

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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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 FINANCE

April 1, 2015  
2:00 P.M.  
CONFERENCE ROOM 308

SENATE BILL NO. 1228, SD 2, HD 2  
RELATING TO PROCUREMENT

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1228, SD2, HD2. This measure establishes a special innovative procurement process for acquisition of supplies, services, professional services, or construction. It requires the establishment of procedures and rules by the Procurement Policy Board for use in the special innovative procurement process, and makes an appropriation out of the general funds for a temporary position within the Department of Accounting and General Services for 2015-2017 to assist with the special innovative procurements. Part II of the bill appropriates funds for the Hawaii Health Systems Corporation to procure services to develop a master plan for the Samuel Mahelona Memorial Hospital and Kauai Veterans Memorial Hospital. The Department supports Part I of the bill but has no position on Part II of the bill.

The Department of Agriculture supports Part I of 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 facilitate opportunities while achieving transparency and accountability.

Thank you for the opportunity to present our testimony.



DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

PAULA A. YOUNGLING  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY

OF

SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE

ON

FINANCE

APRIL 2, 2015, 2:00 P.M.

SENATE BILL 1228, SD2 HD2  
RELATING TO PROCUREMENT

Chair Luke, Vice-Chair Nishimoto, and members of the committee, thank you for the opportunity to submit testimony on SB 1228, SD2 HD2.

The State Procurement Office (SPO) is in **SUPPORT** of the measure **with suggested revisions** as set forth below.

SB 1228, SD2 HD2 **Part I**, 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 will 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 SB1228, SD2 HD2 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:

*PART I, SECTION 2.*

On page 3, line 14

“(a) Contracts for goods or services ~~or professional services~~ may be awarded...”

Reasoning: Discussions still need to take place with the construction and design community before these areas should be included in this section.

On page 4, lines 18-21:

~~“(5) Minimizing deviation from section 103D-302 and 1-3D-303 for construction contracts, specifically addressing contractor provisions such as subcontractor listing, as applicable; and”~~

On page 5, lines 1-2:

~~“(6) Minimizing deviation from section 103D-304 provisions for professional services, as applicable.”~~

Reasoning: Discussions still need to take place with the construction and design community before these areas should be included in this section.

On page 5, lines 3-5:

“(c) The head of the purchasing agency shall submit a procurement plan for public private partnership procurements developed pursuant to this section ~~and rules adopted by the board~~ to the attorney general...”

Reasoning: The intent is to include the attorney general’s (AG) office in reviewing plans specifically for public-private partnerships at the outset in consideration of protections and liabilities. The AG does not need to review and approve already approved rules.

On page 5, lines 10-13:

~~“(e) Nothing in this section shall preclude the adoption of rules providing for the use of bonuses instead of preferences or requiring subcontractor provisions in a procurement of construction.”~~

Reasoning: Discussions still need to take place with the construction and design community before these areas should be included in this section.

*PART I, SECTION 4.*

On page 7, lines 9-17:

~~“(3) Provisions that require the government to have an independent consultant or in-house expert in facilities planning, design, and construction assess the long-term projected needs of the government before considering the use of a public-private partnership; advise the government prior to solicitation; and continue serving as advisor to the government throughout the planning, design, and construction phases;”~~

Reasoning: Discussions still need to take place with the construction and design community before these areas should be included in this section.

On page 8, lines 1-6:

~~“(5) Provisions that encourage communication between design vendors and the end user during the request for proposals phase so the government end user is empowered to provide direct, meaningful input to the competitor design teams developing the proposed designs; and~~

Reasoning: Discussions still need to take place with the construction and design community before these areas should be included in this section.

*PART III, SECTION 10.*

SPO recommends that Part I take effect on July 1, 2015, to allow use of funds to be appropriated in fiscal year 2015-2016 and fiscal year 2016-2017 for the purpose of developing and implementing Special Procurements.

Thank you.

