



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE
FEBRUARY 11, 2015, 2:30 PM

HB 1028
RELATING TO PROCUREMENT

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

HB 1028 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 HB1028 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.

The SPO suggests the following revisions:

- On page 2, line 6: “may be awarded [~~without regard to sections 103D-302 or 103D-303~~] with or without competitive sealed bidding or competitive sealed proposals . . .”

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 without competitive sealed bidding or competitive sealed proposals.

- 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.



Email: communications@uluponoinitiative.com

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, February 11, 2015 — 2:30 p.m. — Room 325

Ulupono Initiative Strongly Supports HB 1028, Relating to Procurement

Dear Chair McKelvey, Vice Chair Woodson, 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, 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

Investing in a Sustainable Hawai'i



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



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:

February 11, 2015
2:30 p.m.
State Capitol, Room 325

H.B. 1028
RELATING TO PROCUREMENT

House Committee on Consumer Protection and Commerce

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 includes 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 the following revision to the proposed statutory language, "(d) Nothing in this section shall preclude the adoption of rules providing for the use of ~~bonuses~~ incentives instead of preferences in a procurement of construction."

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



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SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson



TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND
COMMERCE

February 11, 2015
2:30 P.M.
CONFERENCE ROOM 325

HOUSE BILL NO. 1028
RELATING TO PROCUREMENT

Chairperson McKelvey and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1028. This measure establishes a special innovative procurement process for acquisition of supplies, services, professional services, or construction. It requires the establishment of procedures by the Procurement Policy Board for use in the special innovative procurement process.

The Department of Agriculture supports this measure that could result in allowing Hawaii's agricultural industry the opportunity to sell Hawaii-grown agricultural products to government institutions including schools and prisons. In turn, this can challenge all components of Hawaii's agricultural industry, including non-governmental organizations such as the Ulupono Initiative, to work together to achieve opportunities while achieving transparency and accountability.

Thank you for the opportunity to provide our testimony on this important measure.



LATE TESTIMONY

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 2, 2015

House Committee on Consumer Protection & Commerce

Hearing Date: Wednesday, February 11, 2:30 p.m., Conference Room 325

Honorable Representative Angus L.K. McKelvey, Chair; Justin H. Woodson, Vice Chair; and Members of the House Committee on Consumer Protection and Commerce

**Subject: HB 1028, Relating to Procurement
TESTIMONY WITH COMMENTS**

Dear Chair McKelvey, Vice Chair Woodson, and Committee Members:

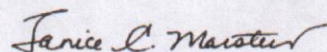
The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. ACECH is a strong supporter of HRS §103D-304, the State's "qualification-based selection" (QBS) law for procurement of professional services. While HB1028 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 services.

We are also concerned that this bill is too vague, and doesn't adequately identify the problem it seeks to resolve. 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 procurement. Public-private partnerships and agricultural preferences could be addressed by more specific statute, and we understand that other bills in the current session address these topics.

§103D-102 also contains an allowance for exemptions based on rules made by the procurement policy board or the Chief Procurement Officer (CPO). In a previous hearing of this bill, the CPO stated that the goal of the bill is to bring currently exempt procurement activities under the procurement code. This is a worthy goal, but we fail to see how this particular bill would address exempt procurement activities, as the bill doesn't mention the exemptions. The bill states that the guidelines would be established in rules but, given the protection of public interest provided by the procurement code, we feel it is necessary to develop a well-defined statute.

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



Janice Marsters, Ph.D., FACEC
Legislative Committee Co-Chair