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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEES
ON
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS
AND
AGRICULTURE

February 5, 2009

10:30 AM

HB 988

RELATING TO PROCUREMENT.

Chair McKelvey, Chair Tsuji, Vice-Chair Choy, Vice-Chair Wooley and committee members, thank you for the opportunity to testify on HB 988.

This bill states that “undermining and eviscerating the entire preference program, are the administrative rules that exempt certain products from the entire procurement code, . . . including ‘fresh meats and produce’, ‘animals and plants’, and ‘food and fodder for animals.’” The SPO is uncertain on what the bill is alluding to. In reviewing the use of these specific exemptions from November 2005 to January 2009, out of approximately 800 awards, at least 99% has been awarded to Hawaii vendors.

The State Procurement Office (SPO) does not support the language allowing State agencies to accept Hawaii product preference “self-certification” from offerors at the bid or proposal submittal date. The change to a self-certification evaluation process to be conducted by the various agencies will lead to delays in awards, either through protests or verifying information on the form. In addition, the inconsistent manner in which the evaluation processes are conducted by each of the various agencies will be problematic.

HB 988
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HRS §103D-102(b)(4)(L) statutorily allows the Procurement Policy Board (Board) to determine by rules any other goods or services for which procurement by competitive means is either not practicable or not advantageous to the State. The Board reviews these exemptions annually, or more frequently as needed; and the public and governmental agencies participate in the Board discussions when these items are placed on its meeting agenda.

The statute goes further to clarify that governmental agencies ‘...are nevertheless encouraged to adopt and use provisions of this chapter and its implementing rules as appropriate...’. As stated earlier, based upon a preliminary review of award data from the SPO Procurement Reporting System (PRS) reflecting purchases made by agencies using the administrative rules exemptions for fresh meat and produce and food and fodder for animal, the report reflects at least 99% are being acquired from various local vendors.

This therefore does not substantiate the need to amend the Hawaii product preference law or Hawaii Administrative Rules. This bill is not necessary, and recommend it be held.

LINDA LINGLE
Governor



State of Hawaii
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1428 South King Street
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SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

**TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEES ON
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS
AND
AGRICULTURE
THURSDAY, FEBRUARY 5, 2009
10:30 A.M.
ROOM 312**

**HOUSE BILL NO. 988
RELATING TO PROCUREMENT**

Chairpersons McKelvey and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 988 that eliminates several Procurement Exemptions from Chapter 103D, HRS. The Hawaii Department of Agriculture (HDOA) strongly opposes this bill as it circumvents the administrative rule process and eliminates exemptions supported by HDOA that have been fully vetted by the Procurement Policy Board over the last two years.

HDOA strongly advocated to retain the 103 exemption under Number 9 "Food and Fodder for Animals" for dog and cat foods as elimination of this provision would adversely impact its operation of the Animal Quarantine Station and Airport Animal Quarantine Holding Facility that inspects, processes and quarantines dogs and cats transiting through and entering Hawaii.

In December 2006, the Department provided information justifying retaining the exemption in a letter to the State Procurement Office (refer to attachment 1). Concerns from a technical perspective and the Division's past experience with feeding different

foods is covered in the transmittal. In addition, the Department has provided written (refer to attachments 2 - 4) and/or oral testimony and/or information at Procurement

Policy Board meetings were held in May 2008, June 2008, July 2008 and December 2008 and we testified in support of retaining Exemption No. 9, Food and Fodder for Animals. The Board decided to retain the exemptions.

Labeled analyses for different dog and cat foods do not quantify certain factors such as palatability and other qualities that may not be measured or specified in a procurement solicitation. In addition, feeding trials are not required to evaluate all pet foods prior to production and label analyses may not accurately reflect a diet's performance when fed, further rendering specifications problematic.

Furthermore, it is not feasible for the department to utilize a Qualified Products List of Pre-approved Products because it is not practicable to conduct feeding trials on quarantined animals for different products submitted by vendors to ascertain their suitability. It is also not desirable to experiment with foods on privately owned pets without an existing problem to justify such action. Moreover, adverse consequences or inadequate performance due to a food at a pet's expense should not be required to eliminate a product.

