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## A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The legislature finds that, while the Hawaii  
2 public procurement code promotes fair and equitable treatment,  
3 fosters broad-based competition, and increases public  
4 confidence, in a few, very limited instances, the procurement  
5 code restricts compliance with legislative intent. The  
6 legislature notes that legislative agencies that are preparing  
7 studies and reports for submission to the legislature typically  
8 have only six to seven months to prepare, print, and submit the  
9 studies and reports in a timely manner. If an agency finds it  
10 necessary to hire a contractor to complete the report, the  
11 requirements of the Hawaii public procurement code can delay the  
12 start of work on the project which, in turn, detracts from the  
13 agency's ability to comply promptly with the legislature's  
14 reporting requirement. A procurement code exemption for these  
15 contracts would benefit all legislative agencies that need to  
16 submit studies or reports to the legislature. Most of all,  
17 however, the legislature recognizes that this exemption is  
18 beneficial to the legislature itself. The legislature wants and



1 needs these studies and reports to be completed and submitted in  
2 a timely manner. It is therefore appropriate for the  
3 legislature to help promote this result by removing a barrier to  
4 timely completion of reports.

5 The legislature also notes that the Hawaii strategic  
6 development corporation was created to address the critical  
7 shortage of seed and venture capital resources in the State.  
8 The legislature further finds that the nature of providing  
9 venture capital investment financing is not "procurement". In  
10 addition, the corporation needs the flexibility to be able to  
11 respond quickly when funds come on the market; otherwise, it may  
12 be impeded from fulfilling its statutory purposes. A  
13 procurement exemption for the Hawaii strategic development  
14 corporation will enable it to operate in a time-sensitive,  
15 market-driven environment and meet the demands of private-sector  
16 investors and entrepreneurs.

17 The legislature also finds that Act 216, Session Laws of  
18 Hawaii 2004 (Act 216), repealed the Hawaii public procurement  
19 code exemptions for the high technology development corporation  
20 established by section 206M-3, Hawaii Revised Statutes, relating  
21 to general powers of the corporation, and section 206M-42,  
22 Hawaii Revised Statutes, relating to special facility leases.



1 However, Act 216 did not amend section 206M-16(b), Hawaii  
2 Revised Statutes, which provides an exemption for project  
3 agreements, construction contracts, lease and sublease  
4 agreements, or other contracts, unless a project agreement so  
5 requires.

6 The attorney general recommended, in testimony on  
7 October 24, 2005, that sections 206M-3 and 206M-42, Hawaii  
8 Revised Statutes, be amended to restore the exemptions that were  
9 repealed by Act 216 if the intent of the legislature is to  
10 confer a broad procurement code exemption to the corporation.  
11 The existing exemption under section 206M-16(b), Hawaii Revised  
12 Statutes, does not provide a broad exemption.

13 Finally, the legislature finds that a procurement code  
14 exemption for the natural energy laboratory of Hawaii authority  
15 would make it more efficient in its procurement process and  
16 enable it to attract more competent service providers. Because  
17 the authority is a unique agency that deals with various  
18 cutting-edge technology projects, it is sometimes not practical  
19 for it to go through the processes required by the procurement  
20 code to select the best services from competent contractors  
21 without long delays. Federal funds earmarked to the authority  
22 are very difficult to pass through to contracted agencies under



1 procurement code procedures. Allowing the authority to procure  
2 goods and services without the necessity of a bid process would  
3 give it the opportunity to work with universities and  
4 laboratories conducting research on a continual contract basis,  
5 particularly when federal moneys are involved. Further, the  
6 legislature notes that the natural energy laboratory of Hawaii  
7 authority is subject to periodic federal government audits in  
8 connection with the expenditure of federal funds.

