**S.B. NO.** <sup>2824</sup> S.D. 2 H.D. 1 C.D. 1

# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

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#### PART I.

SECTION 1. The legislature finds that the comptroller should be an ex-officio nonvoting member of the state procurement policy board in order to ensure the board's independence.

6 The purpose of this part is to make the comptroller an ex-7 officio nonvoting member of the procurement policy board.

8 SECTION 2. Section 103D-201, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The <u>state procurement</u> policy board shall consist of 11 seven members. Notwithstanding the limitations of section 78-4, 12 the members of the board shall include:

13 (1) The comptroller [+] as an ex-officio nonvoting member;

14 (2) A county employee with significant high-level

15 procurement experience[+] as an ex-officio nonvoting 16 member; and

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1 Five persons who shall not otherwise be full-time (3) 2 employees of the State or any county; provided that at 3 least one member shall be a certified professional in 4 the field of procurement, at least one member shall 5 have significant high-level, federal procurement 6 experience, and at least two members shall have 7 significant experience in the field of health and 8 human services.

9 Each appointed member shall have demonstrated sufficient 10 business or professional experience to discharge the functions 11 of the state procurement policy board. The initial and subsequent members of the state procurement policy board, other 12 13 than the comptroller, shall be appointed by the governor from a 14 list of three individuals for each vacant position, submitted by 15 a nominating committee composed of four individuals chosen as 16 follows: two persons appointed by the governor; one person 17 appointed by the president of the senate; and one person 18 appointed by the speaker of the house. Except as provided in 19 this section, the selection and terms of the state procurement 20 policy board members shall be subject to the requirements of 21 section 26-34. No member of the state procurement policy board 22 shall act concurrently as a chief procurement officer. The

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1 members of the state procurement policy board shall devote such time to their duties as may be necessary for the proper 2 3 discharge thereof." 4 PART II. 5 SECTION 3. The legislature finds that the State 6 procurement policy office, in order to fully discharge its 7 responsibilities, must take further steps to ensure compliance 8 with chapter 103D, Hawaii Revised Statutes, by the executive 9 agencies. The purpose of this part is to require the State 10 11 procurement policy board to conduct compliance audits. 12 SECTION 4. Section 103D-202, Hawaii Revised Statutes, is 13 amended to read as follows: 14 "§103D-202 Authority and duties of the state procurement policy board. (a) Except as otherwise provided in this 15 16 chapter, the state procurement policy board shall have the 17 authority and responsibility to adopt rules, consistent with 18 this chapter, governing the procurement, management, control, 19 and disposal of any and all goods, services, and construction. 20 All rules shall be adopted in accordance with chapter 91; provided that the state procurement policy board shall have the 21 22 power to issue interim rules by procurement directives, which 2008-2612 SB2824 CD1 SMA-1.doc

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1 shall be exempt from the public notice, public hearing, and 2 gubernatorial approval requirements of chapter 91. The interim 3 rules shall be effective for not more than eighteen months. 4 (b) The state procurement policy board shall consider and decide matters of policy within the scope of this chapter 5 6 including those referred to it by a chief procurement officer. 7 (C) The state procurement policy board shall [have the 8 power to] audit and monitor the implementation of its rules and 9 the requirements of this chapter; but shall not exercise 10 authority over the award or administration of any particular 11 contract, or over any dispute, claim, or litigation pertaining 12 thereto. 13 The state procurement policy board shall annually audit a 14 minimum of two executive departments, divisions, or agencies, to ensure compliance with this chapter, as follows: 15 16 (1) Based upon a pattern of noncompliance; or 17 (2) Based upon circumstances of a particular procurement 18 that may indicate an intention to circumvent this 19 chapter; 20 provided that there shall be follow-up audits of a department,

21 division, or agency that has been previously audited under

22 paragraph (1) or (2).

S.B. NO. In addition, the state procurement policy board shall select any department, division, or agency for compliance audits, to be randomly selected or as otherwise authorized by The state procurement office shall report the results of

5 all compliance audits to the legislature no later than twenty 6 days before the convening of each regular session." 7

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law.

#### PART III.

9 SECTION 5. The Hawaii public procurement code was 10 originally enacted by Act 8, Special Session Laws of Hawaii 1993, codified as chapter 103D, Hawaii Revised Statutes. Since 11 1993, only one audit of the State's procurement practices has 12 13 been performed. That audit, Auditor's Report No. 95-8, was performed in 1995 and states in pertinent part in the summary: 14

"We found that the administration has been slow in 15 16 implementing the procurement code and has not taken the 17 necessary steps to ensure effective implementation. The late start of the Procurement Policy Office without 18 19 appropriate staff has limited the ability of the policy board to carry out its responsibilities. Furthermore, the 20 21 late appointment of the interim administrator of the 22 Procurement Office delayed development of an on-going

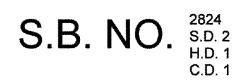
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training program, procurement manual, and a periodic review of the procurement process. Because rules were issued late and insufficient attention was paid to interpreting the law and communicating the rules clearly, we found a number of instances of noncompliance and confusion about the law and rules....

