



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
FINANCE  
FEBRUARY 25, 2015, 2:45 PM

HOUSE BILL 1028, HD 1  
RELATING TO PROCUREMENT

Chair Luke, Vice-Chair Nishimoto, and members of the committee, thank you for the opportunity to submit testimony on HB 1028 HD 1. The State Procurement Office (SPO) is in **STRONG SUPPORT** of the measure with suggested revisions set forth below.

HB 1028 HD1 creates a new section within Hawaii Revised Statutes chapter 103D to address what are called special innovative procurements. Among public procurement's guiding principles are value and transparency. Value ensures prudent use of taxpayer dollars. Transparency ensures accountability and system integrity, which in turn, fosters public confidence. These guiding principles are built into HRS chapter 103D, our State Procurement Code.

Special innovative procurements allow the State to procure when unusual or unique circumstances exist that require other than full competition, when standard procurement procedures would be contrary to the public interest. Unlike an exemption, special innovative procurements are an alternative process **within** the procurement code. This means that the State can effectively respond to unique needs or situations and maintain the accountability and transparency of the procurement and resulting management of the contract. In other words, special innovative procurements help to avoid costly and embarrassing missteps that can occur with exemptions. In fact, our research shows that several states currently apply similar statute, and the ABA 2000 Model Procurement Code recommends the use of special innovative procurements.

The language of HB 1028 HD1 tracks the language found in the Alaska innovative procurements statute (AS § 36.30.308). Although aimed at flexibility to accommodate unique circumstances, special innovative procurement statutes have protections built in, which require a written determination by the CPO, notice, and a published record to be maintained. Such safeguards ensure the special innovative procurement will be utilized only in unusual or unique circumstances and only if advantageous to the state, best value can be achieved, and the public interest will be promoted in a manner not practicably realized under standard procurement procedures.

In order for the SPO to develop and make recommendations of rules on behalf of the Procurement Policy Board (PPB), a qualified temporary hire position is required for a period of two years to develop and implement the interim and final rules. The total cost would be approximately \$85,000 per year.

The SPO suggests the following revisions:

- On page 2, line 6: “may be awarded [~~without regard to sections 103D-302 or 103D-303~~] with other than full competition . . .”

Explanation: When used, the special procurement award is not to be made without regard to 103D-302 or 103D-303. Rather it may be made with other than full competition.

- On page 2, line 15: “(b) The [~~chief procurement officer~~] head of the purchasing agency shall submit [~~any~~] a . . .”

Explanation: the procurement plan is best prepared by the head of the purchasing agency. The Chief Procurement Officer provides oversight rather than being directly involved in the details of the process.

- On page 3, lines 7 thru 9: “. . . contract file, and a report shall be made [~~publically available by the chief procurement officer at least annually describing all determinations made since the last annual report~~] by the head of the purchasing agency at least annually describing all determinations made since the last annual report. The report shall be transmitted to the Administrator of the State Procurement Office who shall make the report publically available.

Explanation: The head of the purchasing agency is best suited to make the annual report while the administrator of the SPO centrally collects the reports and makes them publically available in a central location.

Thank you.

# Hawai'i Farm to School and School Garden Hui



Coordinated through The Kohala Center

## TESTIMONY

House Committee on Finance  
February 25, 2015, 2:45 p.m.

### Kaua'i

Tiana Kamen  
*Farm to Keiki Preschool Program*

Keone Kealoha  
*Mālama Kaua'i  
Kaua'i School Garden Network*

### O'ahu

Hunter Heavilin  
*O'ahu Farm to School Network*

Natalie McKinney  
*Kōkua Hawai'i Foundation*

Debbie Millikan  
*Iolani School*

Elysa Ermatinger  
*Hoa 'Āina O Makaha*

Mahealani Matsuzaki  
*Kamehameha Schools  
'Āina-Based Education*

Terri Langley  
*MA'O Organic Farms*

Jayne Grzebik  
*University of Hawai'i  
Master Gardeners*

### Moloka'i

Harmonee Williams  
*Sustainable Moloka'i  
Moloka'i School Garden Network*

### Mauī & Lana'i

Lehn Huff  
*Mauī & Lana'i School Garden Network*

Nio Kindla & Kirk Surry  
*Grow Some Good*

### Hawai'i Island

Nancy Redfeather & Donna Mitts  
*The Kohala Center  
Hawai'i Island School Garden Network*