9 The purpose of this Act is to:

10 (1) Provide an exemption from the Hawaii public  
11 procurement code:

12 (A) For the services of contractors under contract  
13 with a legislative agency to prepare a study or  
14 report for the legislature;

15 (B) For the Hawaii strategic development corporation;  
16 and

17 (C) For the natural energy laboratory of Hawaii  
18 authority; and

19 (2) Restore the procurement code exemptions for the high  
20 technology development corporation.

21 SECTION 2. Chapter 211G, part II, Hawaii Revised Statutes,  
22 is amended by adding a new section to read as follows:



1           "§211G- Procurement exemption. The corporation shall be  
2 exempt from the procurement code under chapter 103D."

3           SECTION 3. Section 103D-102, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

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

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

11           (A) For grants or subsidies as those terms are  
12           defined in section 42F-101, made by ~~[the]~~:

13           (i) The State in accordance with standards  
14           provided by law as required by article VII,  
15           section 4, of the State Constitution; or by  
16           ~~[the]~~

17           (ii) The counties pursuant to their respective  
18           charters or ordinances;

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



- 1 (C) To satisfy obligations that the State is required  
2 to pay by law, including paying fees, permanent  
3 settlements, subsidies, or other claims, making  
4 refunds, and returning funds held by the State as  
5 trustee, custodian, or bailee;
- 6 (D) For entitlement programs, including public  
7 assistance, unemployment, and workers'  
8 compensation programs, established by state or  
9 federal law;
- 10 (E) For dues and fees of organizations of which the  
11 State or its officers and employees are members,  
12 including the National Association of Governors,  
13 the National Association of State and County  
14 Governments, and the Multi-State Tax Commission;
- 15 (F) For deposit, investment, or safekeeping,  
16 including expenses related to their deposit,  
17 investment, or safekeeping;
- 18 (G) To governmental bodies of the State;
- 19 (H) As loans, under loan programs administered by a  
20 governmental body; and
- 21 (I) For contracts awarded in accordance with chapter  
22 103F[-];



- 1           (3) To procure goods, services, or construction from a
- 2                   governmental body other than the University of Hawaii
- 3                   bookstores, from the federal government, or from
- 4                   another state or its political subdivision;
- 5           (4) To procure the following goods or services [~~which~~]
- 6                   that are available from multiple sources but for which
- 7                   procurement by competitive means is either not
- 8                   practicable or not advantageous to the State:
- 9                   (A) Services of expert witnesses for potential and
- 10                           actual litigation of legal matters involving the
- 11                           State, its agencies, and its officers and
- 12                           employees, including administrative quasi-
- 13                           judicial proceedings;
- 14                   (B) Works of art for museum or public display;
- 15                   (C) Research and reference materials, including
- 16                           books, maps, periodicals, and pamphlets [~~which~~]
- 17                           that are published in print, video, audio,
- 18                           magnetic, or electronic form;
- 19                   (D) Meats and foodstuffs for the Kalaupapa
- 20                           settlement;
- 21                   (E) Opponents for athletic contests;



- 1 (F) Utility services whose rates or prices are fixed  
2 by regulatory processes or agencies;
- 3 (G) Performances, including entertainment, speeches,  
4 and cultural and artistic presentations;
- 5 (H) Goods and services for commercial resale by the  
6 State;
- 7 (I) Services of printers, rating agencies, support  
8 facilities, fiscal and paying agents, and  
9 registrars for the issuance and sale of the  
10 State's or counties' bonds;
- 11 (J) Services of attorneys employed or retained to  
12 advise, represent, or provide any other legal  
13 service to the State or any of its agencies, on  
14 matters arising under laws of another state or  
15 foreign country[7] or in an action brought in  
16 another state, federal, or foreign jurisdiction,  
17 when substantially all legal services are  
18 expected to be performed outside this State;
- 19 (K) Financing agreements under chapter 37D; and
- 20 (L) Any other goods or services [~~which~~] that the  
21 policy board determines by rules or the chief  
22 procurement officer determines in writing is



1 available from multiple sources but for which  
 2 procurement by competitive means is either not  
 3 practicable or not advantageous to the State;  
 4 [and]

