1

A BILL FOR AN ACT

RELATING TO HAWAII PUBLIC PROCUREMENT CODE.

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

1		PART I
2		PROCUREMENT EXEMPTIONS
3	SECTI	ION 1. 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 State in
13		accordance with standards provided by law as
14		required by article VII, section 4, of the State
15		Constitution; or by the counties pursuant to
16		their respective charters or ordinances;



1	(B)	To make payments to or on behalf of public
2		officers and employees for salaries, fringe
3		benefits, professional fees, or reimbursements;
4	(C)	To satisfy obligations that the State is required
5		to pay by law, including paying fees, permanent
6		settlements, subsidies, or other claims, making
7		refunds, and returning funds held by the State as
8		trustee, custodian, or bailee;
9	(D)	For entitlement programs, including public
10		assistance, unemployment, and workers'
11		compensation programs, established by state or
12		federal law;
13	(E)	For dues and fees of organizations of which the
14		State or its officers and employees are members,
15		including the National Association of Governors,
16		the National Association of State and County
17		Governments, and the Multi-State Tax Commission;
18	(F)	For deposit, investment, or safekeeping,
19		including expenses related to their deposit,
20		investment, or safekeeping;
21	(G)	To governmental bodies of the State;



1		(H)	As loans, under loan programs administered by a
2			governmental body; and
3		(I)	For contracts awarded in accordance with chapter
4			103F[-] <u>;</u>
5	(3)	То р	rocure goods, services, or construction from a
6		gove	rnmental body other than the University of Hawaii
7		book	stores, from the federal government, or from
8		anot	her state or its political subdivision;
9	(4)	То р	rocure the following goods or services which are
10		avai	lable from multiple sources but for which
11		proc	urement by competitive means is either not
12		prac	ticable or not advantageous to the State:
13		(A)	Services of expert witnesses for potential and
14			actual litigation of legal matters involving the
15			State, its agencies, and its officers and
16			employees, including administrative quasi-
17			judicial proceedings;
18		(B)	Works of art for museum or public display;
19		(C)	Research and reference materials including books,
20			maps, periodicals, and pamphlets, which are

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1		published in print, video, audio, magnetic, or
2		electronic form;
3	(D)	Meats and foodstuffs for the Kalaupapa
4		settlement;
5	(E)	Opponents for athletic contests;
6	(F)	Utility services whose rates or prices are fixed
7		by regulatory processes or agencies;
8	(G)	Performances, including entertainment, speeches,
9		and cultural and artistic presentations;
10	(H)	Goods and services for commercial resale by the
11		State;
12	(I)	Services of printers, rating agencies, support
13		facilities, fiscal and paying agents, and
14		registrars for the issuance and sale of the
15		State's or counties' bonds;
16	(J)	Services of attorneys employed or retained to
17		advise, represent, or provide any other legal
18		service to the State or any of its agencies, on
19		matters arising under laws of another state or
20		foreign country, or in an action brought in
21		another state, federal, or foreign jurisdiction,



1			when substantially all legal services are
2			expected to be performed outside this [State;]
3			state;
4		(K)	Financing agreements under chapter 37D; and
5		(L)	Any other goods or services which the policy
6			board determines by rules or the chief
7			procurement officer determines in writing is
8			available from multiple sources but for which
9			procurement by competitive means is either not
10			practicable or not advantageous to the State;
11			[and]
12	(5)	Whic	h are specific procurements expressly exempt from
12 13	(5)		ch are specific procurements expressly exempt from or all of the requirements of this chapter by:
	(5)		or all of the requirements of this chapter by:
13	(5)	any	or all of the requirements of this chapter by:
13 14	(5)	any	or all of the requirements of this chapter by: References in state or federal law to provisions
13 14 15	(5)	any	or all of the requirements of this chapter by: References in state or federal law to provisions of this chapter or a section of this chapter, or
13 14 15 16	(5)	any	or all of the requirements of this chapter by: References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this
13 14 15 16 17	(5)	any (A)	or all of the requirements of this chapter by: References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
13 14 15 16 17 18	(5)	any (A)	or all of the requirements of this chapter by: References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and Trade agreements, including the Uruguay Round
13 14 15 16 17 18 19	(5)	any (A)	or all of the requirements of this chapter by: References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT)



