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# A BILL FOR AN ACT

RELATING TO THE STATE PROCUREMENT POLICY BOARD.

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

1       SECTION 1. The legislature finds that boards and  
2 commissions provide an opportunity for citizens to have a voice  
3 in government and provide a means to influence decisions that  
4 shape the quality of life for the residents of the State.

5 However, vacancies on these boards and commissions pose  
6 challenges for some agencies in fulfilling their duties.

7       The state procurement policy board is one example of  
8 vacancies hampering state processes. The board was formed to  
9 adopt, amend, or repeal administrative rules to carry out and  
10 effectuate the purpose and provisions of chapter 103D, Hawaii  
11 Revised Statutes, known as the Hawaii public procurement code,  
12 which governs the State's procurement, management, control, and  
13 disposal of any and all goods, services, and construction, and  
14 chapter 103F, which governs the State's purchase of health and  
15 human services. Other duties of the board are to consider and  
16 decide matters of policy, including those referred by a chief  
17 procurement officer, audit and monitor the implementation of its



1 rules and the requirements of applicable statutes, and consider  
2 applicants for the position of the state procurement  
3 administrator. Unfortunately, because of vacancies on the  
4 board, vital tasks are left pending. Repealing the policy  
5 procurement board and transferring its duties to the state  
6 procurement administrator will increase efficiency in government  
7 and facilitate the rule-making process and procurement in the  
8 State.

9 The purpose of this Act is to:

- 10 (1) Repeal the state procurement policy board, including  
11 the policy board nominating committee;  
12 (2) Amend the appointment process of the administrator of  
13 the state procurement office; and  
14 (3) Transfer the authority and responsibilities of the  
15 state procurement policy board to the administrator of  
16 the state procurement office.

17 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By amending the definition of "responsible bidder or  
20 offeror" to read:



1        "Responsible bidder or offeror" means a person who has the  
2        capability in all respects to perform fully the contract  
3        requirements, and the integrity and reliability that will assure  
4        good faith performance, pursuant to the responsibility  
5        determination standards adopted by the ~~[policy board]~~ the state  
6        procurement office."

7        2. By deleting the definition of "policy board".

8        ~~["Policy board" means the procurement policy board created~~  
9        ~~in section 103D-201."]~~

10       SECTION 3. Section 103D-106, Hawaii Revised Statutes, is  
11       amended by amending subsection (b) to read as follows:

12       "(b) After reasonable notice and reasonable opportunity to  
13       be heard, the chief procurement officer, after consultation with  
14       the using agency and the attorney general or corporation  
15       counsel, as applicable, may render a written decision or issue a  
16       written order providing for the assessment of an administrative  
17       fine against a person found to have violated this chapter;  
18       provided that:

19       (1) The amount of the fine shall be set out in rules  
20       adopted by the ~~[policy board pursuant to section 103D-~~  
21       ~~202,~~ state procurement office; and



(2) The written decision or order shall be final and conclusive, subject to an administrative review under section 103D-709."

SECTION 4. Section 103D-108, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-108 Compliance audit unit; duties and responsibilities.** The compliance audit unit shall:

- (1) Review and assess applicable innovations in procurement methods or processes in other governmental jurisdictions or as described in national or regional publications;
- (2) Review current or proposed statutes and rules to determine whether they promote fairness, efficiency, and accountability in the procurement process;
- (3) Review selected contracts awarded pursuant to section 103D-304;
- (4) Conduct studies, research, and analyses, and make reports and recommendations with respect to existing and new methods of procurement and other matters within the jurisdiction of the ~~[policy board,]~~ state procurement office;



- 1 (5) Establish and maintain a procurement library;
- 2 (6) Report to the appropriate agency and the chief
- 3 procurement officer stating the areas of noncompliance
- 4 and recommendations for remedial action; and
- 5 (7) Be present at legislative hearings [~~and policy board~~
- 6 ~~meetings~~] to present the findings of the unit."

7 SECTION 5. Section 103D-204, Hawaii Revised Statutes, is

8 amended to read as follows:

9 **"§103D-204 Establishment of the state procurement office;**

10 **administrator.** (a) There shall be a state procurement office,

11 placed for administrative purposes only, within the department

12 of accounting and general services, which shall be headed by the

13 administrator of the state procurement office. The

14 administrator shall be the chief procurement officer for those

15 governmental bodies of the executive branch as provided in

16 section [~~+~~]103D-203(a)(8)[~~+~~]. The administrator shall be a

17 full-time public official. The administrator shall serve a term

18 of four years, and shall be paid a salary not to exceed eighty-

19 seven per cent of the salary of the director of human resources

20 development, without diminution during the administrator's term



1 of office unless by general law applying to all deputies or  
2 assistants to department heads.

