

# HB1374 SD1

Amends the statutory designation of state and county chief procurement officers and prohibits certain persons from serving as chief procurement officers.  
(Proposed SD1)

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 20, 2013  
2:50 p.m.  
State Capitol, Room 16

**H.B. 1374, Proposed S.D. 1  
RELATING TO PROCUREMENT**

Senate Committee on Economic Development, Government Operations and Housing

The Department of Transportation defers to the State Procurement Office and the affected state agencies on H.B. 1374, Proposed S.D. 1.

Thank you for the opportunity to provide this comment.



Testimony of  
GLENN M. OKIMOTO  
DIRECTOR

Deputy Directors  
JADE BUTAY  
FORD N. FUCHIGAMI  
RANDY GRUNE  
JADINE URASAKI

IN REPLY REFER TO:  
(808) 586-2165

NEIL ABERCROMBIE  
GOVERNOR



KATHRYN S. MATAYOSHI  
SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 03/20/2013

**Committee:** Senate Economic Development,  
Government Operations and Housing

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** HB 1374, HD1, SD1 Proposed RELATING TO PROCUREMENT.

**Purpose of Bill:** Allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements.

**Department's Position:**

Thank you for the opportunity to testify in opposition to HB 1374, HD1, Proposed SD1. The Department of Education offers testimony limited to the amendment to HRS 103D-203 (a)(6) which proposes to repeal the Superintendent of Education's authority to serve as the chief procurement officer and instead provides that the Board of Education shall designate someone other than the Superintendent to serve this function.

As currently drafted, this measure creates an uncertainty in the ability of the department to prioritize, execute and administer the procurement of all goods, services and construction for the department. This measure creates an ambiguity in the lines of authority and responsibility between the Board of Education and the Superintendent of Education, and has the potential to decrease the level of accountability for the Department's procurement decision-making. Finally, as drafted, it is unclear what issue this bill is intended to address.

Thank you for the opportunity to provide testimony.



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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Honolulu, Hawaii 96810-0119  
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**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE  
SENATE COMMITTEE  
ON  
ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS  
AND HOUSING**

March 20, 2013

2:50 p.m.

HB 1374, HD1, Proposed SD1

**RELATING TO PROCUREMENT.**

Chair Dela Cruz, Vice Chair Slom, and committee members, thank you for the opportunity to testify on HB 1374, HD1, Proposed SD1. The bill proposes to amend §103D-203 on designations of chief procurement officers (CPO), and to prohibit certain persons from serving as the CPO.

The purpose of designating a CPO for the various jurisdictions is to assign appropriate authority for accountability of procurement actions in the handling of expenditures of taxpayer monies. The CPO shall be an individual with the authority and duties as specified in §103D-205.

The CPO is responsible to ensure the procurements are conducted in accordance with the Hawaii Public Procurement Code (Code) and its administrative rules, and is tasked to make various determinations for its delegated procurement officers, such as approving sole sources, emergency procurements, restrictive specifications, procurement violations, exemptions from the Code, contract extensions, etc. The individual designated as the CPO should have relevant and recent experience in public procurement in the large-scale procurement of goods, services, or construction, and demonstrated executive and organizational abilities.

HB 1374, HD1, Proposed SD1, Testimony  
Senate Committee on Economic Development,  
Government Operations and Housing  
March 20, 2013  
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As CPO for the executive departments, I devote 100% of my time to procurement activities. Other CPOs must rightfully devote a majority of their time to their subject matter and procurement activities become secondary at best. The CPO has the highest authority to decide procurement matters, and the individual with that authority should devote a majority of their efforts to the subject matter of procurement.

If this bill allows the designated CPO to devote a good portion of their time to procurement activities, the SPO supports this bill. Thank you.



IN REPLY REFER TO:  
CMS-AP00-00411

HONOLULU AUTHORITY for RAPID TRANSPORTATION

March 19, 2013

The Honorable Donovan M. Dela Cruz, Chair  
and Members  
Committee on Economic Development, Government  
Operations and Housing  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Daniel A. Grabauskas  
EXECUTIVE DIRECTOR AND CEO

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Damien T.K. Kim  
Glenn M. Okimoto, Ph.D.

Dear Chair Dela Cruz and Members:

Subject: HB1374, Proposed SD1, Relating to Procurement  
Committee on Economic Development, Government Operations and Housing  
Wednesday, March 20, 2013, at 2:50 PM

Due to the scheduling of this legislative hearing, I present this testimony on behalf of the Honolulu Authority for Rapid Transportation (HART), pending the HART Board of Directors approval at its board meeting on Thursday, March 21, 2013.