The Animal Quarantine Station feeds several types of dog and cat foods. In addition to maintenance diets for each species, the Station also feeds several specialty diets designed to assist and treat common conditions in kenneled animals such as gastrointestinal disease, inappetance and weight loss. In addition, there are additional specialty foods that the Station does not currently use but may be needed in the future. Optimum pet care dictates that different foods be utilized for different animals and conditions.

Flexibility afforded under the exemption for dog and cat food allows the Station to rapidly procure different diets to optimize animal care by addressing existing or emergent animal health situations in the population. Additionally, the procurement objective of minimizing purchase price is still addressed through quotations.

It is important to note that no testimony was received by the PPB or SPO that opposed retaining Exemption No. 9 during the period when meetings were held on this subject. Furthermore, with the information presented by the Department and other agencies at these meetings, the State Procurement Office has recommended retaining Exemption Number 9 and the exemption was voted on and not eliminated at the December 2008 meeting of the Procurement Policy Board.

The department believes that given the extensive history of deliberations conducted by the Procurement Policy Board regarding this exemption that it is inappropriate to eliminate it when various state and county agencies have expressed serious concerns and its elimination is not supported by the State Procurement Office and Procurement Policy Board.

Regarding the produce and fresh meat Exemption Number 5, we understand that some local produce is successfully being sold to schools and hospitals under this exemption. It's not clear to us that elimination of this exemption would result in helping farmers sell more of their products to these institutions or if it would hurt their existing level of sales. We advise that a cautious approach be taken and not eliminate this exemption until we know what its effect will be.

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

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DEPARTMENT OF AGRICULTURE
Animal Industry Division
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Phone: (808) 483-7151 Fax: (808) 483-7100

December 11, 2006

TO: Aaron S. Fujioka, Administrator
State Procurement Office

SUBJECT: Exemption for Dog and Cat Foods

We request that the 103D exemption be retained and not eliminated for dog and cat foods.

Although the labeled analyses for different dog and cat foods may appear identical, there are other factors and product qualities that cannot be quantified by label analysis or objectively specified in a procurement solicitation. Therein lies some of the problems created by removing all food and fodder from exemption.

The Association of American Feed Control officials (AAFCO) develops recommended standards for the nutrient content of dog and cat foods. Manufacturers can show their food meets AAFCO standards for nutritional adequacy by calculations or by feeding trials (Bren, 2001). However, previous studies have demonstrated that AAFCO approved feeding trials are valid to assess pet food quality whereas chemical analysis or calculated values may not be (Huber et al., 1991). In other words, guaranteed labeled chemical analysis is not as meaningful as results of feeding tests.

One of the major qualities of a dog or cat food product is palatability. It is common for different foods to have identical or relatively similar labels yet have vastly different qualities of acceptance by animals. Conversely, a food may be highly palatable but be undesirable due to its ingredients although the nutritional analyses are similar. Nonetheless, palatability cannot be, and is not, quantified on pet food labels. In a quarantine situation where animals may be confined for up to four months, adding an unpalatable diet as an additional stressor is undesirable and will have adverse effects.

Digestibility is another quality that is not easily determined without actual feeding trials. Depending on the biological availability of the ingredients, the digestibility of products can vary (Earl et al., 1998). For example, cooked carbohydrates (starches) are generally more easily digested than uncooked starch (ISU, AnS320). The bioavailability of other nutrients such as protein is similarly affected by the source. Due to this, less digestible nutrients may pass through the digestive tract without being absorbed and consequently larger volumes of food are required. This in turn creates larger volumes of animal waste to clean and increases potential for gastrointestinal upset. Pet food industry labeling standards do not adequately address digestibility and bioavailability (Michel, 2001).

Food additives such as dyes, colorants and preservative may affect the solid waste produced by an animal. Since the Animal Quarantine Station dog kennel floors are constructed of concrete, certain foods fed in the past have caused staining of the floor that was not easily removed. Those dog foods are no longer used for that reason. This aspect is also difficult to specify and confirm without actually feeding the product.

In addition, the Station has the need to purchase specific specialized veterinary diets to meet the health or medical issues of dogs and cats at the Station. These issues include cardiac, metabolic, gastrointestinal and others. Highly digestible and high caloric foods are two examples used to treat animals with intestinal disease and weight loss respectively. Although the program can require the owner to provide the food, experience has shown that many pet owners do not and the program needs the capability to purchase and provide these and other specialized diets within 24 hours or less.

