

---

---

## A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 82, Session Laws  
2 of Hawaii 2010, provided the University of Hawaii a temporary  
3 exemption from specified provisions of the Hawaii public  
4 procurement code. The purpose of the exemption was to  
5 facilitate implementation of needed deferred maintenance and  
6 capital renewal projects more quickly by shortening delays in  
7 the contracting and procurement process. The legislature also  
8 finds that after two years, the University of Hawaii has not  
9 completed the backlog of maintenance and construction and that  
10 the temporary exemption from procurement requirements is  
11 necessary to finish the needed projects in a timely manner.  
12 However, Act 82, Session Laws of Hawaii 2010, sunsetted on July  
13 1, 2012.

14           The purpose of this Act is to reenact the temporary  
15 procurement exemptions and alternate construction contracting  
16 requirements of Act 82, Session Laws of Hawaii 2010, for an  
17 additional two years.



1 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is  
2 amended by adding four new sections to be appropriately  
3 designated and to read as follows:

4 "§304A-A Construction projects. In the solicitation for  
5 bids for construction projects with a total estimated contract  
6 value of \$1,000,000 or higher, the university shall require each  
7 bidder to submit a listing of the bidder's subcontractors who  
8 are to perform work with a value that exceeds five per cent of  
9 the total bid amount submitted by the bidder.

10 §304A-B Pre-bid conference. (a) At least fifteen days  
11 prior to submission of bids similar to those described in  
12 section 103D-302 for a construction or design-build project with  
13 a total estimated contract value of \$500,000 or more, and at  
14 least fifteen days prior to submission of proposals similar to  
15 those described in section 103D-303 for a construction or  
16 design-build project with a total estimated contract value of  
17 \$100,000 or more, the university shall hold a pre-bid conference  
18 and shall invite all potential interested bidders, offerors,  
19 subcontractors, and union representatives to attend.

20 (b) The university shall comply with the rules adopted  
21 pursuant to section 103D-303.5, by the procurement policy board  
22 established under section 103D-201.



1        §304A-C Right to audit records. (a) The university, at  
2 reasonable times and places, may audit the books and records of  
3 any person who has submitted cost or pricing data similar to  
4 those described in section 103D-312 to the extent that such  
5 books and records relate to such cost or pricing data. Any  
6 person who receives a contract, change order, or contract  
7 modification for which cost or pricing data is required, shall  
8 maintain such books and records that relate to such cost or  
9 pricing data for three years from the date of final payment  
10 under the contract, unless another period is otherwise  
11 authorized in writing.

12        (b) The university shall be entitled to audit the books  
13 and records of a contractor or any subcontractor under any  
14 negotiated contract or subcontract other than a fixed-price  
15 contract to the extent that such books and records relate to the  
16 performance of such contract or subcontract. The books and  
17 records shall be maintained by the contractor for a period of  
18 three years from the date of final payment under the prime  
19 contract and by the subcontractor for a period of three years  
20 from the date of final payment under the subcontract, unless  
21 another period is otherwise authorized in writing.



1        §304A-D Preference for small businesses; set-asides; use  
2 as subcontractors. The university shall comply with the rules  
3 adopted pursuant to section 103D-906, by the procurement policy  
4 board established under section 103D-201."

5        SECTION 3. Section 103D-102, Hawaii Revised Statutes, is  
6 amended by amending subsection (c) to read as follows:

7        "(c) Notwithstanding subsection (a), this chapter shall  
8 not apply to contracts made by:

- 9        (1) Any regional system board of the Hawaii health systems  
10        corporation; [~~or~~]
- 11        (2) The Kaho'olawe island reserve commission, except as  
12        provided by section 6K-4.5[-]; or
- 13        (3) The university or the board of regents of the  
14        university, except with respect to 103D-110, 103D-304  
15        with respect to design professional services furnished  
16        by licensees under chapter 464, 103D-324, 103D-707,  
17        and 103D-1002."

18        SECTION 4. Section 304A-105, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20        "(b) The board of regents shall develop internal policies  
21 and procedures for the procurement of goods, services, and  
22 construction, consistent with the goals of public accountability



1 and public procurement practices, which shall be subject to  
2 [~~chapter 103D~~] sections 103D-110, 103D-304 with respect to  
3 design professional services furnished by licensees under  
4 chapter 464, 103D-324, 103D-707, 103D-1002, 304A-A, 304A-B,  
5 304A-C, and 304A-D. Except as provided in this subsection,  
6 chapter 103D shall not apply to any actions or activities  
7 undertaken, conducted, or performed under authority of the board  
8 of regents or the university; provided that the board of regents  
9 and the university are encouraged to use the provisions of  
10 chapter 103D as guidelines; and provided further that in using  
11 one or more provisions of chapter 103D as guidelines, neither  
12 the board of regents nor the university shall be:

- 13       (1) Deemed to have waived in any way the exemption from  
14           the requirements and applicability of chapter 103D  
15           granted in this subsection; or  
16       (2) Subject to any of the provisions or requirements of  
17           chapter 103D other than those provided for in this  
18           subsection."

19       SECTION 5. The board of regents of the University of  
20 Hawaii shall submit annual reports to the legislature no later  
21 than twenty days prior to the convening of the regular sessions



1 of 2014 and 2015, that shall include but not be limited to the  
2 following:

- 3 (1) A description of the University of Hawaii's internal  
4 procurement process;
- 5 (2) A description of the University of Hawaii's internal  
6 procedures for handling protests of solicitations or  
7 awards of contracts, if different from the procedures  
8 described under chapter 103D, Hawaii Revised Statutes;  
9 and
- 10 (3) A description and summary of any protests or  
11 litigation that have arisen during the period of time  
12 that the University of Hawaii is exempt from chapter  
13 103D, Hawaii Revised Statutes, with certain  
14 exceptions, pursuant to this Act.

15 SECTION 6. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun, before its effective date.

18 SECTION 7. In codifying the new sections added by section  
19 2 of this Act, the revisor of statutes shall substitute  
20 appropriate section numbers for the letters used in designating  
21 the new sections in this Act.



# H.B. NO. 548

1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2013;  
4 provided that on July 1, 2015, this Act shall be repealed and  
5 sections 103D-102(c) and 304A-105(b), Hawaii Revised Statutes,  
6 shall be reenacted in the form in which they read on the day  
7 prior to the effective date of this Act.

8

INTRODUCED BY:

*[Signature]*

*Linda Chizama*

*Celeste A. Jay*

*Gregory*

*Kelle*

*[Signature]*

*[Signature]*

*Rickie Arbouilla*

*[Signature]*

JAN 18 2013



# H.B. NO. 548

**Report Title:**

University of Hawaii; Procurement; Exemption

**Description:**

Temporarily exempts the UOH and the University of Hawaii board of regents from certain Hawaii public procurement code requirements. Sunsets 07/01/15.

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

