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To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, March 22, 2017

Time: 9:30 A.M.

Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1414, H.D. 1, Relating to the Department of Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 1414, H.D. 1, and the interest in the success of the Tax System Modernization (TSM) project. The Department provides the following comments on H.B. 1414, H.D. 1.

H.B. 1414, H.D. 1, requires the Office of the Auditor (Auditor) to investigate the TSM project. The measure requires the auditor to execute a contract with an appropriate contractor to complete the investigation. The measure requires the auditor to submit a report on its investigation to the legislature no later than twenty days prior to the convening of the regular session of 2018. The stated purpose of the investigation is to: (1) identify any operational problems; (2) ascertain the cause of such problems; and (3) estimate any tax revenue lost due to or associated with such problems. Section 2 of the measure provides an unspecified appropriation for fiscal year 2017-2018. H.B. 1414, H.D. 1, is effective July 1, 2017.

The Department is participating in a review directed by the Governor involving ETS, and is working with the Director of Finance and the Comptroller, to review the TSM program and its processes. Observations, results of this review, and recommendations to improve processes, if any, will be compiled in a report for submission to the Governor and Legislature.

The Department also notes that it has contracted with an independent verification and validation vendor (IV&V) that regularly reviews the ongoing TSM implementation process. The analysis and recommendations of the vendor are also available to ETS and Director of Finance and the Comptroller for consideration in developing their report. We believe the IV&V reports provide a thorough review of the operation and fidelity of TSM processes.

H.B. 1414 seeks to duplicate what is being done by ETS, the Director of Finance and the Comptroller, and the IV&V auditor. For this reason, the Department does not believe the investigation proposed by this measure is necessary. If, however, this measure does move

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forward, the Department requests that the audit not commence until after Rollout 3 is completed; it is scheduled for completion on August 14, 2017.

Thank you again for your interest in the success of the TSM project and for the opportunity to provide comments.



SENATE COMMITTEE ON WAYS AND MEANS
The Honorable Jill N. Tokuda, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair

H.B. No. 1414, H.D. 1, Relating to the Department of Taxation

Hearing: Wednesday, March 22, 2017, 9:30 a.m.

The Office of the Auditor has **no position** on H.B. No. 1414, H.D. 1, Relating to the Department of Taxation (“DoTAX”), which directs the Auditor to retain a consultant to investigate DoTAX’s tax system modernization project. However, we note that the tax modernization project is ongoing and, for that reason, suggest that an investigation at this time may be premature.

The purpose of the investigation is to: (1) identify any operational problems of the tax system modernization project; (2) ascertain the causes of those problems; and (3) estimate the amount of tax revenue lost because of the problems associated with the use and implementation of the tax system modernization project.

It is our understanding that only the first phase of the project has been completed, with subsequent phases scheduled to rollout in August 2017, November 2018, and July 2019. We suggest that it may be difficult for us to identify and assess operational issues relating to the tax system modernization project until the project is completed and there has been sufficient time for the department and users to identify any operational problems. We suggest that the committee consider postponing the investigation of the tax system modernization project, as required by the bill.

If the committee is aware of specific issues relating to the first phase of the project that it wants investigated, we request that the bill be amended to more clearly identify the concerns and the limited scope of the required investigation.

Thank you for considering our testimony related to H.B. No. 1414, H.D. 1.

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
WAYS AND MEANS

March 22, 2017, 9:30 AM

House Bill 1414 HD1
RELATING TO THE DEPARTMENT OF TAXATION

Chair Tokuda Vice-Chair Dela Cruz, and members of the committee, thank you for the opportunity to submit testimony on HB 1414 HD1. The State Procurement Office's (SPO) comments are limited to SECTION 1 of the bill exempting the Office of the Auditor from the Hawaii Public Procurement Code (Code) as follows:

“The auditor shall not be subject to chapter 103D, Hawaii Revised Statutes, in executing the purpose of this Act.”

The auditor already procures for all financial audits using HRS 103-D. Exemptions are used when it is not practicable or advantageous to the State.

In addition, the Code already provides flexibility to address the needs of the Auditor's needs in the event the office needs to contract with consultants when specialized expertise is needed. HRS §103D-102(b)(4)(L) gives the Chief Procurement Officer, the President of the Senate and the Speaker of the House of Representatives, the authority to exempt specific purchases when it is not advantageous or practicable. HAR §3-120-5 provides the mechanism for the head of a purchasing agency to follow when requesting an exemption to the Code.

The harm of granting a statutory blanket exemption is that the procurement would not be reviewed to determine the appropriateness of that exemption, which over a period of time may change. In addition, statutory exemptions are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part "...shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings..." Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system;

fosters effective broad-based competition; and increases public confidence in public procurement.

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly to obtain its requirements, which was the legislature's intent for the Code. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic for the administration and vendors/contractors that must comply with a variety of processes. Most agencies agree that fairness, open competition, a level playing field, and government disclosure and transparency in procurement and contracting process are vital to good government. They believe that for this to be accomplished, we must participate in the process with one set of statutes and rules.

One of public procurement's primary objectives is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in the awarding of contracts. Another critical objective is to ensure disclosure and public visibility into the way taxpayer dollars are being spent. As such, along with open competition the Code provides safeguards to ensure procurement integrity, determination of fair and reasonable pricing, public notice, and transparency. The Code also provides consistency in the manner in which purchasing agencies procure goods, services, and construction.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

Exemptions to the Code mean that all procurements made with taxpayer monies for this authority, will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the Code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the State in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, the authority can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost saving efficiencies found in the consistent application of the procurement code are lost. It also means the authority is not required to adhere to the Code's procurement integrity laws.

When public bodies are removed from the State's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates

an imbalance wherein the competitive environment becomes different among the different jurisdictions and the entire procurement process becomes less efficient and more costly for the State and vendors.

Thank you.