It is recommended that the selection of foods for the dogs and cats at the Animal Quarantine Station remain flexible by keeping the exemption from 103D to minimize animal health and operational problems and minimize pet owner complaints.

Please contact Dr. Isaac Maeda, Animal Quarantine Branch Manager, at (808) 483-7144 with any questions.



James Foppoli, DVM, PhD, Administrator
Division of Animal Industry

c: Elaine Abe, ASO
Dr. Isaac Maeda, AQB ✓

References

Bren, L., (2001). FDA, Center for Veterinary Medicine, Pet food: the Lowdown on labels, May-June 2001.

Huber, T.L., Laflamme, D.P., Medleau, L., Comer, K.M. & Rakich, P.M., (1991) CVM, UGA, Comparison for assessing adequacy of dog foods, *JAVMA*, Sept. 15, 199(6):731-4.

Iowa State University, Animal Science Lab; AnS320 presentation, Pet food labels.

Earle, K. E., Kienzle, E., Opitz, B., Smith, P.M. & Maskell, I.E., Fiber affects digestibility of organic matter and energy in pet foods, *Journal of Nutrition*, 128;12/2798.

Michel, K., (2001). World Small Animal Veterinary Association, WC Vancouver 2001, Pet food labels: What reading a label will and won't tell you about the food.



LINDA LINGLE
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SANDRA LEE KUNIMOTO
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May 12, 2008

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony to Procurement Exemption No. 9, Chapter 3-120, HAR

The Hawaii Department of Agriculture requests that the 103D exemption number 9 "Food and Fodder for Animals" be retained for dog and cat foods. It is likely the Department will be the primary agency affected by this provision and its elimination will have adverse effects on the Animal Quarantine Station.

The Department manages and operates the Animal Quarantine Station and Airport Animal Quarantine Holding Facility that inspects, processes and quarantines dogs and cats transiting through and entering Hawaii. I have attached a letter dated December 11, 2006 from Dr. James Foppoli, Administrator, Division of Animal Industry to Mr. Aaron Fujioka, Administrator, State Procurement Office. Dr. Foppoli's letter contains the concerns with the elimination of this exemption from a technical perspective. In addition, the Division's past experience with feeding different foods is explained. As detailed in his letter, labeled analyses for different dog and cat foods does not quantify certain factors such as palatability and other qualities that may not be measured or specified in a procurement solicitation. For example, because feeding trials are not required to evaluate all pet foods, label analyses may not accurately reflect a diet's performance when fed.

Therefore, flexibility afforded under the exemption for dog and cat food optimizes animal care while minimizing animal health issues and pet owner complaints. Furthermore, requesting exemption on a case by case basis from the Chief Procurement Officer is cumbersome and may not be timely in certain circumstances.

It is strongly recommended that the exemption from 103D regarding the procurement of foods for dogs and cats at the Animal Quarantine Station and Airport Animal Quarantine Holding Facility be retained.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Lee Kunimoto".

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

Attachment

c: Animal Industry
Elaine Abe, ASO

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

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May 30, 2008

ADMINISTRATION
PROCUREMENT OFFICE
JUN -3 11:30
80

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony in Support of Retaining Procurement Exemption No. 9, Chapter 3-120, HAR

The Hawaii Department of Agriculture strongly recommends that the exemption from 103D exemption number 9 "Food and Fodder for Animals" be retained for dog and cat foods

In response to comments from Procurement Policy Board members at the meeting on May 15, 2008, the Department has requested a determination from the State Procurement Office on whether Restricted Specification Requests for various dog and cat food products is feasible. However, the Department opposes deleting exemption 103D No. 9, Food and Fodder for Animals as it has not been determined that restrictive specifications are a viable alternative.

The Animal Quarantine Station (Station) feeds several types of dog and cat foods. In addition to maintenance diets for each species, the Station also feeds several specialty diets designed to assist and treat common conditions in kenneled animals such as gastrointestinal disease, inappetance and weight loss. In addition, there are additional specialty foods that the Station does not currently use but may be needed in the future. Optimum pet care dictates that different foods may be utilized for different animals and conditions.

Flexibility afforded under the exemption for dog and cat food allows the Station to rapidly procure different diets to address existing or emergent animal health situations in the population.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Lee Kunimoto".

