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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 creative problem  
2 solving is necessary to address the growing concerns of the  
3 State's deficit. Hawaii is responsible for unfunded liabilities  
4 totaling billions of dollars. Like many states, Hawaii must  
5 balance its budget while managing the demands of infrastructure  
6 maintenance and public service needs. Budget shortfalls result  
7 in postponed maintenance and reduced social services despite a  
8 growing population driving the demand for services and adding  
9 stress to public infrastructure.

10           The legislature finds that the State's process of acquiring  
11 goods and services must be agile to accommodate circumstances  
12 where other than full competition is necessary to address a  
13 unique need, such as local food purchasing or where  
14 nontraditional procurement practices, such as public-private  
15 partnerships, can help government maintain infrastructure,  
16 provide services, and operate more efficiently.

17           A public-private partnership is a contractual agreement  
18 between a public agency and a private sector entity where skills



1 and assets of each sector are combined to deliver services to  
2 the public. Both entities share in the risks and rewards of the  
3 venture. A public-private partnership is not privatization of a  
4 government function. The partnership provides for a level of  
5 public control and oversight of operations not typical of  
6 privatization.

7 While public-private partnerships are widely employed  
8 around the world, only five states have adopted comprehensive  
9 legislation authorizing governmental entities to contract with  
10 private partners to design, build, finance, operate, and  
11 maintain public facilities. Public-private partnerships have  
12 been created to address social infrastructure, transportation,  
13 water treatment, energy, and financial management concerns. The  
14 private sector contributes management efficiency, technology,  
15 cash flow management, and personnel development to complement  
16 the government's legal authority, capital resources, procurement  
17 policies, and broad perspective.

18 The purpose of this Act is to provide the State greater  
19 flexibility in procurement by establishing a process for special  
20 innovative procurement and generating a framework for public-  
21 private partnerships in Hawaii.



1 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§103D- Special innovative procurement. (a) Contracts  
5 for supplies, services, professional services, or construction  
6 may be awarded with other than full competition using a special  
7 innovative procurement process in accordance with this section  
8 and procedures set forth in rules adopted by the procurement  
9 policy board. The special innovative procurement process  
10 authorized by this section shall only be used when the chief  
11 procurement officer determines in writing that it is  
12 advantageous to the State to use the process for procurement of  
13 new or unique requirements of the State, new technologies, or to  
14 achieve best value.

15 (b) The head of the purchasing agency shall submit a  
16 procurement plan developed pursuant to this section to the  
17 attorney general for review and approval as to form before  
18 issuing the notice required under subsection (c).

19 (c) Notice of the invitation for bids shall be given in  
20 the same manner as provided in section 103D-302(c).



1        (d) Nothing in this section shall preclude the adoption of  
2 rules providing for the use of bonuses instead of preferences in  
3 a procurement of construction.

4        (e) A written determination of the basis for the  
5 procurement and for the selection of the particular contractor  
6 shall be included by the head of the purchasing agency in the  
7 contract file, and a report shall be made by the head of the  
8 purchasing agency at least annually describing all  
9 determinations made since the last annual report. The report  
10 shall be transmitted to the administrator of the state  
11 procurement office who shall make the report publicly  
12 available."

13        SECTION 3. Section 103D-301, Hawaii Revised Statutes, is  
14 amended to read as follows:

15        "**§103D-301 Methods of source selection.** Unless otherwise  
16 authorized by law, all contracts shall be awarded pursuant to  
17 the following sections, as applicable:

- 18        (1) Section 103D-302 (Competitive sealed bids);  
19        (2) Section 103D-303 (Competitive sealed proposals);  
20        (3) Section 103D-304 (Professional services procurement);  
21        (4) Section 103D-305 (Small purchases);



- 1 (5) Section 103D-306 (Sole source procurement); [~~and~~]
- 2 (6) Section 103D-307 (Emergency procurements) [~~-~~]; and
- 3 (7) Section 103D- (Special innovative procurement)."