The Revised Charter of Honolulu (RCH) Article XVII, Public Transit Authority, established HART as a semi-autonomous agency of the City and County of Honolulu. The RCH grants HART the authority to develop, operate, maintain and expand the city fixed guideway system (RCH§17-103(1)). In order to perform the duties set forth above, the authority was given the power "to make and execute contracts, project labor agreements, and other instruments requiring execution by the authority...with any person or entity in the execution and performance of its powers, duties, and functions." (RCH§17-03(2)(a)). The executive director of HART has the power and duty to "sign all necessary contracts for the authority..."(RCH§17-104(c)).

HB1374, Proposed SD1, proposes to shift the power and duties of the HART executive director, mandated by the RCH, to a HART board of directors' appointee who shall not be the executive director. The proposed amendment directly conflicts with the RCH§17-104(c).

HART recommends no change to the current statutory requirements of Hawaii Revised Statutes (HRS) §103D-203 since the amendment directly conflicts with the powers and duties granted to the executive director of HART in the Revised Charter of the City and County of Honolulu, Charter Amendment Article XVII §17-104(c).

If such an amendment to HRS §103D-203 is advanced, HART recommends that the CPO appointment authority of the board of directors be defined and limited to a person who: (1) is a current HART employee; (2) has experience in transit projects with Federal funding; and (3) is knowledgeable of Hawaii and Federal Transit Administration procurement requirements.

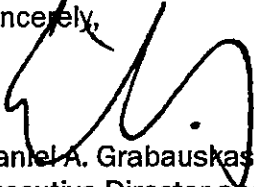
The Honorable Donovan M. Dela Cruz, Chair  
and Members  
Committee on Economic Development, Government  
Operations and Housing

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March 19, 2013

Thank you for this opportunity to provide written testimony.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Grabauskas', written over the word 'Sincerely,'.

Daniel A. Grabauskas  
Executive Director and CEO

cc: HART Board of Directors  
Ms. Ember Shinn, Managing Director Designate



Testimony of  
The Pacific Resource Partnership

Senate Committee on Economic Development, Government Operations and Housing  
Senator Donovan M. Dela Cruz, Chair  
Senator Sam Slom, Vice Chair

HB 1374, HD1 Proposed SD1 – Relating to Procurement  
Wednesday, March 20, 2013  
2:50 pm  
Conference Room 016

Aloha Chair Dela Cruz, Vice Chair Slom and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP continues to **support** HB 1374, HD1 Relating to Procurement, which allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements. This measure would also include in each bid evaluation a review of assessments from past work from a potential contractor, and allow departments to consider the assessments when making contract awards.

PRP also supports the addition of the proposed SD 1, as a meaningful clarification of the designation of agency procurement officers.

Previous testimony has been submitted noting that current law already allows such factors to be considered; however, construction contractors with records of delays, overruns and violations on public works projects are still securing public works awards with no consideration of poor past performance. The common practice is to ignore poor past performance provided the construction contractor is the low bidder. Procuring agencies need to develop systems to give weight to contractors' performance records on public works projects.

Various models can be considered during the rulemaking process; for example, a point-system might be the most efficient process, or it might be better to allow a contractor to place its statement in the record along with a procurement officer's evaluation. The fact is, models for implementation exist. In any case, an isolated problem or issues that arose from extraordinary project conditions need not exclude the contractor from future bidding.



March 20, 2013

Testimony Supporting HB 1374, HD1, Proposed SD1 – Relating to Procurement

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PRP, in its capacity as a construction industry “watch dog”, has monitored multiple private and public works projects in recent years. We believe this is a great first step in “weeding out” unqualified contractors. This measure helps ensure the probability that the right contractor is chosen for public works contracts. Legislation such as this makes it less likely that the wrong contractor is chosen.

For the reasons mentioned above, we respectfully ask for your support on HB 1374, HD1, Proposed SD1. Thank you for the opportunity to share our views with you.



# **UNIVERSITY OF HAWAII SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
Senate Committee on Economic Development,  
Government Operations and Housing  
March 20, 2013 at 2:50pm

by  
Howard Todo  
Vice President for Budget and Finance  
University of Hawai'i

### **HB 1374 HD1 PROPOSED SD1 – RELATING TO PROCUREMENT**

Chair Dela Cruz, Vice Chair Slom, and Members of the Committee:

Thank you for the opportunity to submit testimony on HB 1374 HD1 Proposed SD1, which amends the statutory designation of state and county chief procurement officers and prohibits certain persons from serving as chief procurement officers.

The University of Hawai'i supports the chief procurement officer of the University being subject to the authority of Board of Regents. However, we are unclear as to the rationale for amending Hawa'ii Revised Statute 103D-203 (a) (5) to exclude the president.

Thank for the opportunity to provide testimony.