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

Attachments

c: Animal Industry
Elaine Abe, ASO

LINDA LINGLE
Governor



C-11
SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

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November 10, 2008

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony to Procurement Exemption No. 9, Chapter 3-120, HAR

The Hawaii Department of Agriculture strongly requests that the 103D exemption number 9 "Food and Fodder for Animals" be retained for dog and cat foods. The Department will be adversely affected by the elimination of this provision in its operation of the Animal Quarantine Station.

The Department manages and operates the Animal Quarantine Station and Airport Animal Quarantine Holding Facility that inspects, processes and quarantines dogs and cats transiting through and entering Hawaii. I have attached a letter dated December 11, 2006 from Dr. James Foppoli, Administrator, Division of Animal Industry to Mr. Aaron Fujioka, Administrator, State Procurement Office and copies of prior testimonies submitted to the Procurement Policy Board requesting continuance of the exemption for food and fodder for animals. The concerns with the elimination of this exemption from a technical perspective and the Division's past experience with feeding different foods is covered in Dr. Foppoli's letter. For example, labeled analyses for different dog and cat foods do not quantify certain factors such as palatability and other qualities that may not be measured or specified in a procurement solicitation. In addition, feeding trials are not required to evaluate all pet foods and label analyses may not accurately reflect a diet's performance when fed.

The Animal Quarantine Station feeds several types of dog and cat foods. In addition to maintenance diets for each species, the Station also feeds several specialty diets designed to assist and treat common conditions in kenneled animals such as gastrointestinal disease, inappetance and weight loss. In addition, there are additional specialty foods that the Station does not currently use but may be needed in the future. Optimum pet care dictates that different foods be utilized for different animals and conditions.

Flexibility afforded under the exemption for dog and cat food allows the Station to rapidly procure different diets to optimize animal care by addressing existing or emergent animal health situations in the population.

In response to comments from Procurement Policy Board members at the May 15, 2008 meeting, the Department requested a determination from the State Procurement Office (SPO) on whether Restricted Specification Requests for various dog and cat food products is feasible. The SPO has

Memo to Procurement Policy Board
November 10, 2008
Page 2

since concluded that restrictive specifications are not possible with pet foods. Furthermore, requesting exemption on a case by case basis from the Chief Procurement Officer is cumbersome and may not be a viable alternative. Therefore, the Department opposes deleting exemption 103D No. 9, Food and Fodder for Animals and strongly recommends that the exemption be retained for the Animal Quarantine Station and Airport Animal Quarantine Holding Facility.

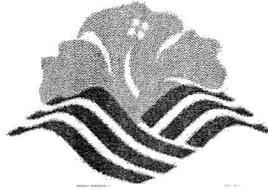
Sincerely,

A handwritten signature in black ink, appearing to read 'Sandra Lee Kunimoto', written in a cursive style.

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

Attachment

c: Animal Industry Div.
Keith Aragaki, ASO



KONA COUNTY FARM BUREAU
P.O. Box 2341 • Kealahou, Hawaii 96750
Phone: 324-6011

February 4, 2008

House of Representatives Committee on Agriculture
House Committee on Economic Revitalization, Business, & Military Affairs

Testimony on HB 988
(RELATING TO PROCUREMENT)

Chairman Clift Tsuji, Chairman Angus L.K. McKelvey and Committee Members:

The Kona County Farm Bureau respectfully submits testimony in support of HB 988.

As the sponsors of the three-year old Keauhou Farmers Market, the Kona County Farm Bureau Board of Directors feel very strongly that we need to encourage the "Buy Local" campaign as a means of reducing our dependence on imported food and developing our local agriculture industry.

In 1994, Act 186 created a "preference" for purchase of Hawaii products, which was codified into part X of chapter 103D, Hawaii Revised Statutes. The purpose was to provide Hawaii businesses a procurement preference similar to the federal government's "Buy American Act" under Federal Acquisition Regulation 52.225-1.

The amendments proposed in HB 988 will increase the effectiveness of Act 186, serving its original intended purpose in support of Hawaii-grown products.

Thank you for providing this opportunity to share with you the position of the Kona County Farm Bureau.

Sincerely yours,

Nancy Pisicchio
President