1	comptroller to be conducted in accordance with
2	its terms [+]; and
3	(6) With a bidder or offeror who is a United States
4	General Services Administration-approved sole source
5	vendor, who shall be exempt from complying with
6	section 103D-302, 103D-303, or 103D-304, as
7	applicable, in any procurement funded by state and
8	federal matching funds, if the bidder or offeror was
9	responsible for obtaining and was the recipient of the
10	federal funds."
11	SECTION 2. Section 103D-305, Hawaii Revised Statutes, is
12	amended to read as follows:
13	"§103D-305 Small purchases; prohibition against parceling.
14	(a) Procurements of less than $[\$50,000]$ $\$100,000$ for goods $[-7]$
15	or services, or $\$250,000$ for construction shall be made in
16	accordance with procedures set forth in rules adopted by the
17	policy board that are designed to ensure administrative
18	simplicity and as much competition as is practicable; provided
19	that multiple expenditures shall not be created at the inception
20	of a transaction or project so as to evade the requirements of
21	this chapter; and provided further that procurement requirements

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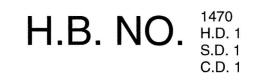
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1	shall not be artificially divided or parceled so as to
2	constitute a small purchase under this section.
3	(b) Procurements of greater than \$50,000 for construction
4	under subsection (a) shall require security by a performance
5	bond delivered to the purchasing agency that is:
6	(1) In a form prescribed by the rules of the policy board;
7	(2) Executed by a surety company authorized to do business
8	in this state; and
9	(3) In an amount equal to one hundred per cent of the
10	price specified in the contract,
11	or shall otherwise be secured by a performance bond in a manner
12	satisfactory to the purchasing agency.
13	[(b)] <u>(c)</u> Procurements of \$25,000 to less than [\$50,000]
14	\$100,000 shall be made in accordance with small purchase
15	procedures; provided that small purchase procurements through an
16	electronic system shall be required after the policy board has
17	adopted rules for electronic procurement and provided training
18	to the affected agency."
19	

19

1	PART II
2	PROCUREMENT PREFERENCES
3	SECTION 3. Chapter 103D, Hawaii Revised Statutes, is
4	amended by adding a new section to be appropriately designated
5	and to read as follows:
6	<pre>"§103D- Agricultural products subject to this chapter.</pre>
7	The following agricultural products shall be subject to this
8	chapter:
9	(1) Fresh meats and produce; and
10	(2) Animals and plants.
11	Except for the exemptions under section 103D-102(b), no
12	exemptions under this chapter shall apply to this section."
13	SECTION 4. Chapter 103D, Hawaii Revised Statutes, is
14	amended by adding a new section to part X to be appropriately
15	designated and to read as follows:
16	" <u>§103D-</u> Failure to adequately verify, deliver, or supply
17	Hawaii products. If the administrator or procurement officer
18	who has awarded a contract under section 103D-1002, finds that
19	in the performance of that contract there has been a failure to
20	comply with section 103D-1002, the contract shall be voidable

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1	and the f	indings shall be referred for debarment or suspension				
2	proceedings under section 103D-702."					
3	SECTION 5. Section 103D-1001, Hawaii Revised Statutes, is					
4	amended as follows:					
5	1. By adding the definition of "Hawaii input" to be					
6	appropriately inserted and to read:					
7	"Hawaii input" means the part of the cost of a product that					
8	is attributable to production, manufacturing, or other expenses					
9	arising within the state. "Hawaii input" includes but is not					
10	limited to	D:				
11	(1)	The cost to mine, excavate, produce, manufacture,				
12		raise, or grow the materials in Hawaii;				
13	(2)	The added value of that portion of the cost of				
14		imported materials that is incurred after landing in				
15		Hawaii, including but not limited to other articles,				
16		materials, and supplies, added to the imported				
17		materials;				
18	(3)	The cost of labor, variable overhead, utilities, and				
19		services, incurred in the production and manufacturing				
20		of materials or products in Hawaii; and				

