



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
and

Senate Committee on Judiciary
April 6, 2021 at 10:00 a.m.

by

Jan Gouveia, Vice President for Administration
University of Hawai'i System

HB 1067 HD1 SD1 – RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and members of the Committees:

Thank you for the opportunity to submit testimony on HB 1067 HD1 SD1, which amends section 6 of Act 42, Session Laws of Hawai'i (SLH) 2018, to extend the sunset provision expiration to June 30, 2024. The University of Hawai'i (University) is in support of this measure, but requests that the HD1 version of the bill be reinstated, which will permanently reinstate the President as the chief procurement officer for contracts for construction and construction-related professional services. Furthermore, the University requests that the effective date of the bill be amended to June 29, 2021.

In 2018, Act 42, SLH 2018, was signed into law that, among other things, amended Hawai'i Revised Statutes (HRS) §§103D-203 and 304A-2672 to reinstate the authority of the President as the Chief Procurement Officer for construction-related procurements and provided a sunset date of June 30, 2021 for the repeal of the act and reenactment of HRS §§103D-203 and 304A-2672 as amended in 2013 by Act 87, SLH 2013 (HB 114).

Act 87, SLH 2013 (HB 114), among other things, amended HRS §§103D-203 and 304A-2672 to:

- Require the Administrator of the State Procurement Office (SPO), rather than the University of Hawai'i President, to serve as the Chief Procurement Officer for construction-related procurements;
- Require all procurements for professional services furnished by licensees under chapter 464 (i.e. Engineers, Architects, Surveyors, and Landscape Architects) for construction projects to be “coordinated” with the Department of Accounting and General Services (DAGS); and
- Require SPO to submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2016, of the Administrator's findings and recommendations, including any proposed legislation, relating to the transparency, efficiency, and compliance of the University of Hawai'i's procurement of construction contracts and construction-related consultant services pursuant to chapter 103D, HRS.

Currently and prior to 2013, the President has been afforded the duties, powers and authority of a chief procurement officer – similar to the Administrative Director of the Courts for the Judiciary, President of the Senate, Speaker of the House of Representatives, Chairperson of the Board of the Office of Hawaiian Affairs, Superintendent of the Department of Education, CEO of Hawai'i

Health Systems Corporation, the Administrator of the State Procurement Office, the respective finance directors of the counties, the respective chairpersons of the councils of the counties, the managers and chief engineers of the respective county boards of department water supply, and director of the semi-autonomous public transit agency.

The chief procurement officer plays an integral role in the day-to day transactions of all procurements under chapter 103D, HRS – which is an already complicated and time-consuming effort. It became further complicated and time consuming when this role was transferred to the Administrator for SPO, along with the additional requirement of coordinating with DAGS. Fortunately, the Administrator for SPO and the Public Works Director for DAGS handled the situation with professionalism and sensitivity to their impact on UH's CIP program, and all parties agreed to some basic parameters and a process for all construction-related procurements.

In accordance with the Act, the SPO Administrator submitted a report to the 2016 Legislature entitled, "State Procurement Office Findings and Recommendations Relating to the University of Hawai'i's Procurement of Construction Contracts and Construction-Related Consultant Services Pursuant to Chapter 103D Hawai'i Revised Statutes as Required by Act 87, SLH 2013, 'Relating to Higher Education.'"

The report documents the extensive oversight, reviews, cooperation and coordination between the University and the SPO on procurements for construction and construction-related professional services. As documented in the report, between July 1, 2013 to June 30, 2015, the SPO reviewed 102 University solicitations for construction out of 373 construction procurements conducted by UH during that time. The reviews included solicitations for competitive sealed bids, professional services, and small purchases. The SPO also provided oversight of post-award procurement activities by conducting eleven (11) construction site visits and three (3) desktop reviews of on-going projects.

The conclusion to the report stated:

"Based on SPO's review of 102 UH construction solicitations, UH's Administrative Procedures, and fourteen (14) post-award Site Visits, SPO finds that UH is conducting construction procurements in a compliant, efficient, and transparent manner."

The SPO report set forth minimal recommendations for improvement and, in fact, lauded some University-specific procedures as "best-practices." While the University has implemented the SPO recommendations, it has continued to improve the efficiency, transparency and compliance of its capital program since the Report:

1. To ensure strict compliance with the Hawai'i Public Procurement Code, the University has extensively revised policies and procedures related to the procurement of construction and professional services to align with Section 103D HRS and its related Hawai'i Administrative Rules.
2. To ensure the prudent and transparent expenditure of public funds, the University established a core staff of procurement professionals, dedicated solely to the procurement of construction and construction-related professional services.
3. The University has adopted the Hawai'i Electronic Procurement System (HePS) which provides real-time and immediate access to by all interested contractors, consultants and

vendors to construction solicitations, bidder submittals, and public notice of awards on a single, online platform.