From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, April 01, 2015 9:44 AM  
To: FINTestimony  
Cc: psgegen@hotmail.com  
Subject: Submitted testimony for SB1228 on Apr 2, 2015 14:00PM

**SB1228**

Submitted on: 4/1/2015

Testimony for FIN on Apr 2, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
pat gegen	Kauai Regional Board - HHSC	Support	No

Comments: The Kauai Regional Board Strongly SUPPORTS the inclusion of funding for creation of a master plan for our regional hospital campuses. This master plan would assist the Kauai Region in identifying opportunities that would foster us in becoming more self-sustaining and less of a burden on the State Funding. Thank you for your consideration of this request.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

# Hawai'i Farm to School and School Garden Hui



Coordinated through The Kohala Center

**TESTIMONY**  
House Committee on Finance  
April 2, 2015, 2:00 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*

## Maui & Lana'i

Lehn Huff  
*Maui & 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*

## **SB1228 SD2 HD2: RELATING TO PROCUREMENT**

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

The Hawai'i Farm to School and School Garden Hui **supports** SB1228 SD2 HD2, which establishes a process for special innovative procurement and generates a framework for public-private partnership in Hawai'i.

Formed in 2010, the Hawai'i Farm to School and School Garden Hui is a statewide network comprised of five 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 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.**

Mahalo for the opportunity to testify.

Sincerely,

Lydi Morgan Bernal  
Coordinator  
schoolgardenhui@kohalacenter.org  
www.hawaiischoolgardenhui.org





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

HOUSE COMMITTEE ON FINANCE  
Thursday, April 2, 2015 — 2:00 p.m. — Room 308

**Ulupono Initiative Strongly Supports SB 1228 SD 2 HD 2, 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 SB 1228 SD 2 HD 2**, 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



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
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HOUSE COMMITTEE ON FINANCE  
Hearing Scheduled 2 pm, Thursday April 2, 2015, Conference Room 308  
SB 1228, HD 2, RELATING TO PROCUREMENT  
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

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

**The League of Women Voters of Hawaii opposes SB 1228, HD 2 on procedural grounds.** Part I of the bill (to establish a new process for innovative procurement and a framework for public-private partnerships) has a different subject than Part II of the bill (to fund a master plan for 2 Kauai hospitals).

Because Part II of SB 1228, HD 2 was added as an amendment after crossover, the subject of Part II of the bill will not have 3 readings in the House. Article III, Section 15 of Hawaii's Constitution requires that "No bill shall become law unless it shall pass three readings in each house on separate days." The 3 reading requirement applies to the subject of a bill - - not just the bill title and bill number.

Thank you for the opportunity to submit testimony.

1065 Ahua Street  
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Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcawhawaii.org](mailto:info@gcawhawaii.org)  
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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 2, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HOUSE COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION TO S.B. 1228, SD2, HD2 RELATING TO PROCUREMENT.**

Establishes a process for special innovative procurement and generates a framework for public-private partnership in Hawaii. Appropriates funds for a temporary position to assist the Procurement Policy Board. Appropriates funds for the Hawaii Health Systems Corporation to procure services to develop a master plan for the Samuel Mahelona Memorial Hospital and Kauai Veterans Memorial Hospital. (SB1228 HD2)

Public Hearing

DATE: Thursday, April 2, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 308

Dear Chair Luke and Vice Chair Nishimoto and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

Part I of S.B. 1228, SD2, HD1 proposes to adopt a procurement procedure that can accommodate unique situations in which traditional procurement procedures may not allow acquiring goods and services, including construction services in the most efficient manner. GCA's comments are specific to Part I of this measure. **While GCA appreciates the intent of S.B. 1228, SD2, HD1 we oppose the bill as it is currently written. Instead, we recommend the language be similar to Alaska's Statute Section 36.30.308 governing Special Innovative Procurement, which provides a tested and successful model which appears to have the necessary safeguards and transparency required to allow such innovative processes to succeed.** The 2000 ABA Model Procurement Code in its Commentary of Section 3-207 recognizes that its language was based on laws in Alaska and Arizona, which include proper safeguards that only the Chief Procurement Officer or the head of a Purchasing Agency will authorize each special procurement process, and document both the reasons therefore and the selection process followed.