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1	(4)	Fixed overhead cost and amortization or depreciation
2		cost, if any, for buildings, tools, and equipment,
3		situated and located in Hawaii and used in the
4		production or manufacturing of a product."
5	2. B	y amending the definition of "Hawaii products to read:
6	""Haw	aii products" means products that are mined,
7	excavated,	produced, manufactured, raised, or grown in the
8	[State] <u>st</u>	ate and where the [input constitutes no less than
9	twenty fiv	e] cost of the Hawaii input towards the product
10	exceeds fi	fty per cent of the [manufactured] total cost[+] of
11	the produc	t; provided that:
12	[(1)	Where the value of the input constitutes twenty five
13		per cent or more, but less than fifty per cent, of the
14		manufactured cost, the product shall be classified as
15		class I;
16	(2)]	(1) Where the value of the input [constitutes]
17		exceeds fifty per cent [or more, but less than
18		seventy five per cent,] of the [manufactured] total
19		cost, the product shall be classified as class $[rac{ extsf{II}}{ extsf{II}}]$
20		I; and



1	[(3)	Where the value of the input constitutes seventy five
2		per cent or more of the manufactured cost, the product
3		shall be classified as class III.]
4	(2)	Where any agricultural, aquacultural, horticultural,
5		silvicultural, floricultural, or livestock product is
6		raised, grown, or harvested in the state, the product
7		shall be classified as class II."
8	SECT	TION 6. Section 103D-1002, Hawaii Revised Statutes, is
9	amended t	to read as follows:
10	"§10	3D-1002 Hawaii products. (a) A purchasing agency
11	shall rev	view all specifications in a bid or proposal for
12	purchase	[from the] <u>of</u> Hawaii products [list] where these
13	products	are available[; provided that the products:
14	(1)	Meet the minimum specifications and the selling price
15		f.o.b. jobsite;
16	(2)	Unloaded including applicable general excise tax and
17		use tax does not exceed the lowest delivered price in
18		Hawaii f.o.b. jobsite; and
19	(3)	Unloaded, including applicable general excise tax and
20		use tax, does not exceed the lowest delivered price of
21		a similar non Hawaii product by more than:



1		(A)	Three per cent where class I Hawaii products are
2			involved;
3		(B)	Five per cent where class II Hawaii products are
4			involved; or
5		(C)	Ten per cent where class III Hawaii products are
6			involved].
7	(b)	All	invitations for bids and requests for proposals
8	shall [in	clude	-] <u>-</u>
9	(1)	Incl	ude a description of the products that are listed
10		in t	he Hawaii products list established pursuant to
11		this	section, [and their established classes,] which
12		may	be used to complete the scope of work specified in
13		the	invitation for bids or request for proposals[$ au$
14		wher	e the products are]; or
15	(2)	Allc	w as part of the offer, self-certification that
16		the	Hawaii products qualify for preference;
17	provided	that	the offer may be evaluated along with any other
18	published	. crit	eria in the solicitation, including but not
19	limited t	o con	siderations such as specific nutritional content
20	<u>or its eq</u>	uival	ent, timing of delivery, quality or freshness, and
21	past perf	orman	ce, if applicable.





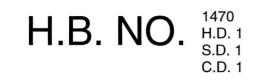
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All Hawaii products in any bid or request for proposal
 shall be made available [and meet] for inspection, or additional
 information may be requested to verify that the Hawaii product
 meets the minimum specifications.

5 (c) All persons submitting bids or proposals to claim a
6 Hawaii products preference shall designate in their bids which
7 individual product and its price is to be supplied as a Hawaii
8 product.

