

HB 2122, HD2

RELATING TO THE PROCUREMENT CODE

Temporarily authorizes the governor or a county mayor to exempt a construction or design-build procurement from protest concerning the procurement and administrative review of a non responsible offeror determination. Requires, as a condition of the exemption, that all bids and proposals, including amendments or revisions, evaluations, and ratings, but not trade inspection. Requires the posting of the information on the state or applicable county website. Effective July 1, 2012.



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TESTIMONY
OF
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TO THE
SENATE COMMITTEE
ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

March 13, 2012

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HB 2122, HD2

RELATING TO THE PROCUREMENT CODE.

Chair Espero, Vice Chair Kidani, and committee members, thank you for the opportunity to testify on HB 2122, HD2. This bill proposes a new section, limited to certain construction and design-build procurements, which proposes to allow the Governor or Mayors to determine applicability of exempting the requirements of the Hawaii Public Procurement Code (Code).

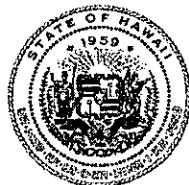
The Code was established to separate and remove the Governor and Mayors from any procurement decisions by placing the authority, responsibility and accountability with the designated chief procurement officers for the various state and county jurisdictions. This was done to assure the public and all interested parties that the awarding of government contracts is void of any perceived partisan involvement. To allow the Governor and Mayors to exempt procurement requirements may be viewed as a legal maneuver to circumvent the Code.

This bill would adversely impact vendors, contractors and service providers by eliminating due process to protest the outcome of award which may be due to faulty specifications and other requirements that may be biased, restrictive or preferential in nature. Protests also allow mistakes on the part of the governmental agency to be corrected.

The bill eliminates checks and balances, limits the ability of the chief procurement officers to take corrective action, and likely lead to misuse.

The State Procurement Office opposes this bill.

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IN REPLY REFER TO:

March 13, 2012

**H.B. 2122, H.D. 2
RELATING TO THE PROCUREMENT CODE**

SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS &
MILITARY AFFAIRS

The Department of Transportation (DOT) supports HB 2122, HD 2. Protests under the procurement code have had a negative impact on the economy because the awarding of construction and design-build projects resulted in costly delays in the commencement and completion of projects. Protests have hindered the procurement process and slowed the normal course of progress of projects that would energize and rejuvenate the economy. The bill would authorize the governor or county mayors to have a two (2) year exemption from the procurement code and apply to protests of non-responsible offeror determinations, therefore decreasing any unnecessary halts to the contract process.

DOT recognizes that such an exemption would be extraordinary and that safeguards should be implemented in order to maintain the integrity of the procurement process. HB 2122, HD2 ensures the public will have access to information involving the exempt procurement, provided that trade secrets and proprietary data are protected.

Thank you for the opportunity to provide testimony.





Hawaii Chapter

March 13, 2012

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Testimony of Associated Builders and Contractors Hawaii Chapter in **opposition to HB 2122 H.D. 2**

Chair Espero, Vice Chair Kidani, and members of the Committee; thank you for the opportunity to testify on this matter. My name is Malcolm Barcarse, Jr. I am the 2012 Board Chair and the Legislative Committee Chair of Associated Builders and Contractors Hawaii Chapter. We are an association of over 150 members representing the merit shop contracting industry in Hawaii.

We recognize the need to jump start the construction industry in Hawaii and appreciate the Legislature's efforts to streamline procurement of Capital Improvement Projects. However we should not undermine the integrity of the procurement process in the name of streamlining and we believe that HB 2122 H.D. 2 does so and that is why we **oppose** it.

The bid protest system exists to ensure that the State and Counties are getting a responsible contractor for its projects. Many protestable flaws that occur in the bidding process are discovered by contractors that are knowledgeable of the marketplace. Eliminating protests will deprive the State and Counties of the checks and balances necessary between the Government and the Contracting Community to ensure that the procurement process is fair and provides a good value to the Government.

We believe that there are better ways to reform the procurement process some of these bills are being heard at this very hearing. The ability to exempt a project from bid protests while potentially expediting the procurement may cost the State and Counties in the long run if a non responsible bidder is awarded a contract when the problem with its bid could have been discovered during the protest process.

Thank you for the opportunity to testify.

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