



GOV. MSG. NO. 1058

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1659 HD2 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB1659 HD2 SD1 CD1

A BILL FOR AN ACT RELATING TO
PROCUREMENT.

Sincerely,

LINDA LINGLE

P R O C L A M A T I O N

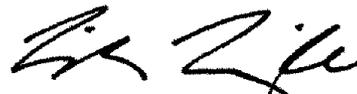
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1659, entitled "A Bill for an Act Relating to Procurement," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1659 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1659 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1659

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1659, entitled "A Bill for an Act Relating to Procurement."

The purpose of this bill is to require that all funds received by, on behalf of, or for the benefit of a governmental body pursuant to a solicitation by a governmental body to pay for the costs of State-sponsored trips and other efforts to generate business opportunities, be deposited in the General Fund, to be disbursed pursuant to legislative appropriation. The bill also appropriates \$50,000 in Fiscal Year 2007-2008 only to cover costs for such public-private marketing endeavors.

This bill is objectionable because it would compromise the effectiveness of State agencies such as the Department of Business and Economic Development (DBEDT), Department of Agriculture, and the High Technology Innovation Corporation in their efforts to coordinate trade shows and endeavors that

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1659
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feature and highlight many of Hawaii's businesses and business opportunities. While the bill would allow such agencies to solicit partnership funds from the private sector, those funds would be deposited into the General Fund and there is no assurance that the agency that solicited the funds would have access to the funds for the specific purpose for which they were contributed.

Furthermore, this bill would result in the use of public dollars to purchase trade show booths, exhibit space, convention fees, and marketing expenses that should be borne by the private businesses and firms that directly benefit from these activities. It is inappropriate and poor fiscal policy to ask the taxpayers of the State of Hawaii to subsidize profitable, private firms.

For the foregoing reasons, I am returning House Bill No. 1659 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103D-102, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-102 Application of this chapter.** (a) This chapter
4 shall apply to all procurement contracts made by governmental
5 bodies whether the consideration for the contract is cash,
6 revenues, realizations, receipts, or earnings, any of which the
7 State receives or is owed; in-kind benefits; or forbearance;
8 provided that nothing in this chapter or rules adopted hereunder
9 shall prevent any governmental body from complying with the
10 terms and conditions of any other grant, gift, bequest, or
11 cooperative agreement.

12 (b) Notwithstanding any provision of this chapter to the
13 contrary, any moneys received by, on behalf of, or for the
14 benefit of a government body pursuant to a solicitation of funds
15 by the government body to cover the costs and expenses of state-
16 sponsored trips and other state-sponsored endeavors to generate
17 business opportunities and goodwill for the State, shall be



1 deposited into the general fund and disbursed pursuant to
2 legislative appropriation.

3 [~~(b)~~] (c) Notwithstanding subsection (a), this chapter
4 shall not apply to contracts by governmental bodies:

5 (1) Solicited or entered into before July 1, 1994, unless
6 the parties agree to its application to a contract
7 solicited or entered into prior to July 1, 1994;

8 (2) To disburse funds, irrespective of their source:

9 (A) For grants or subsidies as those terms are
10 defined in section 42F-101, made by the State in
11 accordance with standards provided by law as
12 required by article VII, section 4, of the State
13 Constitution; or by the counties pursuant to
14 their respective charters or ordinances;

15 (B) To make payments to or on behalf of public
16 officers and employees for salaries, fringe
17 benefits, professional fees, or reimbursements;

18 (C) To satisfy obligations that the State is required
19 to pay by law, including paying fees, permanent
20 settlements, subsidies, or other claims, making
21 refunds, and returning funds held by the State as
22 trustee, custodian, or bailee;



- 1 (D) For entitlement programs, including public
2 assistance, unemployment, and workers'
3 compensation programs, established by state or
4 federal law;
- 5 (E) For dues and fees of organizations of which the
6 State or its officers and employees are members,
7 including the National Association of Governors,
8 the National Association of State and County
9 Governments, and the Multi-State Tax Commission;
- 10 (F) For deposit, investment, or safekeeping,
11 including expenses related to their deposit,
12 investment, or safekeeping;
- 13 (G) To governmental bodies of the State;
- 14 (H) As loans, under loan programs administered by a
15 governmental body; and
- 16 (I) For contracts awarded in accordance with chapter
17 103F;
- 18 (3) To procure goods, services, or construction from a
19 governmental body other than the University of Hawaii
20 bookstores, from the federal government, or from
21 another state or its political subdivision;



- 1 (4) To procure the following goods or services [~~which~~
2 that are available from multiple sources but for which
3 procurement by competitive means is either not
4 practicable or not advantageous to the State:
- 5 (A) Services of expert witnesses for potential and
6 actual litigation of legal matters involving the
7 State, its agencies, and its officers and
8 employees, including administrative quasi-
9 judicial proceedings;
- 10 (B) Works of art for museum or public display;
- 11 (C) Research and reference materials including books,
12 maps, periodicals, and pamphlets[~~, which~~] that
13 are published in print, video, audio, magnetic,
14 or electronic form;
- 15 (D) Meats and foodstuffs for the Kalaupapa
16 settlement;
- 17 (E) Opponents for athletic contests;
- 18 (F) Utility services whose rates or prices are fixed
19 by regulatory processes or agencies;
- 20 (G) Performances, including entertainment, speeches,
21 and cultural and artistic presentations;



- 1 (H) Goods and services for commercial resale by the
2 State;
- 3 (I) Services of printers, rating agencies, support
4 facilities, fiscal and paying agents, and
5 registrars for the issuance and sale of the
6 State's or counties' bonds;
- 7 (J) Services of attorneys employed or retained to
8 advise, represent, or provide any other legal
9 service to the State or any of its agencies, on
10 matters arising under laws of another state or
11 foreign country, or in an action brought in
12 another state, federal, or foreign jurisdiction,
13 when substantially all legal services are
14 expected to be performed outside this State;
- 15 (K) Financing agreements under chapter 37D; and
- 16 (L) Any other goods or services [~~which~~] that the
17 policy board determines by rules or the chief
18 procurement officer determines in writing is
19 available from multiple sources but for which
20 procurement by competitive means is either not
21 practicable or not advantageous to the State; and



1 (5) [~~which~~] That are specific procurements expressly
2 exempt from any or all of the requirements of this
3 chapter by:

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

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

14 [~~(e)~~] (d) Governmental bodies making procurements [~~which~~]
15 that are exempt from this chapter are nevertheless encouraged to
16 adopt and use provisions of this chapter and its implementing
17 rules as appropriate; provided that the use of one or more
18 provisions shall not constitute a waiver of the exemption
19 conferred and subject the procurement or the governmental body
20 to any other provision of this chapter."

21 SECTION 2. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$50,000 or so much



1 thereof as may be necessary for fiscal year 2007-2008 to cover
2 the costs and expenses of state-sponsored trips and other state-
3 sponsored endeavors to generate business opportunities and
4 goodwill for the State.

5 The sum appropriated shall be expended by the department of
6 business, economic development, and tourism for the purposes of
7 this Act.

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2007.