9 (d) Where a bid or proposal contains both Hawaii and non-10 Hawaii products, then for the purpose of selecting the lowest 11 bid or purchase price only, the price or bid [or] offered for a 12 Hawaii product item shall be decreased by subtracting 13 [therefrom: three per cent, five per cent, or] ten per cent for 14 [the] class I[, class II, or class III] Hawaii product items bid 15 or offered, [respectively.] or fifteen per cent for class II 16 Hawaii product items bid or offered. The lowest total bid or 17 proposal, taking the preference into consideration, shall be 18 awarded the contract unless the bid or offer provides for 19 additional award criteria. The contract amount of any contract 20 awarded, however, shall be the amount of the bid or price 21 offered, exclusive of the preferences.



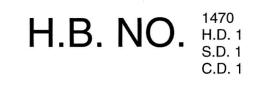


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1 (e) Upon receipt and approval of application for Hawaii 2 products preference, the administrator shall include within the 3 Hawaii products list, the names of producers and manufacturers 4 in the [State] state who are authorized to supply locally 5 manufactured soil enhancement products to state agencies under 6 subsection [(h),] (k). The administrator of the state 7 procurement office shall maintain and distribute copies of the 8 list to the purchasing agencies of the various governmental 9 agencies. 10 (f) Any person not on the Hawaii products list desiring a 11 preference pursuant to this section shall certify the Hawaii 12 product when submitting a response to a solicitation; provided 13 that the person certifies under penalty of sanctions that the 14 offered Hawaii products meet the requirements for the 15 preference. The procurement officer may request additional information 16 deemed necessary to qualify a product and shall have sole 17 discretion in determining qualification for the preference. 18 19 Any offeror whose product is deemed not qualified for the 20 preference may appeal by filing a written request for

21 reexamination of facts to the procurement officer. Upon

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1	determining that the offeror is qualified for the preference,
2	the procurement officer shall notify the administrator and the
3	administrator shall place the offeror on the Hawaii products
4	list.
5	(g) Solicitations shall contain a provision notifying
6	offerors who request application of the preference that in the
7	event of any change that materially alters the offeror's ability
8	to supply Hawaii products, the offeror shall immediately notify
9	the chief procurement officer in writing and the parties shall
10	enter into discussions for the purposes of revising the contract
11	or terminating the contract for convenience.
12	(h) Nothing in this section shall limit, restrict, or
13	preclude a Hawaii product from any preferences, set-asides, or
14	criteria that may be applied under section 103D-906, and this
15	section shall operate instead to mutually enhance the purpose of
16	this section and section 103D-906.
17	$\left[\frac{(f)}{(i)}\right]$ This section shall not apply whenever its
18	application will disqualify any governmental agency from
19	receiving federal funds or aid.
20	[(g)] <u>(j)</u> Any purchase made or any contract awarded or
21	executed in violation of this section shall be void and no

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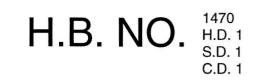
payment shall be made by any purchasing agency on account of the
 purchase or contract.

3 [(h)] (k) For the purposes of this section, "soil 4 enhancement product" means any nonchemical soil preparation, 5 conditioner, or compost mixture designed to supplement aeration or add organic, green waste, or decaying matter to the soil; 6 provided that the term does not include any plant fertilizer 7 8 intended to stimulate or induce plant growth through chemical 9 means. All state agencies shall include in their solicitations, 10 when required, the soil enhancement products identified on the 11 Hawaii products list pursuant to subsection (e)." 12 PART III 13 PROCUREMENT PROTESTS AND DISPUTES 14 SECTION 7. Chapter 103D, Hawaii Revised Statutes, is 15 amended by adding a new section to be appropriately designated 16 and to read as follows: 17 "§103D- Procurement statistics. The state procurement 18 office shall keep statistics on solicitations and awards 19 protested under section 103D-701 for the purpose of improving 20 procurement procedures. The statistics shall include 21 information on protests involving inadvertent errors."