3 (b) The administrator shall be appointed by the governor  
4 ~~[from a list of no less than three and no more than five names~~  
5 ~~submitted by the policy board]~~. The appointment of the  
6 administrator shall require the advice and consent of the  
7 senate. The administrator may only be removed from office by  
8 the governor, provided the governor shall give prior  
9 notification of ~~[such]~~ the removal to ~~[the chairperson of the~~  
10 ~~policy board,~~ the president of the senate~~[7]~~ and the speaker of  
11 the house of representatives.

12 (c) The administrator shall have:

13 (1) A minimum of five years experience in public  
14 procurement within twelve years preceding the date of  
15 appointment; and

16 (2) Demonstrated executive and organizational ability.

17 (d) The administrator shall operate independently of the  
18 comptroller. The administrator may appoint and dismiss a  
19 private secretary without regard to chapters 76 and 89, who  
20 shall serve at the administrator's pleasure. The comptroller  
21 shall provide support to permit the administrator to satisfy



1 ~~[all of]~~ the administrator's responsibilities as the chief  
2 procurement officer for those governmental bodies of the  
3 executive branch of the State for which a chief procurement  
4 officer is not otherwise designated.

5 (e) Except as otherwise provided in this chapter, the  
6 state procurement office shall have the authority and  
7 responsibility to adopt rules, consistent with this chapter,  
8 governing the procurement, management, control, and disposal of  
9 any and all goods, services, and construction. All rules shall  
10 be adopted in accordance with chapter 91; provided that the  
11 state procurement office shall have the power to issue interim  
12 rules by procurement directives, which shall be exempt from the  
13 public notice, public hearing, and gubernatorial approval  
14 requirements of chapter 91. The interim rules shall be  
15 effective for no more than eighteen months. The state  
16 procurement office shall consider and decide matters of policy  
17 within the scope of this chapter including those referred to it  
18 by a chief procurement officer. The state procurement office  
19 shall have the power to audit and monitor the implementation of  
20 its rules and the requirements of this chapter, but shall not  
21 exercise authority over the award or administration of any



1 particular contract, or over any dispute, claim, or litigation  
2 pertaining thereto."

3 SECTION 6. Section 103D-206, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§103D-206 Additional duties of the administrator of the  
6 procurement office. In addition to the duties referred to in  
7 section 103D-205, the administrator shall:

8 (1) Perform periodic review of the procurement practices  
9 and procedures of all governmental bodies [~~in~~  
10 ~~collaboration with the state procurement policy~~  
11 ~~board,~~] for compliance with the procurement code;

12 (2) Assist, advise, and guide governmental bodies in  
13 matters relating to procurement;

14 (3) Determine corrective actions; provided that if a  
15 procurement officer under the jurisdiction of the  
16 administrator of the state procurement office or a  
17 chief procurement officer of any of the other state  
18 entities under section 103D-203, fails to comply with  
19 any determination rendered by the administrator within  
20 thirty days from the date of the issuance of the  
21 determination, or longer if permitted by the

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1 administrator upon request by the procurement officer  
2 or a chief procurement officer, the procurement  
3 officer or chief procurement officer shall be subject  
4 to an administrative fine under section 103D-106, for  
5 every day of noncompliance;

6 (4) Develop and administer a statewide procurement  
7 orientation and training program;

8 (5) Develop, distribute, and maintain a procurement manual  
9 for all state procurement officials; and

10 (6) Develop, distribute, and maintain a procurement guide  
11 for vendors wishing to do business with the State and  
12 its counties."

13 SECTION 7. Section 103D-310, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) Unless the [~~policy board, by rules, specifies~~] rules  
16 adopted by the state procurement office specify otherwise,  
17 before submitting an offer, a prospective offeror, not less than  
18 ten calendar days prior to the day designated for opening  
19 offers, shall give written notice of the intention to submit an  
20 offer to the procurement officer responsible for that particular  
21 procurement."



SECTION 8. Section 103D-408, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding chapter 91, for the purposes of satisfying the percentage footprint requirements under subsection (c), the purchasing agency may exclude from total plant footprint calculations those areas where available Hawaiian plant species are not appropriate for the particular landscaping needs or environmental conditions of such areas. The exclusion of such areas shall be determined by procedures, standards, or guidelines established by the ~~[policy board]~~ state procurement office at the time of issuance of the invitation for bids, requests for proposals, or other solicitation under this chapter. ~~[Procedures, standards, or guidelines established pursuant to this subsection may be established by board action notwithstanding chapter 91.]~~ "

SECTION 9. Section 103F-106, Hawaii Revised Statutes, is amended to read as follows:

"§103F-106 Authority of the ~~[procurement policy board.]~~ state procurement office. The ~~[policy board]~~ state procurement office established under section ~~[103D-201]~~ 103D-204 shall adopt all rules necessary to implement this chapter. All rules shall



1 be adopted in accordance with chapter 91. The [~~policy board~~]  
2 state procurement office shall consider and decide matters of  
3 policy within the scope of this chapter including those referred  
4 to it by chief procurement officers. The [~~policy board~~] state  
5 procurement office may audit and monitor implementation of its  
6 rules and the requirements of this chapter, but shall not  
7 exercise authority over the award or administration of any  
8 particular contract, or over any dispute or claim arising from a  
9 contract."