The use of special innovative procurement procedures have been in practice in Alaska for over ten years and has reflected a number of different ways in which special innovative practices have worked. The following are examples of some forms for public-private partnerships from the National Council for Public-Private Partnerships, including, but not limited to, Design-Build-Maintain contracts; Design-Build-Operate; Operations and Management; Design-Build-Finance-Operate-Maintain; Build-Own-Operate; Developer Finance; Lease-Develop-Operate or Build-Develop Operate mechanisms. These mechanisms provide options, especially for financing of large infrastructure projects or public accommodation venues that the government has difficulty securing.

Thank you the opportunity to share our testimony.



April 1, 2015

**House Committee on Finance**

**Hearing Date: Thursday, April 2, 2:00 p.m., Conference Room 308**

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

Subject: **SB 1228, Relating to Procurement  
TESTIMONY WITH COMMENTS**

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. ACECH is a strong supporter of HRS §103D-304, the State's "qualification-based selection" (QBS) law for procurement of professional services, which follows the National model procurement code. The Legislature has expressed their intent to maintain a strong QBS statute for the procurement of professional services to reduce corruption and protect the public interest.

ACECH is concerned with the potential use of a process other than QBS for the procurement of professional services and, therefore, respectfully requests that any reference to the procurement of professional services be removed from this bill.

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

A handwritten signature in black ink that reads "Janice C. Marsters".

Janice C Marsters, Ph.D.  
Legislative Committee  
808-371-8504

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*A'ohe hana nui ka alu'ia*  
*"No Task Is Too Big When Done Together By All"*

**HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO**

735 Bishop Street, Suite 412 \* Honolulu, Hawaii 96813  
(808) 524-2249 - FAX (808) 524-6893

KIKA G. BUKOSKI  
*Executive Director*

April 2, 2015

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Local 630

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Sheetmetal Workers, I.A. Local 293

RONAN KOZUMA  
Hawaii Teamsters & Allied  
Workers Local 996

VAUGHN CHONG  
Roofers, Waterproofers & Allied  
Workers United Union of Roofer  
Local 221

Honorable Representative Sylvia Luke, Chair  
Honorable Representative Scott Nishimoto, Vice Chair  
Members of the Committee on Finance  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

RE: **SUPPORT WITH AMMENDMENTS**, SB1228, SD2, HD2, RELATING TO PROCUREMENT  
Hearing: Thursday, April 2, 2015, 2:00 p.m. Conference Room 308

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO (HBCTC) is a chartered member of the Building and Construction Trades Department, AFL-CIO which was first organized in 1908 and is comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 20,000 members locally. Our primary mission being to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

HBCTC supports the intent of SB1228, SD2, HD2, to address Hawaii's unfunded liabilities and provide for flexibility in the procurement of goods and services. HBCTC offers the below proposed amendments to allow for such flexibility while ensuring the public's interest is protected in matters that involve the procurement of public contracts.

The proposed amendments (SB1228, SD2, HD3 PROPOSED) included below, allow for special innovative procurement with prior public notice and subject to such competition as practicable for contracts in excess of respective small purchase procurements. The proposed language is consistent with language found in the American Bar Association 2000 Model Procurement Code for State and Local Governments.

In addition, HBCTC respectfully recommends the deletion of and reference to professional services and the insertion of "goods or" services. This amendment is consistent with provisions found in Chapter 103D-102(b)(4)(L) HRS, which currently allows Chief Procurement Officers the flexibility to request for exemptions from HRS 103D under certain circumstances explicit to goods or services.

As such, other references to construction found throughout the HD2 draft version have also been recommended for deletion as it would no longer apply.

For the above reasons, HCBTC supports SB1228, SD2, HD2 with the following proposed amendments:

THE SENATE  
TWENTY-EIGHTH LEGISLATURE,  
2015  
STATE OF HAWAII

**S.B. NO.** 1228  
S.D. 2  
H.D. 3  
PROPOSED

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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

## PART I

SECTION 1. The legislature finds that creative problem solving is necessary to address growing concerns arising from the State's fiscal deficit. Hawaii is responsible for unfunded liabilities totaling billions of dollars. Like many states, Hawaii must balance its budget while managing the demands of infrastructure maintenance and public service needs. Budget shortfalls result in postponed maintenance and reduced social services despite a growing population driving the demand for services and adding stress to the public infrastructure.