4 SECTION 4. (a) The procurement policy board shall draft  
5 rules for special innovative procurements, including but not  
6 limited to public-private partnership contracts.

7 (b) The rules for public-private partnerships shall  
8 include but not be limited to the following:

- 9 (1) A requirement that a public-private partnership  
10 contract include a long-term maintenance and  
11 operations scope;
- 12 (2) Provisions that require a suitability test wherein a  
13 centralized governmental entity with expertise in  
14 public-private partnership delivery and financial  
15 modeling compares the value of long-term leases to  
16 existing project delivery models before issuing any  
17 requests for qualifications or proposals, which would  
18 be triggered after satisfaction of basic threshold  
19 requirements for public-private partnerships;
- 20 (3) Provisions that require the government to have an  
21 independent consultant or in-house expert in



- 1 facilities planning, design, and construction assess  
2 the long-term projected needs of the government before  
3 considering the use of a public-private partnership;  
4 advise the government prior to solicitation; and  
5 continue serving as advisor to the government  
6 throughout the planning, design, and construction  
7 phases;
- 8 (4) Comprehensive statutory guidelines that apply to all  
9 state entities to provide a uniform, fair process that  
10 enables private developers to properly assess the  
11 risks and rewards of engagement;
- 12 (5) Provisions that encourage communication between design  
13 professionals and the end user during the request for  
14 proposals phase so the government end user is  
15 empowered to provide direct, meaningful input to the  
16 competitor design teams developing the proposed  
17 designs; and
- 18 (6) Provisions that enable small businesses to compete.
- 19 (c) The procurement policy board shall report the draft  
20 rules for public-private partnerships and any proposed



1 legislation to the legislature no later than twenty days prior  
2 to the convening of the regular session of 2017.

3 SECTION 5. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$65,000 or so much  
5 thereof as may be necessary for fiscal year 2015-2016 and the  
6 same sum or so much thereof as may be necessary for fiscal year  
7 2016-2017 for a temporary position within the department of  
8 accounting and general services, not to exceed two years from  
9 the effective date of this Act, with duties to include but not  
10 be limited to assisting the procurement policy board in the  
11 research and development of special innovative procurements and  
12 public-private partnership rules.

13 The sums appropriated shall be expended by the department  
14 of accounting and general services for the purposes of this Act.

15 SECTION 6. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

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

20 SECTION 8. This Act shall take effect on July 1, 2050;  
21 provided that section 5 shall take effect on July 1, 2050.



**Report Title:**

State Procurement Office; Special Innovative Procurement;  
Public-private Partnerships; Procurement Policy Board; Rules;  
Appropriation

**Description:**

Establishes the special innovative procurement process for procurement of supplies, services, professional services, and construction. Requires the procurement policy board to establish procedures for use of the special innovative procurement process. Requires the procurement policy board to develop draft rules regarding special innovative procurements, including public-private partnerships in Hawaii, and to report the draft rules and any proposed legislation to the 2017 legislature. Makes an appropriation to fund a temporary position to assist the procurement policy board in drafting rules. Effective 7/1/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**DAVID Y. IGE**  
Governor

**SHAN S. TSUTSUI**  
Lt. Governor



**SCOTT E. ENRIGHT**  
Chairperson, Board of Agriculture

**PHYLLIS SHIMABUKURO-GEISER**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS**

March 18, 2015  
10:15 A.M.

CONFERENCE ROOM 312

**SENATE BILL NO. 1228 SD2  
RELATING TO PROCUREMENT**

Chairperson Kawakami and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1228 SD2. This measure establishes a special innovative procurement process for acquisition of supplies, services, professional services, or construction. It requires the establishment of procedures and rules by the Procurement Policy Board for use in the special innovative procurement process, and makes an appropriation out of the general funds for a temporary position within the Department of Accounting and General Services for 2015-2017 to assist with the special innovative procurements.