4. To ensure the prudent and transparent management of public funds, the University has acquired a collaborative, cloud-based construction project management system called e-Builder®. The goal is to provide visibility into the status of our construction projects so all stakeholders have access to real-time information and ensure projects are delivered on-time and on-budget. As a web-based solution, it captures project data and utilizes electronic workflow to track business processes and generate reports that support a capital program at both the micro and macro level.
5. To reduce the time required for the procurement of professional services and construction in nine different areas, the University has begun utilizing Requirements or Indefinite Delivery Indefinite Quantity (IDIQ) contracts systemwide. By having contracts already in place when work is needed in these areas, the University is able to simply issue a work order to the contracted vendor, greatly reducing the time spent on procurement.
6. To ensure the delivery of high quality projects, the University has expanded the use of the competitive sealed proposal procurement method to procure both Design-Build and construction projects (fully designed). This provides the University with the ability to award based on best value versus the lowest price.

Additionally, from fiscal years 2018 through 2020, the University processed a total 250 construction and construction-related procurement contracts and received a total of only eight protests. All of the protests were resolved and none of the protesters requested a hearing with the Department of Commerce and Consumer Affairs.

The University has tremendous regard for the Administrator and the entire State Procurement Office team. We appreciate the long-standing relationship based on respect and professional courtesy. However, under the structure imposed by Act 87 in 2013, the University was operating under a bifurcated procurement system. There was one set of procedures, templates, forms and approval work flows specific to goods and services, for which the President served as the chief procurement officer; and another set of processes for construction and construction-related professional services that utilized the SPO forms, templates, and procedures, for which the SPO Administrator served as the chief procurement officer for the University. This dual authority structure also caused confusion for UH personnel with procurement requirements, support staff processing procurement and related documents, and, more importantly, the vendor and contracting community who bid on University projects.

With the finding by SPO set forth in its Report to the Legislature that “UH is conducting construction procurements in a compliant, efficient, and transparent manner,” and the additional improvements that the University has made specifically to the management and solicitation of its construction projects, the University believes full chief procurement officer authority should be permanently restored to the President. This is particularly important at a time when the University is expected to aggressively address its deferred maintenance backlog. With the additional safeguards and imposition of industry best practices, we believe the University has demonstrated that it can and will continue to conduct its construction procurements in a compliant, efficient, and transparent manner.

Thank you for the opportunity to testify in support of HB 1067 HD1 SD1 and respectfully request that the President be permanently reinstated as the Chief Procurement Officer for construction-related procurements of the University and the effective date be amended to June 29, 2021.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 220-8892

April 6, 2021

The Honorable Donovan Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
and members
Senate Committee on Ways and Means

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and members
Senate Committee on Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: SUPPORT for HB1067 HD1 SD1

Dear Chair Dela Cruz, Chair Rhoads, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We offered comments on this bill in the Senate Higher Education committee about our deep concerns that many of the University of Hawaii projects are possibly being given to non-signatory contractors.

After deeper investigation it seems that a significant amount of these contracts have been awarded to non-signatory, as well as non-local, contractors.

With Hawaii's economy being extremely dependent on construction, and the fact that the tourism sector will need time to recover from the pandemic, we feel that exemption should not be permanently granted without further examination.

We believe that the University's procurement exemption **should be held to a 3 year extension**, in the hopes that they can take this time to meet with important stakeholders to alleviate the concerns outlined above.

Therefore, we strongly ask for your committee's favorable action on HB1067 HD1 SD1.

Mahalo,



Nathaniel Kinney
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

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April 5, 2021

To: **Senate Committees on Ways and Means and Judiciary**

Re: **Testimony on HB1067 SD1 Relating to Procurement for the University of Hawaii**

For WAM/JDC Hearing on Tuesday, April 6, 2021 at 10:00 am in Conference Room 211

Aloha Honorable Chairs **Dela Cruz** and **Rhoads**, Vice Chairs **Keith-Agaran** and **Keohokalole**, and Committee Members,

The **Hawaii Laborers & Employers Cooperation and Education Trust Fund** (Hawaii LECET) is a labor-management partnership established in 1992 between the 5,000 statewide members of the Hawaii Laborers Union and over 250 unionized contractor members from the General Contractors Association and the Building Industry Association. The Laborers International is the largest construction trade union in the country, and Hawaii LECET is part of a network of 38 labor-management LECET Funds in North America.