The legislature finds that the State's process of acquiring goods and services must be flexible to accommodate circumstances where other than full competition is necessary to address a unique need, such as local food

purchasing, or where nontraditional procurement practices, such as public-private partnerships, can help government maintain infrastructure, provide services, and operate more efficiently to achieve the best value while giving effect to state policy goals.

The Legislature further finds that public-private partnerships are utilized successfully throughout the nation, and although Hawaii has specifically authorized a select number of such partnerships, a more effective approach of addressing public-private partnership procurements is in the best interest of effective utilization of taxpayer money with increased transparency. A public-private partnership is a contractual agreement between a public agency and a private sector entity where skills and assets of each sector are combined to deliver services to the public, not a privatization of a government function. Both entities share in the risks and rewards of the venture. The partnership provides for a level of public control and oversight of operations not typical of privatization.

While public-private partnerships are widely employed around the world, only five states have adopted comprehensive legislation authorizing governmental entities to contract with private partners to design, build, finance, operate, and maintain public facilities. Public-private partnerships have been created to address social infrastructure, transportation, water treatment, energy, and financial management concerns. The private sector

contributes management efficiency, technology, cash flow management, and personnel development to complement the government's legal authority, capital resources, procurement policies, and broad perspective.

The purpose of this part is to provide the State greater flexibility in procurement by establishing a process for special innovative procurement and generating a framework for public-private partnerships in Hawaii.

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 goods, or services, or professional services and may be awarded with other than full competition 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 any special innovative procurement under this section shall be made with such competition as is practicable under the circumstances, where the contract is greater than the small purchase amount specified in Chapter 103D, Section 305 (HRS). The special innovative procurement process authorized by this section shall only be used when the chief procurement officer, with prior public notice, 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, and that an unusual or unique situation exists



that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest.

(b) All special innovative procurements shall include, to the extent possible, provisions and processes to ensure taxpayer accountability, transparency of innovative process for evaluation, communication of innovation for future duplication, and clear cause for deviation from other standard methods of source selection in section 103D-301. Administrative rules shall be adopted by the policy board pursuant to chapter 91 and shall address the following:

- (1) Compliance with local, State, and federal laws;
- (2) Attaining the maximum level of competition to achieve the best value;
- (3) Adherence to purchasing ethics to protect the public trust, as codified in the administrative rules;
- (4) Specific procedures for addressing public-private partnerships; and

~~(5) Minimizing deviation from section 103D-302 and 103D-303 for construction contracts, specifically addressing contractor provisions such as subcontractor listing, as applicable; and~~

~~(6) Minimizing deviation from section 103D-304 provisions for professional services, as applicable.~~

(5) Prior public notice to initiate a special innovative procurement.

(c) The head of the purchasing agency shall submit a procurement plan developed pursuant to this section and rules adopted by the board to the attorney general for review and approval as to form before issuing the notice required under subsection (d).

(d) Notice of the invitation for bids shall be given in the same manner as provided in section 103D-302(c).

~~(e) Nothing in this section shall preclude the adoption of rules providing for the use of bonuses instead of preferences or requiring subcontractor provisions in a procurement of construction.~~

~~(f)~~ (e) A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the head of the purchasing agency in the contract file, and a report shall be made by the head of the purchasing agency at least annually describing all determinations made since the last annual report, pursuant to procedures directed by the administrator of the state procurement office. The report shall be transmitted to the administrator of the state procurement office who shall make the report publicly available."

SECTION 3. Section 103D-301, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-301 Methods of source selection.** Unless otherwise authorized by law, all contracts shall be awarded pursuant to the following sections, as applicable:

- (1) Section 103D-302 (Competitive sealed bids);
- (2) Section 103D-303 (Competitive sealed proposals);
- (3) Section 103D-304 (Professional services procurement);
- (4) Section 103D-305 (Small purchases);
- (5) Section 103D-306 (Sole source procurement); ~~[and]~~
- (6) Section 103D-307 (Emergency procurements) ~~[+]~~; and
- (7) Section 103D- (Special innovative procurement)."