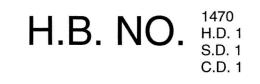
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1	SECTION 8. Section 103-32.1, Hawaii Revised Statutes, is
2	amended to read as follows:
3	"§103-32.1 Contract provision for retainage;
4	subcontractors. (a) Any retainage provided for in this section
5	or requested to be withheld by the contractor shall be held by
6	the procurement officer.
7	(b) A dispute between a contractor and subcontractor of
8	any tier shall not constitute a dispute to which the State or
9	any county is a party, and there is no right of action against
10	the State or any county. The State and a county may not be
11	interpleaded in any judicial or administrative proceeding
12	involving such a dispute.
13	(c) Any public contract may include a provision for the
14	retainage of a portion of the amount due under the contract to
15	the contractor to ensure the proper performance of the contract;
16	provided that:
17	(1) The sum withheld by the procurement officer from the
18	contractor shall not exceed five per cent of the total
19	amount due the contractor and that, after fifty per
20	cent of the contract is completed and progress is
21	satisfactory, no additional sum shall be withheld;

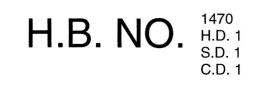


1		provided further that if progress is not satisfactory,
2		the procurement officer may continue to withhold, as
3		retainage, sums not exceeding five per cent of the
4		amount due the contractor; and
5	(2)	The retainage shall not include sums deducted as
6		liquidated damages from moneys due or that may become
7		due the contractor under the contract.
8	(d)	Where a subcontractor has provided evidence to the
9	contracto	r of:
10	(1)	A valid performance and a payment bond for the project
11		that is acceptable to the contractor and executed by a
12		surety company authorized to do business in this
13		[State;] state;
14	(2)	Any other bond acceptable to the contractor; or
15	(3)	Any other form of collateral acceptable to the
16		contractor,
17	the reten	tion amount withheld by the contractor from its
18	subcontra	ctor shall be not more than the same percentage of
19	retainage	as that of the contractor. This subsection shall also
20	apply to	the subcontractors who subcontract work to other
21	subcontra	ctors.

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1	(e)	This section shall not be construed to impair the
2	right of a	a contractor or a subcontractor at any tier to
3	negotiate	, and to include in their subcontract, provisions that:
4	(1)	Permit the contractor or subcontractor to retain,
5		without cause, a specified percentage of no more than
6		ten per cent of each progress payment otherwise due to
7		a subcontractor for satisfactory performance under the
8		subcontract, without incurring any obligation to pay a
9		late payment interest penalty, in accordance with
10		terms and conditions agreed to by the parties to the
11		subcontract, giving such recognition as the parties
12		deem appropriate to the ability of a subcontractor to
13		furnish a performance bond and a payment bond, subject
14		however, to the limitations of subsection (d); and
15	(2)	Permit the contractor or subcontractor to make a
16		determination that part or all of the subcontractor's
17		payment request may be withheld by the procurement
18		officer in accordance with the subcontract agreement,
19		without incurring any obligation to pay interest or a
20		late payment penalty if [:



1	-(A)-	A notice conforming to the standards of
2		subsection (f) has been previously furnished to
3		the subcontractor; and
4	(B)	A copy of any notice issued by the contractor or
5		subcontractor pursuant to subparagraph (A) has
6		been furnished to the procurement officer.
7	(£)	A] <u>a</u> written notice of any withholding [shall be]
8	<u>is</u> i	ssued to a subcontractor, with a copy to the
9	proc	urement officer, specifying the following:
10	[(1)] <u>(A)</u>	The amount to be withheld;
11	[(2)] <u>(B)</u>	The specific causes for the withholding under the
12		terms of the subcontract; and
13	[(3)] <u>(C)</u>	The remedial actions to be taken by the
14		subcontractor to receive payment of the amounts
15		withheld.
16	[(g)] <u>(f)</u>	A contractor may not request payment from the
17	procurement of	ficer of any amount withheld or retained in
18	accordance wit	h subsection (e) until such time as the contractor
19	has determined	and certified to the procurement officer that the
20	subcontractor	is entitled to the payment of such amount.