We support HB1067 SD1. Despite the University of Hawaii's serious problems with procurement in the past, we support a three-year extension of their procurement exemption. The state procurement code is a time-tested safeguard for fair contracting. There are no guarantees that circumstances, leadership, and policies at the University won't change, and perhaps significantly, in the near future. A three-year extension to the state procurement exemption policy will allow the University to establish a more reliable history and track record for informing the legislature on future policy decisions.

Mahalo,

**Hawaii Laborers & Employers Cooperation
and Education Trust Fund**

Testimony of
Pacific Resource Partnership

Senate Committee On Ways And Means
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

Senate Committee On Judiciary
The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair



HB 1067, HD1, SD1—Relating To Procurement For The University Of Hawaii

Tuesday, April 6, 2021
10:00 A.M.
Conference Room 211

Aloha Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and Members of the Committees:

Pacific Resource Partnership (PRP) is a non-profit market recovery trust fund which represents approximately 7,000 men and women union carpenters and 240 large and small contractors. With our expertise in research, compliance, marketing, and project advocacy, we are committed to building a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents of Hawaii.

PRP writes in support of HB 1067, HD1, SD1, which will extend the sunset date for Act 42 by three years until June 30, 2024.

We have concerns that UH has not done enough to ensure that local contractors and workers benefit from taxpayer funded construction projects, especially during a time when Hawaii residents are struggling to make ends meet.

The economic impact of COVID-19 on Hawaii has been broad and destructive. In order to help Hawaii's residents and businesses recover from this pandemic, the State must find ways to ensure that taxpayer dollars and state lands are used wisely to stimulate the local economy. This can be achieved by ensuring that UH hires local contractors who hire a local workforce and pay them prevailing wages pursuant to Chapter 104, Hawaii Revised Statutes. We are deeply concerned that some of UH's construction contracts have been awarded to non-local contractors.

To ensure that the use of state funds, lands or other resources are used wisely to benefit Hawaii's residents, we respectfully recommend that your committees extend the sunset date for Act 42 until June 30, 2024. Thank you for this opportunity to submit written testimony.





LiUNA!

April 6, 2021

PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

JAMES DRUMGOLD JR.
Executive Board

ORLANDO PAESTE
Executive Board

JOSEPH YAW
Executive Board

ESTHER AILA
Auditor

RUSSELL NAPIHAA
Auditor

MARK TRAVALINO
Auditor

MARTIN ARANAYDO
Sergeant-At-Arms

Meeting: Senate Committee on Ways and Means

Date: Tuesday, April 6, 2021

Location: Online (Zoom)

LATE

RE: Support for HB1067 HD1 SD1

The Hawaii Laborers' Union Local 368 represents 5,000 working and retired members across the state of Hawaii and we SUPPORT HB1067 HD1 SD1 giving the University of Hawaii a 3 year extension on their procurement exemption.

With Hawaii's economy being extremely dependent on construction, and the fact that the tourism sector will need time to recover from the pandemic, we feel that exemption should not be permanently granted.

We believe that the University's procurement activities should not only benefit the University, but also help the State in its economic recovery which we should translate local work for local people.

We believe that the University's procurement exemption **should be held to a 3 year extension** and not made permanent until these problems can be addressed. Further, there is no guarantee that future leadership at the University will follow the same procurement policies the State may have, and should therefore NOT be granted a permanent exemption.

Therefore, we strongly ask for your committee's favorable action on HB1067 HD1 SD1.

Respectfully,
Ryan Kobayashi
Government Affairs

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE

Uploaded via Capitol Website

April 5, 2021

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE GIL KEITH-AGARAN, VICE CHAIR, COMMITTEE ON WAYS AND MEANS, HONORABLE KARL RHOADS, CHAIR, HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR, COMMITTEE ON JUDICIARY.

SUBJECT: **SUPPORT OF H.B. 1067 HD1 SD1, RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII.** Extends the sunset provision in Act 42, Session Laws of Hawaii 2018 for three years until June 30, 2024.

HEARING

DATE: Tuesday, April 6, 2021
TIME: 10:00 a.m.
PLACE: Capitol Room 211

Dear Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA is in **support** of H.B. 1067 HD1 SD1, which extends the sunset provision in Act 42, Session Laws of Hawaii 2018 for three years until June 30, 2024.

Act 42, Session Laws of 2018 reinstated the President of the University of Hawaii as the chief procurement officer. Construction projects have been streamlined and greatly improved under the University of Hawaii's leadership. The GCA through its Committee has worked with the University of Hawaii in identifying ways to improve the delivery of university projects. The University of Hawaii has been open to hearing feedback and identifying ways in which it can improve in the execution of important repair and maintenance projects and new construction by ensuring the process is efficient and transparent.

For these reasons we ask that the Committee pass this measure.

Thank you for this opportunity to testify in support of this measure.