



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/14/2023

Time: 09:30 AM

Location: 309 VIA VIDEOCONFERENCE

Committee: House Labor & Government
Operations

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 0335, HD1 RELATING TO DEPARTMENT OF EDUCATION
PROCUREMENT.

Purpose of Bill: Exempts small purchases of career and technical education equipment for the department of education from the electronic procurement system requirements. Adjusts the quotation requirements for the procurement of small purchases of career and technical education equipment for the department. Effective 7/1/3000. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) supports HB 335, HD1, and respectfully provides comments for the committee's consideration.

The bill as currently drafted, highlights the needs of the career and technical education equipment purchases; however the Department requests revisions to the bill to benefit all schools and programs for our students.

Over time, the cost of goods, services and construction has risen along with the overall economy. Over time, the different types of educational resources and materials that are used for learning opportunities has changed and is no longer limited to providing textbooks to students. The Department acknowledges that a change to the way we are able to procure goods, services and construction to better meet the needs of students and schools is needed.

School administrators would benefit from a less cumbersome small purchase

procurement method with increased dollar thresholds to help procure the goods, services and construction for their school in a timely manner. The Department would benefit from an exemption from Chapter 103D, Hawaii Revised Statutes, that would include educational materials.

To ease the burden on school administrators to conduct small purchase procurements and procurement of educational materials, the Department requests to amend the language in this bill to reflect parts of the language in SB 1518, Relating to the Department of Education.

Specifically, the Department requests the following revisions:

- Page 1, line 4: “procure numerous ~~career and technical education equipment goods, services, and construction~~ to run its operations.”
- Page 1, line 10: “~~career and technical education equipment~~ goods, services, and construction.”
- To more broadly apply to procurements made by the Department: Page 2, line 3-10: replace in its entirety to now read as “The purpose of this Act is to provide procurement exemptions for the department of education.”
- To more broadly apply to procurements made by the Department: Replace the remaining Sections 2 through 4 with SB 1518 Sections 2 through 7.

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

JAN 25 2023

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF EDUCATION.

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

1 SECTION 1. The legislature finds that the department of
2 education is the largest department in the State with two
3 hundred ninety-five schools and forty-two thousand salaried and
4 part-time employees, which must procure numerous goods,
5 services, and construction to run its operations. However,
6 chapter 103D, Hawaii Revised Statutes, the Hawaii public
7 procurement code, mandates that the department of education
8 comply with procurement laws for its purchases triggered by
9 certain threshold amounts. Abbreviating certain small purchase
10 procurement requirements for the department of education will
11 help the department procure timely and necessary goods,
12 services, and construction.

13 The legislature further finds that the electronic system,
14 due to its complicated and onerous nature, places a heavy burden
15 on school administrators seeking to address repair and
16 maintenance backlogs and further strains the already limited
17 time and resources of these school administrators. Also, with



1 the recent influx of federal funding, including the maintenance
2 of effort provisions within the Coronavirus Aid, Relief, and
3 Economic Security Act, the department of education needs to have
4 additional flexibility to expend federal funds in a timely
5 manner.

6 The purpose of this Act is to provide procurement
7 exemptions for the department of education.

8 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
9 amended by adding a new section to part V to be appropriately
10 designated and to read as follows:

11 "§302A- Education goods and services procurement; small
12 purchases. Notwithstanding section 103D-305(c) and any other
13 law to the contrary, procurements of less than \$100,000 for
14 goods and services for the department shall be exempt from the
15 requirement to conduct procurements through an electronic system
16 and shall only be subject to:

17 (1) Not less than three quotes for procurements of \$5,000
18 to less than \$15,000; and

19 (2) Not less than three written quotes for procurements of
20 \$15,000 to less than \$100,000."



1 SECTION 3. Chapter 302A, Hawaii Revised Statutes, is
2 amended by adding a new section to part VI to be appropriately
3 designated and to read as follows:

4 "§302A- Education construction procurement; small
5 purchases. Notwithstanding section 103D-305(c) and any other
6 law to the contrary, procurements of less than \$250,000 for
7 construction for the department shall be exempt from the
8 requirement to conduct procurements through an electronic system
9 and shall only be subject to:

- 10 (1) Not less than three quotes for procurements of \$5,000
11 to less than \$15,000; and
12 (2) Not less than three written quotes for procurements of
13 \$15,000 to less than \$250,000."

