methods should continue to be used by the University of Hawaii. The State procurement code provides for fair and proper award of public contracts, in a manner open and transparent to the public. QBS selection procedures under Chapter 103D-304 follows nationally recognized best method for procurement of professional design services. We request that you modify this bill to include the attached language in the current Bill. The proposed modification requires the use of QBS selection procedures for the selection of design professionals as indicated on the proposed amendment.

We ask that you please make the attached modifications to SB 2388.

Sincerely,
Coalition of Hawaii Engineering & Architectural Professionals


Lester H. Fukuda, P.E., FACEC

SECTION 2. Section 304A-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board of regents shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, which shall be subject to section 103D-304~~[-subject to chapter 103D]~~. Notwithstanding any other law to the contrary and pursuant to section 302D-102(b)(5), chapter 103D shall not apply to any actions or activities undertaken, conducted, or performed under the authority of the board of regents or the university, except as provided in this subsection.

The board of regents is encouraged to use where possible the provisions of chapter 103D as guidelines; provided that in using one or more provisions of chapter 103D as guidelines, neither the board nor the university shall be:

- (1) Deemed to have waived in any way the exemption from the requirements and applicability of chapter 103D granted in this subsection to the board and the university; or
- (2) Subject to any of the provisions or requirements of chapter 103D, other than those found in section 103D-304."