### Statewide

Jennifer Ryan & Leimomi Dierks  
*Hawai'i Department of Health*

Dexter Kishida  
*Hawai'i Department of Education, SFSB*

Jennifer Dang  
*Hawai'i Department of Education, HCNP*

Lillian Coltin  
*Hawai'i Department of Education*

Andrea Snow  
*FoodCorps*

### Pacific Region

Dr. Koh Ming Wei  
*Pacific Resources for Education and Learning*

## HB1028 HD1: RELATING TO PROCUREMENT

Chair Luke, Vice Chair Nishimoto, and Members of the Committee,

The Hawai'i Farm to School and School Garden Hui **strongly supports** HB1028 HD1, which provides for the establishment of a special innovative procurement process for the procurement of supplies, services, professional services, or construction, and requires the establishment of procedures by the procurement policy board for use of the special innovative procurement process.

Formed in 2010, the Hawai'i Farm to School and School Garden Hui is a statewide network comprised of six island-level networks, along with representatives of the Hawai'i Departments of Education and Health, whose mission is to strengthen Hawai'i's statewide farm to school and school garden movement.

**Proper procurement policies and procedures are essential to a successful statewide farm to school program.** In its current form, our state's procurement code represents a burdensome obstacle to the purchase of fresh, locally grown foods for school meals and snacks by the Hawai'i Department of Education's School Food Services Branch. Rather than create an exemption, we strongly support this bill to create a special innovative procurement process that will facilitate **all** state agencies in the purchasing of fresh, locally grown foods.

### The Economic Impact of Purchasing Locally Grown Food

A 2008 report from the University of Hawai'i College of Tropical Agriculture and Human Resources, entitled "**Economic Impacts of Increasing Hawai'i's Food Self-Sufficiency**" (P. Leung and M. Loke; <http://hdoa.hawaii.gov/add/files/2012/12/FoodSSReport.pdf>) states:

- \$3.7 billion was spent on food expenditures by local consumers in 2004-2005. Assuming that 85% of the food we consumed is imported, this translates to **\$3.1 billion leaving our state to support agribusinesses elsewhere.**
- Replacing the purchase of only **10% of imported foods with locally produced food could amount to some \$313 million**, or \$94 million in revenue at the farm level, assuming a 30% farm share.
- Taking into account the multiplier effect of 2.0 (as outlined in the report), this \$94 million would generate **an estimated economy-wide impact of \$188 million in sales, \$47 million in earnings, \$6 million in state tax revenues, and more than 2,300 jobs.**

**Please take into account the recommended revisions provided by the State Procurement Office for this bill.** Mahalo for the opportunity to testify.

Sincerely,

Lydi Morgan Bernal  
Coordinator

Hawai'i Farm to School and School Garden Hui  
schoolgardenhui@kohalacenter.org, www.hawaiischoolgardenhui.org



Email: [communications@uluponoinitiative.com](mailto:communications@uluponoinitiative.com)

HOUSE COMMITTEE ON FINANCE  
Wednesday, February 25, 2015 — 2:45 p.m. — Room 308

### **Ulupono Initiative Strongly Supports HB 1028 HD 1, Relating to Procurement**

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

My name is Brandon Lee and I am the policy and public-private partnership associate of the Ulupono Initiative, a Hawai'i-based impact investment company that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase clean, renewable energy, and waste reduction. We believe that self-sufficiency is essential to our future prosperity, and will help shape a future where economic progress and environmental stewardship work hand in hand.

