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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-709, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By amending subsection (a) to read:

4           "(a) The several hearings officers appointed by the  
5 director of the department of commerce and consumer affairs  
6 pursuant to section 26-9(f) shall have jurisdiction to [review]:

7           (1) Review and determine de novo, any request from any  
8           bidder, offeror, contractor, person aggrieved under  
9           section 103D-106, or governmental body aggrieved by a  
10           determination of the chief procurement officer, head  
11           of a purchasing agency, or a designee of either  
12           officer under section 103D-310 [~~7~~, ~~103D-701~~], or 103D-  
13           702 [~~7~~]; and

14           (2) Review and determine any request from any bidder,  
15           offeror, contractor, person, or governmental body  
16           aggrieved by a determination of the chief procurement  
17           officer, head of a purchasing agency, or a designee of  
18           either officer under section 103D-701; provided that



1           the determination of the chief procurement officer,  
2           head of a purchasing agency, or a designee of either  
3           officer shall be affirmed unless there is clear and  
4           convincing evidence that the decision was arbitrary,  
5           capricious, fraudulent, or clearly erroneous."

6           2. By amending subsection (c) to read:

7           "(c) Only parties to the protest made and decided pursuant  
8 to sections 103D-701, 103D-709(a), 103D-310(b), and [+]103D-  
9 702(g) [+] may initiate a proceeding under this section. The  
10 party initiating the proceeding shall have the burden of proof,  
11 including the burden of producing evidence as well as the burden  
12 of persuasion. The degree or quantum of proof shall be a  
13 preponderance of the evidence[~~-~~] except for proceedings under  
14 subsection (a)(2), for which the degree or quantum of proof  
15 shall be clear and convincing evidence. All parties to the  
16 proceeding shall be afforded an opportunity to present oral or  
17 documentary evidence, conduct cross-examination as may be  
18 required, and argument on all issues involved. The rules of  
19 evidence shall apply."

20           3. By amending subsection (f) to read:

21           "(f) [The] Except as provided in subsection (a)(2), the  
22 hearings officer shall decide whether the determinations of the



1 chief procurement officer or the chief procurement officer's  
 2 designee were in accordance with the Constitution, statutes,  
 3 rules, and the terms and conditions of the solicitation or  
 4 contract, and shall order such relief as may be appropriate in  
 5 accordance with this chapter."

6 SECTION 2. This Act does not affect rights and duties that  
 7 matured, penalties that were incurred, and proceedings that were  
 8 begun before its effective date.

9 SECTION 3. Statutory material to be repealed is bracketed  
 10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

The text 'INTRODUCED BY:' is followed by several handwritten signatures. From top to bottom, the signatures are: a large stylized signature, a signature that appears to be 'Sen. Richard Ay...', a signature that appears to be 'Suzanne Mammato', a signature that appears to be 'Myle Carrole', a signature that appears to be 'J. M. Smith', and a final large stylized signature.



# H.B. NO. 2044

**Report Title:**

Procurement; Administrative Proceedings

**Description:**

Requires a hearing officer to affirm the decision of a procurement officer in protests filed under section 103D-701, HRS, unless the procurement officer's decision is shown by clear and convincing evidence to be arbitrary, capricious, fraudulent, or clearly erroneous.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