The Department of Agriculture supports this measure that could result in allowing Hawaii's agricultural industry the opportunity to sell Hawaii-grown agricultural products to government institutions including schools and prisons. In turn, this can challenge all components of Hawaii's agricultural industry, including non-governmental organizations such as the Ulupono Initiative, to work together to facilitate opportunities while achieving transparency and accountability.

Thank you for the opportunity to present our testimony.



DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

PAULA A. YOUNGLING  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Telephone: (808) 587-4700  
e-mail: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>

TESTIMONY

OF

SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE

ON

ECONOMIC DEVELOPMENT & BUSINESS

MARCH 18, 2015, 10:15 A.M.

SENATE BILL 1228, SD2  
RELATING TO PROCUREMENT

Chair Kawakami, Vice-Chair Kong, and members of the committee, thank you for the opportunity to submit testimony on SB 1228, SD2.

The State Procurement Office (SPO) is in **STRONG SUPPORT** of the measure with suggested revision set forth below.

SB 1228, SD2 creates a new section within Hawaii Revised Statutes chapter 103D to address what are called special innovative procurements. Among public procurement's guiding principles are value and transparency. Value ensures prudent use of taxpayer dollars. Transparency ensures accountability and system integrity, which in turn, fosters public confidence. These guiding principles are built into HRS chapter 103D, our State Procurement Code.

Special innovative procurements allow the State to procure when unusual or unique circumstances exist that require other than full competition, when standard procurement procedures would be contrary to the public interest. Unlike an exemption, special innovative procurements are an alternative process **within** the procurement code. This means that the State can effectively respond to unique needs or situations and maintain the accountability and transparency of the procurement and resulting management of the contract. In other words, special innovative procurements help to avoid costly and embarrassing missteps that can occur with exemptions. In fact, our research shows that several states currently apply similar statute, and the ABA 2000 Model Procurement Code recommends the use of special innovative procurements.

The language of SB1228, SD2 tracks the language found in the Alaska innovative procurements statute (AS § 36.30.308). Although aimed at flexibility to accommodate unique circumstances, special innovative procurement statutes have protections built in, which require a written determination by the CPO, notice, and a published record to be maintained. Such safeguards ensure the special innovative procurement will be utilized only in unusual or unique circumstances and only if advantageous to the state, best value can be achieved, and the public interest will be promoted in a manner not practicably realized under standard procurement procedures.

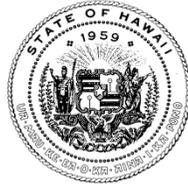
The SPO suggests the following revisions:

On page 4, lines 8 thru 11: “. . . The report shall be transmitted to the A[a]dministrator of the S[s]tate P[p]rocurement O[o]ffice who shall make the report [~~publicly~~] publically available.”

Explanation: Correct spelling and grammar. Include rulemaking also for special innovative procurements other than public private partnerships.

Thank you.

DAVID Y. IGE  
GOVERNOR



FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

March 18, 2015  
10:15 a.m.  
State Capitol, Room 312



**S.B. 1228, S.D. 2**  
**RELATING TO PROCUREMENT**

House Committee on Economic Development and Business

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The Department of Transportation (DOT) **supports** the purpose of this bill which proposes to provide for the establishment of a special innovative procurement process and generating a framework for public-private partnerships in Hawaii.

Although the DOT utilizes all methods of procurement, there are situations when a procurement method does not fit the DOT purchasing needs. The purpose of a special innovative procurement process may provide the DOT with flexibility in procuring new, unique, and specialized goods, services, or construction within the parameters of the procurement code.

This bill as proposed does include a procurement checks and balances provision (Chief Procurement Officer, (CPO) to provide written determination) intending to ensure the use of a particular innovative procurement is advantageous to the State, or to achieve best value.