7 The new procurement organization structure is ineffective with conflicting and unclear roles and 8 9 responsibilities. The division of responsibility and 10 authority between the administrator and the policy office 11 is not clear in law or practice. Both have a 12 responsibility to audit procurement practices. In 13 addition, we found that the administrator has conflicting 14 roles as the chief procurement officer (CPO) for the Executive Branch and as the individual responsible for 15 16 reviewing procurement practices of all governmental 17 agencies."

18 The legislature finds that a new audit is timely and 19 necessary, given that thirteen years have elapsed since the 1993 20 audit and the recent problems in state procurement practices 21 brought to light during the interim hearings by the senate 22 committee on tourism and government operations. One of the

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concerns is the apparent noncompliance with procurement laws in
 the award of contracts, which is a critical element of public
 procurement.

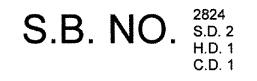
4 The purpose of this part is to require the auditor to
5 conduct a compliance, performance, and management audit of
6 executive agency compliance with chapter 103D, Hawaii Revised
7 Statutes, and the administrative rules adopted thereto.

8 SECTION 6. The auditor shall conduct a compliance, 9 performance, and management audit of chapter 103D, Hawaii Revised Statutes, and the administrative rules adopted pursuant 10 11 to chapter 103D. The audit shall be limited to the state 12 procurement office and the purchasing agencies, as defined in 13 section 103D-104, Hawaii Revised Statutes, of the State, not including the legislature, judicial branch, office of Hawaiian 14 15 affairs, and the several counties.

16 The purpose of the audit, among other relevant issues as 17 determined by the auditor, shall be to determine compliance with 18 chapter 103D, Hawaii Revised Statutes, including but not limited 19 to:

20 (1) Compliance with requirements that contracts be awarded
21 to the highest ranking bidder;

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| 1  | (2)        | The use of an evaluation committee by a procurement    |
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| 2  |            | purchasing agency to score proposals based on          |
| 3  |            | evaluation criteria;                                   |
| 4  | (3)        | Whether awards are based solely on qualifications, and |
| 5  |            | not on other considerations such as personal judgments |
| 6  |            | and biased preferences when selecting another bidder   |
| 7  |            | with a lower score;                                    |
| 8  | (4)        | The proper documentation of each step of the           |
| 9  |            | procurement process by a purchasing agency and its     |
| 10 |            | chief procurement officer, including but not limited   |
| 11 |            | to decisions and justifications to select a bidder and |
| 12 |            | to award a contract;                                   |
| 13 | (5)        | Whether adequate procurement practices training is     |
| 14 |            | made available to and regularly attended by            |
| 15 |            | appropriate procurement officials of state agencies;   |
| 16 |            | and  |
| 17 | (6)        | The proper use of an alternative procurement method.   |
| 18 | SECT       | ION 7. The auditor may contract with a private entity  |
| 19 | for purpo  | ses of conducting the audit and studies required under |
| 20 | this part. |  |
| 21 | SECT       | ION 8. The auditor shall make an interim report of the |
| 22 | findings   | and recommendations to the legislature no later than   |

1 twenty days prior to the convening of the regular session of 2009, and a final report on findings and recommendations, 2 including proposals for statutory amendments, to the legislature 3 no later than twenty days prior to the convening of the regular 4 session of 2010. 5 PART IV. 6 SECTION 9. Statutory material to be repealed is bracketed 7 and stricken. New statutory material is underscored. 8 SECTION 10. This Act shall take effect on January 1, 2009; 9

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10 provided that part III of this Act shall take effect upon the 11 approval of this Act.

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#### Report Title:

Procurement Code; Random Audits; Auditor Review; Appropriation

#### Description:

Helps ensure compliance with procurement code by requiring the state procurement office to perform annual random audits of government purchasing agencies and audits of agencies selected based on a pattern of agency noncompliance. Requires auditor to audit state procurement office and purchasing agencies of the executive branch and report to legislature. Makes Comptroller and county employee member of the state procurement policy board ex-officio nonvoting members. Eff. 1/1/09. (CD1)