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# A BILL FOR AN ACT

RELATING TO STATE PROCUREMENT REFORM.

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

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

4           "§103D-       Cost overruns; liability determination. In the  
5 event of construction cost overruns, a procurement officer shall  
6 create a report documenting the determination whether to pursue  
7 damages against a design professional or contractor. The report  
8 shall identify the factors used by the procurement officer in  
9 making the procurement officer's determination.

10           §103D-       Professional services; disqualified vendors.  
11 The chief procurement officer shall develop a list of all  
12 construction companies and design professionals who are in  
13 noncompliance with a provision of this chapter or have  
14 outstanding fines or other penalties incurred for violations of  
15 this chapter. This list shall be made publicly available on the  
16 state procurement office's website. Noncompliant construction



1 companies and design professionals shall remain on the list for  
2 five years."

3 SECTION 2. Chapter 672B, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§672B- Cost overrun. Construction cost overruns shall  
7 constitute a tort for the purposes of this chapter."

8 SECTION 3. Section 103D-302, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) An invitation for bids shall be issued, and shall  
11 include a purchase description [~~and~~], all contractual terms and  
12 conditions applicable to the procurement[-], and a liability  
13 contingency fund of \_\_\_\_\_ per cent of the project cost to avoid  
14 cost overruns. If the invitation for bids is for construction,  
15 it shall specify that all bids include the name of each person  
16 or firm to be engaged by the bidder as a joint contractor or  
17 subcontractor in the performance of the contract and the nature  
18 and scope of the work to be performed by each. Construction  
19 bids that do not comply with this requirement may be accepted if  
20 acceptance is in the best interest of the State and the value of  
21 the work to be performed by the joint contractor or



1 subcontractor is equal to or less than one per cent of the total  
2 bid amount."

3 SECTION 4. Section 103D-110, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) The state procurement office, in cooperation with the  
6 department of human resources development, shall develop and  
7 maintain a procurement practices training and development  
8 program for procurement officers of the State and the several  
9 counties, to ensure that an agency's procurement practices are  
10 in compliance with the procurement code and that proper  
11 procurement decisions are made consistent with this chapter.  
12 The program shall include [a]:

13 (1) A mandatory fundamental training and development  
14 session; provided that this session shall include  
15 training on the procurement officer's duty to hold  
16 design professionals contractually liable for breaches  
17 of professional standards; and

18 (2) [~~follow-up~~] Follow-up training and development  
19 sessions."

20 SECTION 5. Section 103D-206, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§103D-206 Additional duties of the administrator of the**  
2 **procurement office.** In addition to the duties referred to in  
3 section 103D-205, the administrator shall:

4           (1) Perform periodic review of the procurement practices  
5                 and procedures of all governmental bodies, in  
6                 collaboration with the state procurement policy board,  
7                 for compliance with the procurement code;

8           (2) Assist, advise, and guide governmental bodies in  
9                 matters relating to procurement;

10          (3) Determine corrective actions; provided that if a  
11                 procurement officer under the jurisdiction of the  
12                 administrator of the state procurement office or a  
13                 chief procurement officer of any of the other state  
14                 entities under section 103D-203, fails to comply with  
15                 any determination rendered by the administrator within  
16                 thirty days from the date of the issuance of the  
17                 determination, or longer if permitted by the  
18                 administrator upon request by the procurement officer  
19                 or a chief procurement officer, the procurement  
20                 officer or chief procurement officer shall be subject



1 to an administrative fine under section 103D-106, for  
2 every day of noncompliance;

3 (4) Develop and administer a statewide procurement  
4 orientation and training program[+], which shall  
5 include training on the use of contractors for  
6 program, project, construction, and liability  
7 management services, and which shall align with  
8 current federal practices;

9 (5) Develop, distribute, and maintain a procurement manual  
10 for all state procurement officials; and

11 (6) Develop, distribute, and maintain a procurement guide  
12 for vendors wishing to do business with the State and  
13 its counties."

14 SECTION 6. Section 672E-1, Hawaii Revised Statutes, is  
15 amended by amending the definition of "construction defect" to  
16 read as follows:

17 ""Construction defect" means a deficiency in, or arising  
18 out of, the design, specifications, surveying, planning,  
19 construction, supervision, or observation of construction of a  
20 dwelling or premises. "Construction defect" includes  
21 construction cost overruns."



1 SECTION 7. The chief procurement officer shall adopt or  
2 amend rules pursuant to chapter 91, Hawaii Revised Statutes, to  
3 allow state procurement officers to request that cost or pricing  
4 data be certified upon the initial bid submission and not after  
5 the conclusion of contract negotiations.

6 SECTION 8. (a) There is established the procurement  
7 professional standards task force within the department of  
8 accounting and general services for administrative purposes.  
9 The task force shall be co-chaired by the comptroller and the  
10 chief procurement officer and consist of five other members to  
11 be invited by the state comptroller. The task force shall  
12 develop professional standards for non-state parties involved in  
13 the procurement process.

14 (b) The task force shall submit a report of its findings  
15 and recommendations, including any proposed legislation, to the  
16 legislature no later than twenty days prior to the convening of  
17 the regular session of 2022.

18 SECTION 9. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 10. This Act shall take effect on July 1, 2112.



**Report Title:**

State Procurement Code; Procurement Officers; Training; Design Professionals; Construction Cost Overruns; Task Force

**Description:**

Requires procurement officers to document whether to pursue a design professional or contractor for damages in the event of construction cost overruns. Requires the chief procurement officer to compile a public list of construction companies or design professionals that are in noncompliance with the procurement code or owe penalties. Makes construction cost overruns a tort for purposes of the design claim conciliation panel. Requires bids for a contract under the competitive sealed bidding process to include a liability contingency fund. Requires the state procurement office to include training on the duty of procurement officers to hold design professionals liable for breaches of professional standards. Makes cost overruns a construction defect for the purposes of the contractor repair act. Establishes a procurement professional standards task force. Effective 7/1/2112. (HD1)

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