Thank you for the opportunity to provide testimony.

kong2 - Brenden

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, March 18, 2015 9:03 AM  
To: edbtestimony  
Cc: mmiranda1@honolulu.gov  
Subject: \*Submitted testimony for SB1228 on Mar 18, 2015 10:15AM\*

**LATE**

**SB1228**

Submitted on: 3/18/2015

Testimony for EDB on Mar 18, 2015 10:15AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa Miranda-Johnson	City and County of Honolulu	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Email: [communications@uluponoinitiative.com](mailto:communications@uluponoinitiative.com)

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS  
Wednesday, March 18, 2015 — 10:15 a.m. — Room 312

### **Ulupono Initiative Strongly Supports SB 1228 SD 2, Relating to Procurement**

Dear Chair Kawakami, Vice Chair Kong, and Members of the Committee:

My name is Brandon Lee and I am the policy and public-private partnership associate of the Ulupono Initiative, a Hawai'i-based impact investment company that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase clean, renewable energy, and waste reduction. We believe that self-sufficiency is essential to our future prosperity, and will help shape a future where economic progress and environmental stewardship work hand in hand.

**Ulupono strongly supports SB 1228 SD 2**, which creates a new class within the procurement code that allows for an innovative competitive procurement process to achieve the best results. Two examples of where Ulupono sees great value in this proposed procurement process:

First, Ulupono has identified procuring more locally grown foods by governmental institutions such as prisons, hospitals, and schools can lead to more locally grown foods in Hawai'i. This bill would allow for flexibility within the procurement code to create a customizable procurement process for locally grown foods. Through a more customized procurement process, the goal is to provide more transparency and written contracts to allow for more opportunities for our local farmers to supply the bulk purchases that governmental institutions can provide.

Second, in these tight budgetary times, the State is looking at new and innovative ways to build and maintain infrastructure and services for the taxpayer. One method to obtain funding for these projects is a public-private partnership. However, these projects require flexibility for the private sector with accountability for the public sector. Under this proposed process, public-private partnership projects can be customized so that the parties needs can be better satisfied.

While procurement rules can be daunting, they exist to provide accountability through processes. Often, there are various efforts to exempt categories from the procurement code, some successful and some not. Regardless of an exemption's effectiveness, it creates a system where applicants and regulators need to navigate various procurement processes

*Investing in a Sustainable Hawai'i*



and jurisdictions to participate effectively. This increases costs for both businesses and the government. The special / innovative procurement class can create flexibility for key categories that require it while still keeping the overall management under the expert eyes of the procurement office. Furthermore, keeping procurement processes within the procurement office, helps to provide liability protection and contract management controls for the State.

Currently, at least 9 states currently have a program for special/innovative procurements, 39 states include options for other than full competition within the procurement code, and all states allow for exemptions of some kind outside of their procurement code.

As the issues we face in Hawai'i become more complex and challenging, there needs to be updated policies to address and overcome them. We appreciate this committee's efforts to look at new solutions.

We believe that working together we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Brandon Lee  
Policy and Public-Private Partnership Associate

kong2 - Brenden

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, March 17, 2015 9:50 AM  
To: edbtestimony  
Cc: bcole47@hawaiiantel.net  
Subject: Submitted testimony for SB1228 on Mar 18, 2015 10:15AM

**SB1228**

Submitted on: 3/17/2015

Testimony for EDB on Mar 18, 2015 10:15AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Betsy Cole	The Kohala Center	Support	No

Comments: The Kohala Center supports this bill in order to create greater opportunity for institutional purchasing of locally produced food products. Such opportunities are key to increasing demand, and therefore, the supply of local food as a primary strategy to build a strong and resilient rural economy in Hawaii.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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# Hawai'i Farm to School and School Garden Hui



Coordinated through The Kohala Center

## TESTIMONY

Senate Committee on Economic  
Development & Business  
March 18, 2015, 10:15 a.m.