14 SECTION 4. Section 103D-102, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Notwithstanding subsection (a), this chapter shall
17 not apply to contracts by governmental bodies:

- 18 (1) Solicited or entered into before July 1, 1994, unless
19 the parties agree to its application to a contract
20 solicited or entered into prior to July 1, 1994;
21 (2) To disburse funds, irrespective of their source:



S.B. NO. 1518

- 1 (A) For grants as defined in section 42F-101, made by
2 the State in accordance with standards provided
3 by law as required by article VII, section 4, of
4 the state constitution; or by the counties
5 pursuant to their respective charters or
6 ordinances;
- 7 (B) To make payments to or on behalf of public
8 officers and employees for salaries, fringe
9 benefits, professional fees, or reimbursements;
- 10 (C) To satisfy obligations that the State is required
11 to pay by law, including paying fees, permanent
12 settlements, subsidies, or other claims, making
13 refunds, and returning funds held by the State as
14 trustee, custodian, or bailee;
- 15 (D) For entitlement programs, including public
16 assistance, unemployment, and workers'
17 compensation programs, established by state or
18 federal law;
- 19 (E) For dues and fees of organizations of which the
20 State or its officers and employees are members,
21 including the National Association of Governors,



- 1 the National Association of State and County
- 2 Governments, and the Multi-State Tax Commission;
- 3 (F) For deposit, investment, or safekeeping,
- 4 including expenses related to their deposit,
- 5 investment, or safekeeping;
- 6 (G) To governmental bodies of the State;
- 7 (H) As loans, under loan programs administered by a
- 8 governmental body; and
- 9 (I) For contracts awarded in accordance with chapter
- 10 103F;
- 11 (3) To procure goods, services, or construction from a
- 12 governmental body other than the University of Hawaii
- 13 bookstores, from the federal government, or from
- 14 another state or its political subdivision;
- 15 (4) To procure the following goods or services which are
- 16 available from multiple sources but for which
- 17 procurement by competitive means is either not
- 18 practicable or not advantageous to the State:
- 19 (A) Services of expert witnesses for potential and
- 20 actual litigation of legal matters involving the
- 21 State, its agencies, and its officers and



- 1 employees, including administrative quasi-
- 2 judicial proceedings;
- 3 (B) Works of art for museum or public display;
- 4 (C) Research and reference materials including books,
- 5 maps, periodicals, and pamphlets, which are
- 6 published in print, video, audio, magnetic, or
- 7 electronic form;
- 8 (D) Meats and foodstuffs for the Kalaupapa
- 9 settlement;
- 10 (E) Opponents for athletic contests;
- 11 (F) Utility services whose rates or prices are fixed
- 12 by regulatory processes or agencies;
- 13 (G) Performances, including entertainment, speeches,
- 14 and cultural and artistic presentations;
- 15 (H) Goods and services for commercial resale by the
- 16 State;
- 17 (I) Services of printers, rating agencies, support
- 18 facilities, fiscal and paying agents, and
- 19 registrars for the issuance and sale of the
- 20 State's or counties' bonds;



- 1 (J) Services of attorneys employed or retained to
2 advise, represent, or provide any other legal
3 service to the State or any of its agencies, on
4 matters arising under laws of another state or
5 foreign country, or in an action brought in
6 another state, federal, or foreign jurisdiction,
7 when substantially all legal services are
8 expected to be performed outside this State;
- 9 (K) Financing agreements under chapter 37D; [~~and~~]
- 10 (L) Any other goods or services which the policy
11 board determines by rules or the chief
12 procurement officer determines in writing is
13 available from multiple sources but for which
14 procurement by competitive means is either not
15 practicable or not advantageous to the State; and
- 16 (M) Education materials including textbooks,
17 supplies, implements, tools, machinery,
18 computers, electronic devices, or other goods
19 related to any education, training, or experience
20 required for participation in an educational
21 program; and



1 (5) Which are specific procurements expressly exempt from
2 any or all of the requirements of this chapter by:

3 (A) References in state or federal law to provisions
4 of this chapter or a section of this chapter, or
5 references to a particular requirement of this
6 chapter; and

7 (B) Trade agreements, including the Uruguay Round
8 General Agreement on Tariffs and Trade (GATT)
9 which require certain non-construction and non-
10 software development procurements by the
11 comptroller to be conducted in accordance with
12 its terms."

13 SECTION 5. Department of education expenditures of less
14 than \$100,000 shall not be subject to section 103D-305(c),
15 Hawaii Revised Statutes, and shall be subject to the rules
16 governing procurements of less than \$25,000; provided that
17 department of education expenditures of \$15,000 to less than
18 \$100,000, including those made pursuant to this Act, shall be
19 subject to the requirements of section 3-122-75(a)(2), Hawaii
20 Administrative Rules, and shall be treated thereunder as



1 expenditures of \$15,000 to less than \$25,000, notwithstanding
2 any law to the contrary.

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect on July 1, 2023;
6 provided that this Act shall be repealed on June 30, 2026.

7

INTRODUCED BY: Mehmet N. Sedani



S.B. NO. 1518

Report Title:

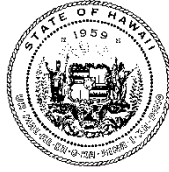
Department of Education; Procurement; Exemptions

Description:

Provides procurement exemptions for the Department of Education for certain goods, services, and construction. Sunsets 6/30/2026.