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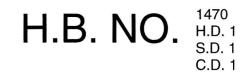
1 [(h)] (g) The provisions of this section shall not be
2 construed to require payment to subcontractors of retainage
3 released to a contractor pursuant to an agreement entered into
4 with the procurement officer meeting the requirements of section
5 103-32.2."

6 SECTION 9. Section 103D-709, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§103D-709 Administrative proceedings for review. (a) 9 The several hearings officers appointed by the director of the 10 department of commerce and consumer affairs pursuant to section 11 26-9(f) shall have jurisdiction to review and determine de novo, 12 any request from any bidder, offeror, contractor, or person aggrieved under section 103D-106, or governmental body aggrieved 13 14 by a determination of the chief procurement officer, head of a 15 purchasing agency, or a designee of either officer under section 16 103D-310, 103D-701, or 103D-702.

(b) Hearings to review and determine any request made pursuant to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a

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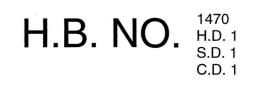
1 written decision [which] not later than forty-five days from the 2 receipt of the request under subsection (a), that shall be final 3 and conclusive unless a person or governmental body adversely 4 affected by the decision commences an appeal in the circuit 5 court of the circuit where the case or controversy arises under 6 section 103D-710.

7 (c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and [+]103D-8 9 702(g) []] may initiate a proceeding under this section. The 10 party initiating the proceeding shall have the burden of proof, 11 including the burden of producing evidence as well as the burden 12 of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding 13 14 shall be afforded an opportunity to present oral or documentary 15 evidence, conduct cross-examination as may be required, and 16 argument on all issues involved. [The rules of evidence shall 17 apply.] Fact finding under section 91-10 shall apply. 18 (d) Any bidder, offeror, contractor, or person that is a

19 party to a protest of a solicitation or award of a contract

20 under section 103D-302 or 103D-303 that is decided pursuant to





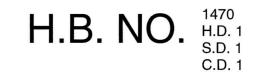
1	section 103D-701 may initiate a proceeding under this section;	
2	provided	that:
3	(1)	For contracts with an estimated value of less than
4		\$1,000,000, the protest concerns a matter that is
5		greater than \$10,000; or
6	(2)	For contracts with an estimated value of \$1,000,000 or
7		more, the protest concerns a matter that is equal to
8		no less than ten per cent of the estimated value of
9		the contract.
10	(e)	The party initiating a proceeding falling within
11	subsectio	n (d) shall pay to the department of commerce and
12	consumer	affairs a cash or protest bond in the amount of:
13	(1)	\$1,000 for a contract with an estimated value of less
14		than \$500,000;
15	(2)	\$2,000 for a contract with an estimated value of
16		\$500,000 or more, but less than \$1,000,000; or
17	(3)	One-half per cent of the estimated value of the
18		contract if the estimated value of the contract is
19		\$1,000,000 or more; provided that in no event shall
20		the required amount of the cash or protest bond be
21		more than \$10,000.





1	If the initiating party prevails in the administrative
2	proceeding, the cash or protest bond shall be returned to that
3	party. If the initiating party does not prevail in the
4	administrative proceeding, the cash or protest bond shall be
5	deposited into the general fund.
6	[(d)] <u>(f)</u> The hearings officers shall ensure that a record
7	of each proceeding which includes the following is compiled:
8	(1) All pleadings, motions, intermediate rulings;
9	(2) Evidence received or considered, including oral
10	testimony, exhibits, and a statement of matters
11	officially noticed;
12	(3) Offers of proof and rulings thereon;
13	(4) Proposed findings of fact;
14	(5) A recording of the proceeding which may be transcribed
15	if judicial review of the written decision is sought
16	under section 103D-710.
17	$\left[\frac{1}{(e)}\right]$ (g) No action shall be taken on a solicitation or an
18	award of a contract while a proceeding is pending, if the
19	procurement was previously stayed under section 103D-701(f).
20	$\left[\frac{f}{f}\right]$ (h) The hearings officer shall decide whether the
21	determinations of the chief procurement officer or the chief





procurement officer's designee were in accordance with the
 Constitution, statutes, rules, and the terms and conditions of
 the solicitation or contract, and shall order such relief as may
 be appropriate in accordance with this chapter.