**LATE**

### Kaua'i

Tiana Kamen  
*Farm to Keiki Preschool Program*

Keone Kealoha  
*Mālama Kaua'i  
Kaua'i School Garden Network*

### O'ahu

Hunter Heavilin  
*O'ahu Farm to School Network*

Natalie McKinney  
*Kōkua Hawai'i Foundation*

Debbie Millikan  
*Iolani School*

Elysa Ermatinger  
*Hoa 'Āina O Makaha*

Mahealani Matsuzaki  
*Kamehameha Schools  
'Āina-Based Education*

Terri Langley  
*MA'O Organic Farms*

Jayne Grzebik  
*University of Hawai'i  
Master Gardeners*

### Moloka'i

Harmonee Williams  
*Sustainable Moloka'i  
Moloka'i School Garden Network*

### Maui & Lana'i

Lehn Huff  
*Maui & Lana'i School Garden Network*

Nio Kindla & Kirk Surry  
*Grow Some Good*

### Hawai'i Island

Nancy Redfeather & Donna Mitts  
*The Kohala Center  
Hawai'i Island School Garden Network*

### Statewide

Jennifer Ryan & Leimomi Dierks  
*Hawai'i Department of Health*

Dexter Kishida  
*Hawai'i Department of Education, SFSB*

Jennifer Dang  
*Hawai'i Department of Education, HCNP*

Lillian Coltin  
*Hawai'i Department of Education*

Andrea Snow  
*FoodCorps*

### Pacific Region

Dr. Koh Ming Wei  
*Pacific Resources for Education and Learning*

## SB1228 SD2: RELATING TO PROCUREMENT

Chair Kawakami, Vice Chair Kong, and Members of the Committee,

The Hawai'i Farm to School and School Garden Hui **strongly supports** SB1228 SD2, which provides for the establishment of a special innovative procurement process for the procurement of supplies, services, professional services, or construction, and requires the establishment of procedures by the procurement policy board for use of the special innovative procurement process.

Formed in 2010, the Hawai'i Farm to School and School Garden Hui is a statewide network comprised of six island-level networks, along with representatives of the Hawai'i Departments of Education and Health, whose mission is to strengthen Hawai'i's statewide farm to school and school garden movement.

**Proper procurement policies and procedures are essential to a successful statewide farm to school program.** In its current form, our state's procurement code represents a burdensome obstacle to the purchase of fresh, locally grown foods for school meals and snacks by the Hawai'i Department of Education's School Food Services Branch. Rather than create an exemption, we strongly support this bill to create a special innovative procurement process that will facilitate **all** state agencies in the purchasing of fresh, locally grown foods.

### **The Economic Impact of Purchasing Locally Grown Food**

A 2008 report from the University of Hawai'i College of Tropical Agriculture and Human Resources, entitled "**Economic Impacts of Increasing Hawai'i's Food Self-Sufficiency**" (P. Leung and M. Loke; <http://hdoa.hawaii.gov/add/files/2012/12/FoodSSReport.pdf>) states:

- \$3.7 billion was spent on food expenditures by local consumers in 2004-2005. Assuming that 85% of the food we consumed is imported, this translates to **\$3.1 billion leaving our state to support agribusinesses elsewhere.**
- Replacing the purchase of only **10% of imported foods with locally produced food could amount to some \$313 million**, or \$94 million in revenue at the farm level, assuming a 30% farm share.
- Taking into account the multiplier effect of 2.0 (as outlined in the report), this \$94 million would generate **an estimated economy-wide impact of \$188 million in sales, \$47 million in earnings, \$6 million in state tax revenues, and more than 2,300 jobs.**

**Please also take into account the recommended revisions provided by the State Procurement Office for this bill.** Mahalo for the opportunity to testify.

Sincerely,

Lydi Morgan Bernal  
Coordinator  
schoolgardenhui@kohalacenter.org  
www.hawaiischoolgardenhui.org