5 (5) For services of contractors contracted by a  
 6 legislative agency for the purpose of preparing a  
 7 study or report for submission to the legislature; and

8 [~~(5) which~~] (6) That are specific procurements expressly  
 9 exempt from any or all of the requirements of this  
 10 chapter by:

11 (A) References in state or federal law to provisions  
 12 of this chapter or a section of this chapter, or  
 13 references to a particular requirement of this  
 14 chapter; and

15 (B) Trade agreements, including the Uruguay Round  
 16 General Agreement on Tariffs and Trade (GATT),  
 17 which require certain non-construction and non-  
 18 software development procurements by the  
 19 comptroller to be conducted in accordance with  
 20 its terms."

21 SECTION 4. Section 206M-3, Hawaii Revised Statutes, is  
 22 amended by amending subsection (b) to read as follows:



1           "(b) The corporation shall be exempt from [~~chapter~~  
2 chapters 102[~~-~~] and 103D."

3           SECTION 5. Section 206M-42, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "**§206M-42 Powers.** In addition to any other powers granted  
6 to the development corporation by law, the development  
7 corporation may:

8           (1) Without compliance with chapter 103D, but with the  
9 approval of the governor[~~7~~] and without public  
10 bidding, enter into a special facility lease or an  
11 amendment or supplement thereto whereby the  
12 development corporation agrees to acquire, construct,  
13 improve, install, equip, and develop a special  
14 facility solely for the use by another party to a  
15 special facility lease;

16           (2) With the approval of the governor, issue special  
17 facility revenue bonds in principal amounts that may  
18 be necessary to yield the amount of the cost of any  
19 acquisition, construction, improvement, installation,  
20 equipping, and development of any special facility,  
21 including, subject to paragraph (6), the costs of  
22 acquisition of the site thereof; provided that the



1 total principal amount of the special facility revenue  
2 bonds [~~which~~] that may be issued pursuant to the  
3 authorization of this section shall not exceed  
4 \$100,000,000;

5 (3) With the approval of the governor, issue refunding  
6 special facility revenue bonds with which to provide  
7 for the payment of outstanding special facility  
8 revenue bonds (including any special facility revenue  
9 bonds theretofore issued for this refunding purpose)  
10 or any part thereof; provided any issuance of  
11 refunding special facility revenue bonds shall not  
12 reduce the principal amount of the bonds that may be  
13 issued as provided in paragraph (2);

14 (4) Perform and carry out the terms and provisions of any  
15 special facility lease;

16 (5) Notwithstanding section 103-7 or any other law to the  
17 contrary, acquire, construct, improve, install, equip,  
18 or develop any special facility[~~7~~] or accept the  
19 assignment of any contract therefor entered into by  
20 the other party to the special facility lease;



1 (6) Construct any special facility on land owned by the  
2 State; provided that no funds derived herein shall be  
3 expended for land acquisition; and

4 (7) Agree with the other party to the special facility  
5 lease whereby any acquisition, construction,  
6 improvement, installation, equipping, or development  
7 of the special facility and the expenditure of moneys  
8 therefor shall be undertaken or supervised by another  
9 person. Any agreement under this paragraph shall not  
10 be subject to chapter 103D."

11 SECTION 6. Section 227D-7, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) The authority shall not be subject to [~~the~~  
14 ~~requirements of chapter~~] chapters 103 and 103D for project  
15 agreements, construction contracts, retail concession or tour-  
16 related contracts, or other contracts, unless a project  
17 agreement with respect to a project or research and technology  
18 park shall require otherwise."

19 SECTION 7. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.





**Report Title:**

Procurement Code; Exemptions

**Description:**

Provides a procurement exemption for the natural energy laboratory of Hawaii authority, Hawaii strategic development corporation, high technology development corporation, and contracted services with a legislative agency to prepare studies or reports for legislative submittal.