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





STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state_procurement_office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR & GOVERNMENT OPERATIONS
Tuesday, February 14, 2023, 9:30 AM

HOUSE BILL 335, HD1
RELATING TO DEPARTMENT OF EDUCATION PROCUREMENT

Chair Matayoshi, Vice Chair Garrett, and members of the committee, thank you for the opportunity to submit testimony on House Bill 335, HD1. The State Procurement Office (SPO) provides the following comments and recommendations:

Comments: The SPO testifies that career and technical education equipment small purchases procurements for the Department of Education (DOE) should be competitively procured pursuant to HRS chapter 103D, the Hawaii Public Procurement Code (Code), and should not be exempt from the requirement to conduct such procurement through an electronic procurement (eProcurement) system. Moreover, if the DOE has specific goods or services that procurement by competitive means is either not practicable or not advantageous to the State, then statutes and rules already exist that allows for exemptions for goods and services (except construction) via HRS §103D-102 and HAR §3-120-5, in a process that is open and transparent instead of a blanket exemption.

The Code is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government. The statutes and rules should apply uniformly for government entities and should not carve out a special process for the DOE. Procurement of career and technical education equipment should be treated no different than other procurements.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law's application.

The SPO feels very strongly that the Code should be applied equally and uniformly throughout departments. By leaving this bill as is, without having to use an eProcurement system, it may

lead to the schools only going to the same vendors repeatedly or even choosing a single vendor repeatedly, which would be in violation of HRS 103D-101(a)(6)(A) to encourage economic competition by:

“(A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.”

Furthermore, it is more transparent to conduct small purchases procurements electronically as it prevents fraud and collusion, as well as parceling, which is the artificial division of purchase of same, like, or related items of goods, services, or construction into several small purchases or smaller quantities, in order evade the statutory competitive requirements. This may occur when the schools obtain three quotes without consolidating similar goods and/or services in any twelve-month period to conclude if the estimated expenditures exceed the small purchases dollar limits, which is a procurement violation.

Utilizing an eProcurement system is also much more efficient, allowing commercial transactions between State departments and vendors to go paperless using an automated process, where processes are optimized and productivity increases. When solicitation are released in the Executive Branch’s Hawaii Electronic Procurement System (HlePRO), all vendors with the applicable Commodity Codes are notified. As a result, buyers no longer need to call or email vendors independently to gets quotes, while also ensuring all vendors are given the same specifications and will respond by the specified due date, which has led to error reduction due to minimized human intervention with the added ability of having all communications (i.e., questions and answer as well as quotes) kept securely in the system and readily available with a history to track the progress of each solicitation. For agencies who procure the same goods and services on a yearly basis, HlePRO allows buyers to create a duplicate solicitation, where the information can be updated, as needed, versus creating a new solicitation from scratch. The SPO just does not see how allowing to the DOE to do small purchases procurements manually for career and technical education equipment will result in being quicker or more efficient by depending heavily on paperwork or phone calls. For principals and teachers to have to call, email, or fax vendors and conduct their procurements manually, while we are in the electronic age, may also handicap the DOE’s operations and potential for financial success by relying on time-consuming and tedious, repetitive tasks that failed to generate significant savings.

Additionally, eProcurement systems provide more security by improving the security and confidentiality of communications. In HlePRO, vendors must log in to submit a response to a solicitation; submit and view questions; and provide answers and view the abstracts of bids or quotes submitted after submittal deadline. Both buyers and vendors are unable to view these abstracts until after the due date has passed, allowing for fair and open competition, where all responses are then made available to the Buyers. Furthermore, once awarded, a copy of the HCE Certificate of Vendor Compliance (CVC) is captured on the date the award is made, allowing buyers to always ensure they have a copy of the vendor’s HCE CVC dated prior to the notice of award date.

Currently all Chief Procurement Officer (CPO) Jurisdictions are statutorily obligated to adhere to HRS103D-305 requiring small purchases of \$25,000 to less than \$250,000 to be made on an eProcurement system and the SPO is unaware of any CPO Jurisdiction who is currently exempt from this requirement. The rules are exactly the same for all CPO Jurisdictions, it is only the mechanism to put out the solicitation that is a little different. In fact, for the Executive Branch departments, its CPO (the SPO Administrator) made the requirement more restrictive by requiring small purchases over \$15,000 to be made on an eProcurement system. Lastly, allowing the DOE this exemption would also open the door for other agencies and/or CPO Jurisdictions from requesting the similar exemption from the Code creating discord with the Procurement Code.

The National Association of State Procurement Officials states that “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.”

As these entities create their own procurement rules, it results in the harm above where businesses are forced to track their various practices. The SPO also comments that obtaining a minimum of three quotes is more labor intensive (i.e., manually posting solicitation notice, sending out emails/letters/phone calls to potential vendors, receiving and keeping track of paper document responses) than using an eProcurement system, which can lead to more efficiencies.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex, while other public bodies, 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 various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Recommendations: Based on the findings above, the SPO recommends removing, in its entirety, Section 2, page 2, lines 14 to 20 and page 3, lines 1 to 4 as stated below.

~~“302A Career and technical education equipment procurement; small purchases. Notwithstanding section 103D-305(c) and any other law to the contrary, procurements of less than \$100,000 for career and technical education equipment for the department shall be exempt from the requirement to conduct such procurements through an electronic system and shall only be subject to:~~

- ~~(1) No less than three quotations for procurements of \$5,000 to less than \$15,000; and~~
- ~~(2) No less than three written quotations for procurements of \$15,00 to less than \$100,000.”~~

Thank you.