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**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4700 Fax: (808) 587-4703  
www.spo.hawaii.gov

TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
HIGHER EDUCATION

February 3, 2009

2:00 PM

HB 347

RELATING TO THE UNIVERSITY OF HAWAII.

Chair Chang, Vice-Chair Nakashima and committee members, thank you for the opportunity to testify on HB 347.

The State Procurement Office (SPO) does not support the language to exempt from HRS chapter 103D, the University of Hawaii, or the board of regents of the University of Hawaii.

Statutory exemptions are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part “. . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . .” Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

The SPO is against statutorily exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process.

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The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic and confusing to vendors, contractors and service providers that must comply with a variety of different processes and standards. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

In conclusion, there needs to be one single source of public procurement policy. If it is to be the policy and procedures as used by the University, then all other purchasing jurisdictions should also use the same requirements, rather than having multiple policies.

Thank you.

February 2, 2009

Representative Jerry Chang, Chair, and Members  
Committee on Higher Education  
House of Representative  
State Capitol  
Honolulu, HI 96813

Dear Chair Chang and Members:

Subject: H.B. No. 347, relating exempting the University of Hawaii from Hawaii public procurement requirements.

I am Jim Donovan, Director of Athletics for the University of Hawaii at Manoa.

I strongly support H.B. No. 347, relating to exempting the University of Hawaii from Hawaii public procurement requirements.

This Bill restores the University's ability to establish its own procurement policies in support of the widely accepted public policy of greater administrative flexibility for the University. The University was granted this flexibility by the Legislature in 1998 and had used it responsibly and to great benefit until its revocation as of January 1, 2005.

The University of Hawaii at Manoa Athletics Department was exempt from the procurement code prior to 1998 and we had a track record of acting in the best interest of all our constituencies to order items in a timely and cost effective manner.

During the past few years we have experienced situations where we couldn't do a cash and trade agreement with certain vendors due to the procurement code. Cash and trade agreements allow us the flexibility to reduce overall costs. The procurement code requires that the cash part be competitively bid which often precludes vendors from providing a trade component.

The procurement code also provides a challenging timeline. Having to begin the procurement process often times 6 to 9 months in advance for items such as media guides and athletic supplies does not allow us the flexibility to reduce potential costs by having additional time for the vendor to "sharpen the pencil."

If the procurement exemption is restored the University of Hawaii at Manoa Athletics Department will use this flexibility responsibly and effectively. We will continue to work within all University of Hawaii purchasing policies including an electronic sourcing system called "SuperQuote" that was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including by enabling purchases over the Internet.

The University of Hawaii at Manoa Athletics Department remains fully committed to openness, appropriate public oversight and accountability and will honor the statutory requirement to comply with the intent of the State procurement code.

I ask your support for the passage of this bill, which is important in helping the University of Hawaii Athletics Department have the facilities and processes to compete in the national marketplace of Colleges and Universities.

Thank you for this opportunity to testify in support of this measure.

Sincerely,

Jim Donovan  
Director of Athletics



# AIA Hawaii State Council

A Council of The American Institute of Architects

To HED  
HED hearing 2/3/098  
2:00 pm Rm 309

February 3, 2009

Honorable Jerry Chang, Chair  
House Committee on Higher Education  
Honorable Mark Nakashima, Vice Chair  
House Committee on Higher Education

Re: **House Bill 347**  
**Relating to the University of Hawaii**

Dear Chair Chang, Vice Chair Nakashima, and Members of the Committees,

My name is Daniel Chun, Government Affairs Chair of The American Institute of Architects (AIA). The AIA Hawaii State Council is **STRONGLY OPPOSED** to House Bill 347 because it grants the University of Hawaii a "wholesale" exemption from the Hawaii public procurement code. Following are our specific concerns:

1. The exemption from chapter 103D-304 will nullify over ten years of efforts by legislators and all of Hawaii's design professional societies to pass an architect-engineer procurement law (Act 52 of 2003) that meets national and federal standards for awarding these types of professional service contracts.
2. The exemption has the potential of increasing business overhead costs in the design and construction industries such as the use of different design and construction procurement methods than are used by other public entities. Our increased overhead costs will have to be borne by other public entities and the private sector.
3. All other procurement statutes and administrative rules and processes that have been developed through years of careful public deliberation are swept away by this bill.

While the bill encourages the University to use the provisions of the Code, there is no guarantee to the private sector that the regents will do this. This legislature is a better public arena for developing state-wide procurement policy that balances the needs of a public entity with that of private businesses that intend to provide design and construction services. In the 1990s AIA supported the University's INDEPENDENCE to select its own providers of services; while operating WITHIN the provisions of the state procurement code.

We have met with UH to discuss their past unsuccessful attempts at a "wholeesale" exemption, but design professionals are still unaware of problems with HRS Chapter 103D that this bill attempts to solve. Thank you for this opportunity to present **STRONGLY OPPOSING** testimony for HB 347.



## Hawaii Chapter AMERICAN PUBLIC WORKS ASSOCIATION

### Chapter Office

501 Sumner Street, Suite 620  
Honolulu, HI 96817

Telephone:  
(808) 531-1308  
Facsimile:  
(808) 521-7348

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Actus Lend Lease

February 1, 2009

EMAILED TESTIMONY TO: HEDtestimony@Capitol.hawaii.gov

**Hearing Date: Tuesday, February 3, 2:00 p.m., Conference Room 309  
(Committee on Higher Education)**

Honorable Representatives Jerry L. Chang, Chair, Mark M. Nakashima, Vice Chair,  
and Members of the House Committee on Higher Education

**Subject: HB 347, Relating to the University of Hawaii**

Honorable Chair Chang, Vice Chair Nakashima, and HRE Committee Members,

The American Public Works Association Hawaii Chapter represents over one hundred engineering design professionals in public and private sector. **We Strongly Oppose HB 347, Relating to the University of Hawaii.** This bill will give the University of Hawaii and exemption from following the State Procurement Code that took many years to bring it closer to the Federal FAR. The State Procurement Code now ensures that the State and Counties follow an open and transparent process and will select the best qualified consultants to perform their professional services.