10 SECTION 10. Sections 103-211 and 103D-303.5, Hawaii  
11 Revised Statutes, are amended by substituting the phrase "state  
12 procurement office", or similar term, wherever the phrase  
13 "procurement policy board", or similar term, appears, as the  
14 context requires.

15 SECTION 11. Sections 103D-102, 103D-205, 103D-208, 103D-  
16 209, 103D-211, 103D-213, 103D-302, 103D-304, 103D-305, 103D-306,  
17 103D-308, 103D-310, 103D-311, 103D-312, 103D-313, 103D-322,  
18 103D-323, 103D-324, 103D-325, 103D-401, 103D-407, 103D-501,  
19 103D-601, 103D-701, 103D-702, 103D-703, 103D-704, 103D-709,  
20 103D-802, 103D-804, 103D-901, 103D-902, 103D-906, 103D-1004,  
21 103D-1005, 103D-1006, 103D-1009, 103D-1103, 103D-1105, 103D-



1 1107, 103D-1201, 103D-1202, 103D-1203, 103F-101, 103F-402, 103F-  
2 403, 103F-405, 103F-407, 103F-408, 103F-411, 103F-501, 103F-504,  
3 201-82, Hawaii Revised Statutes, are amended by substituting the  
4 phrase "state procurement office", or similar term, wherever the  
5 phrase "policy board", or similar term, appears, as the context  
6 requires.

7 SECTION 12. Section 103D-201, Hawaii Revised Statutes, is  
8 repealed.

9 ~~["§103D-201 Creation and membership of the procurement~~  
10 ~~policy board. (a) There is hereby created an autonomous state~~  
11 ~~procurement policy board. The policy board shall be assigned,~~  
12 ~~for administrative purposes only, to the department of~~  
13 ~~accounting and general services.~~

14 ~~(b) The policy board shall consist of seven members.~~  
15 ~~Notwithstanding the limitations of section 78-4, the members of~~  
16 ~~the board shall include:~~

17 ~~(1) The comptroller;~~

18 ~~(2) A county employee with significant high-level~~  
19 ~~procurement experience; and~~

20 ~~(3) Five persons who shall not otherwise be full-time~~  
21 ~~employees of the State or any county; provided that at~~



~~least one member shall be a certified professional in the field of procurement, at least one member shall have significant high level, federal procurement experience, and at least two members shall have significant experience in the field of health and human services.~~

~~Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy board. The initial and subsequent members of the policy board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy board members shall be subject to the requirements of section 26-34. No member of the policy board shall act concurrently as a chief procurement officer. The members of the policy board shall devote such time to their duties as may be necessary for the proper discharge thereof.~~



~~(c) The policy board shall be assisted by employees of the department of accounting and general services, which shall provide at least one full time support staff and funding necessary to support the policy board.~~

~~(d) Members of the policy board shall be reimbursed for any expenses, including travel expenses, reasonably incurred in the performance of their duties.~~

~~(e) The chairperson of the policy board shall be elected annually by a majority of its members from among all of its members; provided that the state comptroller shall not be eligible to serve as the chairperson."]~~

SECTION 13. Section 103D-202, Hawaii Revised Statutes, is repealed.

~~["§103D-202 Authority and duties of the policy board. Except as otherwise provided in this chapter, the policy board shall have the authority and responsibility to adopt rules, consistent with this chapter, governing the procurement, management, control, and disposal of any and all goods, services, and construction. All rules shall be adopted in accordance with chapter 91, provided that the policy board shall have the power to issue interim rules by procurement directives,~~



~~which shall be exempt from the public notice, public hearing,  
and gubernatorial approval requirements of chapter 91. The  
interim rules shall be effective for not more than eighteen  
months. The policy board shall consider and decide matters of  
policy within the scope of this chapter including those referred  
to it by a chief procurement officer. The policy board shall  
have the power to audit and monitor the implementation of its  
rules and the requirements of this chapter, but shall not  
exercise authority over the award or administration of any  
particular contract, or over any dispute, claim, or litigation  
pertaining thereto."]~~

SECTION 14. The revisor of statutes shall substitute the  
phrase "state procurement office", or similar term, wherever the  
phrase "procurement policy board", or similar term, appears, as  
the context requires, in any Acts of the Session Laws of Hawaii  
2022.

SECTION 15. Statutory material to be repealed is bracketed  
and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.



**Report Title:**

Procurement; State Procurement Policy Board; Repeal

**Description:**

Amend the appointment process of the administrator of the state procurement office. Transfers the authority and responsibility of the state procurement policy board to the administrator of the state procurement office. Repeal the procurement policy board nominating committee and the state procurement policy board. (SD1)

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