SECTION 4. (a) The rules for public-private partnerships, adopted pursuant to section 103D- shall also address the following:

- (1) A requirement that a public-private partnership contract include a long-term maintenance and operations scope;
- (2) Provisions that require a suitability test wherein a centralized governmental entity with expertise in public-private partnership delivery and financial modeling compares the value of long-term leases to existing project delivery models before issuing any requests for qualifications or proposals, which would be triggered after satisfaction of basic threshold requirements for public-private partnerships;

- (3) Provisions that require the government to have an independent consultant or in-house expert in facilities planning, design, and construction assess the long-term projected needs of the government before considering the use of a public-private partnership; advise the government prior to solicitation; and continue serving as advisor to the government throughout the planning, design, and construction phases;
- (4) Comprehensive statutory guidelines that apply to all state entities to provide a uniform, fair process that enables private developers to properly assess the risks and rewards of engagement;
- (5) Provisions that encourage communication between design professionals and the end user during the request for proposals phase so the government end user is empowered to provide direct, meaningful input to the competitor design teams developing the proposed designs; and
- (6) Provisions that enable small businesses to compete.

(b) The procurement policy board shall submit a report on its draft rules for public-private partnerships and any proposed legislation to the legislature no later than twenty days prior to the convening of the regular session of 2017.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2015-2016 and the same sum or so much thereof as may be necessary for fiscal year 2016-2017 for a temporary position within the department of accounting and general services, not to exceed two years from the effective date of this Act, with duties to include but not be limited to assisting the procurement policy board in the research and development of special innovative procurements and public-private partnership rules.

The sums appropriated shall be expended by the department of accounting and general services for the purposes of this part.

## PART II

SECTION 6. The legislature finds that the Hawaii health systems corporation provides critical quality of life services that are integral to the public health and safety of our communities. However, as currently operated, Hawaii health systems corporation faces dire financial realities that continue to escalate, placing an ever increasing burden on our state revenues. One possible solution to the long-term financial sustainability of Hawaii health systems corporation would be through the establishment of a long-term public-private partnership that would provide it with financial security while allowing for the continuation of services provided by these hospitals and medical centers.

Samuel Mahelona Memorial Hospital and Medical Center and Kauai Veterans Memorial Hospital serve the rural communities of Kauai by providing numerous medical services. These services include twenty-four hour emergency medical services; rehabilitation therapies (occupational, physical, and recreational); skilled nursing; intermediate, long-term, and acute care; family birth centers; outpatient clinics; imaging services (x-ray, CT, extremity MRI, stress testing, ultrasound-cardiac, and general); and surgery. While both hospitals provide invaluable services to the rural communities of Kauai, these two facilities are also located in urban cores that are in close proximity to schools, public transportation, retail establishments, and housing. The lands these facilities sit on have tremendous opportunity to provide sites for affordable housing, assisted living facilities, retail establishments, and restaurants. The potential revenue through lease rents of these lands could be used to subsidize the hospitals' operations, ease the burden these hospitals have on the state general fund, and allow valued state workers a means to continue providing services in their communities.

The legislature finds that in order for a long-term public-private partnership to work, community input is critical in determining if a project is appropriate. One way to ensure appropriateness is through the use of the Charette process. The Charette process is a design-based, accelerated, and collaborative project management system

that spans the entire pre-construction period of a project. In this type of system, members of the community, representatives from state and county government, and various stakeholders would have a voice in determining what is appropriate and viable for the sustainability of both the Samuel Mahelona Memorial Hospital and Medical Center and Kauai Veterans Memorial Hospital, as well as the communities surrounding these facilities. Establishing a master plan for these two facilities and the lands they encompass would further smart growth development while providing a means for a sustainable future for each hospital.

However, the legislature also finds that development of a master plan, particularly through the use of the Charette system, requires specialized knowledge, and these services need to be procured. Accordingly, the purpose of this part is to appropriate funds for the Hawaii Health Systems Corporation to procure professional services to develop a master plan for the facilities and lands under the jurisdiction of the Samuel Mahelona Memorial Hospital and Medical Center and Kauai Veterans Memorial Hospital.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2015-2016 and the same sum or so much thereof as may be necessary for fiscal year 2016-2017 for the procurement of services to develop a master plan for the design and expansion of Samuel Mahelona Memorial Hospital and the Kauai Veterans

Memorial Hospital; provided that the master plan shall be established using a collaborative project management system that spans the entire pre-construction period and involves community input.