5 [-(g)] (i) The policy board shall adopt such other rules as
6 may be necessary to ensure that the proceedings conducted
7 pursuant to this section afford all parties an opportunity to be
8 heard.

9 (j) As used in this section, "estimated value of the
10 contract" or "estimated value," with respect to a contract,
11 means the lowest responsible and responsive bid under section
12 103D-302, or the bid amount of the responsible offeror whose
13 proposal is determined in writing to be the most advantageous
14 under section 103D-303, as applicable."
15 SECTION 10. Section 103D-710, Hawaii Revised Statutes, is

16 amended as follows:

17 1. By amending subsection (c) to read:

18 "(c) Within [twenty] ten calendar days of the filing of an 19 application for judicial review, the hearings officer shall 20 transmit the record of the administrative proceedings to the

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circuit court of the circuit where the case or controversy 1 2 arises." 3 2. By amending subsection (e) to read: 4 [Upon] No later than thirty days from the filing of "(e) 5 the application for judicial review, based upon review of the 6 record the circuit court may affirm the decision of the hearings 7 officer issued pursuant to section 103D-709 or remand the case 8 with instructions for further proceedings; or it may reverse or 9 modify the decision and order if substantial rights may have 10 been prejudiced because the administrative findings, 11 conclusions, decisions, or orders are: 12 In violation of constitutional or statutory (1)13 provisions; 14 (2) In excess of the statutory authority or jurisdiction 15 of the chief procurement officer or head of the 16 purchasing agency; 17 Made upon unlawful procedure; (3)18 (4)Affected by other error of law; 19 Clearly erroneous in view of the reliable, probative, (5) 20 and substantial evidence on the whole record; or

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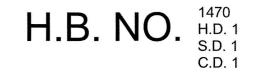
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1	(6) Arbitrary, or capricious, or characterized by abuse of
2	discretion or clearly unwarranted exercise of
3	discretion [-];
4	provided that if an application for judicial review is not
5	resolved by the thirtieth day from the filing of the
6	application, the court shall lose jurisdiction and the decision
7	of the hearings officer shall not be disturbed. All time
8	limitations on actions, as provided for in section 103D-712,
9	shall remain in effect."
10	PART IV
11	MISCELLANEOUS PROVISIONS
12	SECTION 11. Part II does not affect rights and duties that
13	matured, penalties that were incurred, and proceedings that were
14	begun, before its effective date.
15	SECTION 12. If any provision of this Act, or the
16	application thereof to any person or circumstance is held
17	invalid, the invalidity does not affect other provisions or
18	applications of the Act, which can be given effect without the
19	invalid provision or application, and to this end the provisions
20	of this Act are severable.



1 SECTION 13. Statutory material to be repealed is bracketed 2 and stricken. New statutory material is underscored. 3 SECTION 14. This Act shall take effect on July 1, 2009; 4 provided that: 5 (1) Part I shall be repealed on July 1, 2012, and sections 103D-102 and 103D-305, Hawaii Revised Statutes, shall 6 be reenacted in the form in which they read on the day 7 8 before the effective date of this Act; and 9 (2) Part III shall be repealed on July 1, 2011, and sections 103-32.1, 103D-709, 103D-710(c) and 103D-10 11 710(e), Hawaii Revised Statutes, shall be reenacted in 12 the form in which they read on the day before the effective date of this Act. 13



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Report Title:

Procurement Code Exemption; Sole Source; Federal Government

Description:

Exempts GSA-approved sole source vendors from procurement code; increases small purchases limit; increases the Hawaii products preference and allows Hawaii products self-certification; imposes time limits on rendering administrative and judicial review decisions; limits protests to those that are a minimum percentage of the contract value; requires posting of a protest bond, to be forfeited if the protesting party does not prevail. (HB1470 CD1)