**Ulupono strongly supports HB 1028 HD 1**, which creates a new class within the procurement code that allows for an innovative competitive procurement process to achieve the best results. Two examples of where Ulupono sees great value in this proposed procurement process:

First, Ulupono has identified procuring more locally grown foods by governmental institutions such as prisons, hospitals, and schools can lead to more locally grown foods in Hawai'i. This bill would allow for flexibility within the procurement code to create a customizable procurement process for locally grown foods. Through a more customized procurement process, the goal is to provide more transparency and written contracts to allow for more opportunities for our local farmers to supply the bulk purchases that governmental institutions can provide.

Second, in these tight budgetary times, the State is looking at new and innovative ways to build and maintain infrastructure and services for the taxpayer. One method to obtain funding for these projects is a public-private partnership. However, these projects require flexibility for the private sector with accountability for the public sector. Under this proposed process, public-private partnership projects can be customized so that the parties needs can be better satisfied.

While procurement rules can be daunting, they exist to provide accountability through processes. Often, there are various efforts to exempt categories from the procurement code, some successful and some not. Regardless of an exemption's effectiveness, it creates a system where applicants and regulators need to navigate various procurement processes

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and jurisdictions to participate effectively. This increases costs for both businesses and the government. The special / innovative procurement class can create flexibility for key categories that require it while still keeping the overall management under the expert eyes of the procurement office. Furthermore, keeping procurement processes within the procurement office, helps to provide liability protection and contract management controls for the State.

Currently, at least 9 states currently have a program for special/innovative procurements, 39 states include options for other than full competition within the procurement code, and all states allow for exemptions of some kind outside of their procurement code.

As the issues we face in Hawai'i become more complex and challenging, there needs to be updated policies to address and overcome them. We appreciate this committee's efforts to look at new solutions.

We believe that working together we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Brandon Lee  
Policy and Public-Private Partnership Associate





**LATE**

February 24, 2015

**House Committee on Finance  
Hearing Date: Wednesday, February 25, 2:45 p.m., Conference Room 308**

Honorable Representatives Sylvia Luke, Chair; Scott Nishimoto, Vice Chair; and Members of the House Committee on Finance

**Subject: HB 1028, Relating to Procurement  
TESTIMONY IN OPPOSITION**

Dear Chair Luke, Vice Chair Nishimoto, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii.

We are concerned that this bill is too vague, and doesn't adequately identify the problem it seeks to resolve. In a hearing of the House version of this bill, the State Procurement Office stated that the goal of the bill is to bring currently exempt procurement activities under the procurement code. We fail to see how this bill would address exempt procurement activities, as the bill doesn't mention the exemptions. The procurement code already contains many "innovative" and flexible procurement methods, including "competitive sealed proposals" (if the agency does not want price to be the driving factor), sole source procurement (if the agency determines only one source is available); and emergency procurements. Public-private partnerships are addressed in other bills in the current session.

ACECH is a strong supporter of HRS §103D-304, the State's "qualification-based selection" (QBS) law for procurement of professional services, which is the nationally recognized model procurement code for the procurement of professional services. Following enactment of §103D-304, the state procurement office put into place rules (HAR §3-122-663) that did not follow the intent of the law. In February 2014, a decision of the Supreme Court of the State of Hawaii upheld a 2012 Circuit Court decision that found that the rule was invalid and that the law "must be read by its plain and obvious meaning" and the rule "could not be justified by the need to "fill a gap left in HRS § 103D-304," because "[t]he plain language of section 304 does not leave any such gaps[.]" (Decision SCAP-12-0000789). The Court's ruling resulted in considerable negative press regarding the procurement actions that were conducted using the rules and in violation of the law.

While SB 1282 does not discuss section §103D-304, it does include "professional services" among the list of contracted services that may be procured using an "innovative" procurement method. ACECH is concerned with the potential use of a process, other than QBS for the procurement of professional AE services, that could lead to corruption that was seen in Hawaii prior to enactment of §103D-304, and concerned that the state procurement office may develop rules under this "innovative" procurement law that would circumvent the intent of §103D-304. Therefore, if the committee intends to pass this bill, we request that the attached revision be made.