The University of Hawaii and all public sector agencies should be following the State Procurement Code relating to Qualification Based Selection procedures for Design Professionals as outlined in Chapter 103D. No exceptions... too much flexibility could lead to many problems or abuses in the future.

Therefore we ask you to OPPOSE this bill.

Thank you for an opportunity to express our views regarding this bill.

Sincerely,

American Public Works Association, Hawaii Chapter

Lester H. Fukuda, P.E., FACEC

# ***SAH - Subcontractors Association of Hawaii***

***820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938***

***Phone: (808) 537-5619 ✦ Fax: (808) 533-2739***

February 3, 2009

Testimony To: House Committee on Higher Education  
Representative Jerry L. Chang, Chair

Presented By: Tim Lyons  
President

Subject: H.B. 347 - RELATING TO THE UNIVERSITY OF HAWAII

Chair Chang and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. Our testimony today represents the collective thoughts of eight separate and distinct subcontracting associations:

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are opposed to this bill. Prior to the establishment of the procurement code for all state agencies, contractors lived daily with a "mix-mash" of rules and regulations on how to do business with the State. Some contractors gave up doing state work because it was so confusing going from one agency to the other. The rules were different, the procedures were different and the requirements were different.

It was based on that then we endorsed the establishment of the Hawaii Procurement Code. Over the years there have been a number of protections built into the public procurement code which protects subcontractors and those who do business with the government. We are, after all, talking about taxpayer money and it is important that it be spent correctly.

On previous occasions when this subject has arisen, the communication offered by the University of Hawaii officials as to why they wanted to get out of the procurement code was that they were tired of protests and that the procedure lengthened the time of the projects. We think that it is important to remember, protest are filed because the unsuccessful contractor feels as if the successful contractor did not play by the same rules that he had to play by. In most cases they tell us that if they were able to do the same things that the successful bidder was to do, then they could have gotten the job. All the procurement code does is make sure that everybody is playing on a level playing field and if in fact they are not, you need to have a provision that allows people to protest. WE do not believe that it is enough to provide in this bill that the UH be encouraged to use the provisions of the procurement code as "guidelines". This doesn't even call for them to use it. They are only encouraged to use it, and then when they do, it is only a guideline.

In conclusion, we do not feel the University of Hawaii should be exempt from the procurement code and if there are problems with the procurement code that detract from having a smooth, transparent and fair system then we should be addressing that for the benefit of all agencies not just the University of Hawaii.

Based on the above, we oppose this bill.

Thank you.

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**From:** Joel Fischer [jfischer@hawaii.edu]  
**Sent:** Saturday, January 31, 2009 2:11 PM  
**To:** HEDtestimony  
**Subject:** HB347; HRE; Tuesday, 2/3/09; 2PM; Rm 309

HB347, Relating to the UH  
Committee on Higher Education; Chair, Rep. Chang

PLEASE KILL THIS BILL AND THIS IDEA...for now!

I oppose loosening procurement restrictions on the UH AT THIS TIME. The current administration and holdover Board members are corrupt. There just is no other way to put it. These folks simply do not have the moral or fiscal compass to be able to go about the procurement process without very strict guidelines and oversight.

I am not trying to keep the UH, my beloved university, from progressing. I just believe that we cannot trust the the current gang to handle more fiscal freedom.

Perhaps we can revisit this issue after we give a new President a year or so to see how he or she can handle the pressures.

Thank you.

Aloha, joel

Dr. Joel Fischer, ACSW  
President, 19-3, Democratic Party

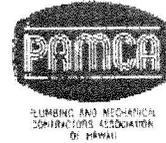
Professor  
University of Hawai'i, School of Social Work  
Henke Hall  
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."  
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."  
Dr. Martin Luther King, Jr.

"Never, never, never quit."  
Winston Churchill

# PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



TELEPHONE: (808) 597-1216  
FAX: (808) 597-1409  
1314 S. King Street, Suite 961  
Honolulu, Hawaii 96814

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via Facsimile: 586-6684

February 2, 2009

Representative Jerry L. Chang, Chair  
Committee on Higher Education  
House of Representatives  
The Twenty-Fifth Legislature, Regular Session of 2009  
State Capitol  
Honolulu, HI 96813

Chair Chang, Vice Chair Nakashima, and Members of the Committee:

**SUBJECT: H.B. 347 Relating to the University of Hawaii**

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii.

The Association for which I speak is opposed to H.B. 347, which exempts the University of Hawaii from the current procurement rules of Chapter 103-D of the Hawaii Revised Statutes.

We believe that Chapter 103-D provides an effective method for the procurement of goods, services and construction, and helps to protect public funds from abuse and waste. In fact, Chapter 103-D was specifically enacted to create a fair and open procurement procedure that eliminates favoritism, ensures competitive bids, and prevents those contractors who do not have the required licenses, tax clearances, insurance coverage, etc., from bidding on public projects, all of which potentially saves thousands in tax payer money.

Furthermore, the creation of separate procurement procedures for different entities will generate confusion among potential contractors and will certainly lead to hours of lost time and efficiency.

Lastly, the actual process of developing a separate procurement procedures will undoubtedly cost the state additional funds that may not be prudent during these economic times.

We therefore respectfully urge the committee to hold this bill.

Thank you very much for this opportunity to testify.

Respectfully yours,

Gregg S. Serikaku  
Executive Director