The sums appropriated shall be expended by the Hawaii health systems corporation for the purposes of this part.

### PART III

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2112.





DAVID Y. IGE  
GOVERNOR



**LATE**

DOUGLAS MURDOCK  
Comptroller

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
DOUGLAS MURDOCK, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEE  
ON  
FINANCE  
ON  
APRIL 2, 2015

S.B. 1228, S.D. 2, H.D. 2

RELATING TO PROCUREMENT

Chair Luke and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 1228, S.D. 2, H.D. 2.

The Department of Accounting and General Services supports the intent of S.B. 1228, S.D. 2, H.D. 2, provided the funds appropriated in SECTION 5 of the measure do not replace or adversely impact priorities indicated in the Executive Budget.

Thank you for the opportunity to submit written testimony on this matter.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

**LATE**

Uploaded via Capitol Website

April 2, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HOUSE COMMITTEE ON FINANCE

SUBJECT: **COMMENTS REGARDING S.B. 1228, SD2, HD2 RELATING TO PROCUREMENT.** Establishes a process for special innovative procurement and generates a framework for public-private partnership in Hawaii. Appropriates funds for a temporary position to assist the Procurement Policy Board. Appropriates funds for the Hawaii Health Systems Corporation to procure services to develop a master plan for the Samuel Mahelona Memorial Hospital and Kauai Veterans Memorial Hospital. (SB1228 HD2)

Public Hearing

DATE: Thursday, April 2, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 308

Dear Chair Luke and Vice Chair Nishimoto and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

Part I of S.B. 1228, SD2, HD1 proposes to adopt a procurement procedure that can accommodate unique situations in which traditional procurement procedures may not allow acquiring goods and services, including construction services in the most efficient manner. GCA's comments are specific to Part I of this measure. **While GCA appreciates the intent of S.B. 1228, SD2, HD1 we oppose the bill as it is currently written and instead prefer a more deliberate approach to this brand new procurement process by deferring it for consideration in the next session. Nevertheless, if such a process is to be considered this session, we recommend following the language of other jurisdictions who have it on their books, such as that of Alaska's Statute Section 36.30.308, so that we may learn from the successes and failures of its use from them.** The 2000 ABA Model Procurement Code in its Commentary of Section 3-207 recognizes that its language was based on laws in Alaska and Arizona, which include proper safeguards and transparency suggested by the model code. May we suggest using the language as written in H.B. 1028, HD2, which appears to be modeled after said Alaska statute, but deleting part (d) concerning bonuses, since we were unable to find any provision in our Hawaii statutes dealing with bonuses.

Thank you the opportunity to share our support for H.B. 1228, SD2, HD2 and for considering proposed amendments.

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

PAULA A. YOUNGLING  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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ADDENDUM TO TESTIMONY

OF

SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

**LATE TESTIMONY**

TO THE HOUSE COMMITTEE

ON

FINANCE

APRIL 2, 2015, 2:00 P.M.

SENATE BILL 1228, SD2 HD2  
RELATING TO PROCUREMENT

Chair Luke, Vice-Chair Nishimoto, and members of the committee, thank you for the opportunity to submit testimony on SB 1228, SD2 HD2.

The State Procurement Office (SPO) is in **SUPPORT** of the measure and wishes to add the following to our testimony originally submitted.

The Procurement Policy Board (PPB) in turn has the authority and responsibility to adopt rules that are consistent with each section of the Code to govern the procurement, management, and control of the goods, services or construction being procured. In order for the State Procurement Office to develop and make recommendation of rules on behalf of the PPB, for example, development of agile food procurement, we need a qualified FTE with money. Rules development, administrative work and facilitation of community outreach will require a position to manage these responsibilities.

This position is a requirement of HRS §103D-201(c), providing that "The policy board shall be assisted by employees of the [DAGS] which shall provide at least one full-time support staff and funding necessary to support the policy board."

The total cost would be approximately \$65,000 per year for one staff member to begin the development and implementation.

Thank you.