We appreciate the opportunity to provide testimony on this matter. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

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**Proposed Revised Text (ACECH added text shown in *bold italics*):**

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§103D- **Special innovative procurement.** (a) Contracts for supplies, services, professional services, or construction may be awarded without regard to sections 103D-302 or 103D-303 using a special innovative procurement process in accordance with this section and procedures set forth in rules adopted by the procurement policy board; *provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to section 103D-304 or 103D-307.* The special innovative procurement process authorized by this section shall only be used when the chief procurement officer determines in writing that it is advantageous to the State to use the process for procurement of new or unique requirements of the State, new technologies, or to achieve best value.

DAVID Y. IGE  
GOVERNOR



FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
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STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
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IN REPLY REFER TO:

February 25, 2015  
2:45 p.m.  
State Capitol, Room 308



**HB 1028, HD1  
RELATING TO PROCUREMENT**

House Committee on Finance

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The Department of Transportation (DOT) **supports** the intent of this bill which proposes to provide for the establishment of a special innovative procurement process for the procurement of supplies, services, professional services, or construction.

Although the DOT utilizes all methods of procurement, there are situations when a procurement method does not fit the DOT purchasing needs. The purpose of a special innovative procurement process may provide the DOT with flexibility in procuring new, unique, and specialized goods, services, or construction within the parameters of the procurement code.

This bill as proposed does include a procurement checks and balances provision (Chief Procurement Officer (CPO) to provide written determination) intending to ensure the use of a particular innovative procurement is advantageous to the State, or to achieve best value.

The DOT proposes that the new proposed language in (b) be revised to read, "~~the chief procurement officer...~~ The head of the purchasing agency...

Thank you for the opportunity to provide testimony.



**HAWAII OPERATING ENGINEERS  
INDUSTRY STABILIZATION FUND**



Affiliated AFL-CIO  
OPEIU - 8 - AFL-CIO (8)

*Uniting our strengths and working together  
for a better tomorrow.*

February 24, 2015  
Honorable Sylvia Luke, Chair  
Honorable Scott Y. Nishimoto, Vice Chair  
And Members of the Committee on Finance  
415 South Beretania Street, Room 306  
Honolulu, HI 96813

**LATE**

RE: Support and Provides Comments on HB 1028, HD1 – Relating to Procurement

Chair Luke and Members of the Committee,

My name is Kimberly Ribellia, Government Liaison, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

HOEISF supports House Bill 1028, HD1 which establishes a special innovative procurement process for the procurement of supplies, services, professional services, or construction. The bill also requires procedures by the procurement policy board for use of the special innovative procurement process.

HOEISF would also like to provide comments on the bill and respectfully request the removal of subsection (d) of Chapter 103D – Special Innovative Procurement which states:

(d) Nothing in this section shall preclude the adoption of rules providing for the use of bonuses instead of preferences for the procurement of construction.

HOEISF believes that this language is not necessary to include in statute and can be addressed through the rule making process.

Thank you for this opportunity to testify in this matter.

Sincerely,

Kimberly Ribellia  
Government Liaison  
HOEISF



From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 24, 2015 9:33 PM  
To: FINTestimony  
Cc: amybrinker@mac.com  
Subject: \*Submitted testimony for HB1028 on Feb 25, 2015 14:45PM\*

**HB1028**

Submitted on: 2/24/2015

Testimony for FIN on Feb 25, 2015 14:45PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

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Sent: Tuesday, February 24, 2015 4:18 PM  
To: FINTestimony  
Cc: gottlieb@hawaii.rr.com  
Subject: \*Submitted testimony for HB1028 on Feb 25, 2015 14:45PM\*

**LATE**

**HB1028**

Submitted on: 2/24/2015

Testimony for FIN on Feb 25, 2015 14:45PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Gottlieb	Hawaii Cattlemen's Council	Support	No

Comments:

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