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# A BILL FOR AN ACT

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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 not in  
13       compliance with a provision of this chapter or have outstanding  
14       finances or other penalties incurred for violations of this  
15       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-110, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) The state procurement office, in cooperation with the  
11 department of human resources development, shall develop and  
12 maintain a procurement practices training and development  
13 program for procurement officers of the State and the several  
14 counties, to ensure that an agency's procurement practices are  
15 in compliance with the procurement code and that proper  
16 procurement decisions are made consistent with this chapter.

17 The program shall include [a]:

18 (1) A mandatory fundamental training and development  
19 session; provided that this section shall include  
20 training on the procurement officer's duty to hold



1           design professionals contractually liable for breaches  
2           of professional standards; and

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

5           SECTION 4.   Section 103D-206, Hawaii Revised Statutes, is  
6   amended to read as follows:

7           "**§103D-206   Additional duties of the administrator of the**  
8   **procurement office.**   In addition to the duties referred to in  
9   section 103D-205, the administrator shall:

- 10           (1)   Perform periodic review of the procurement practices  
11               and procedures of all governmental bodies, in  
12               collaboration with the state procurement policy board,  
13               for compliance with the procurement code;
- 14           (2)   Assist, advise, and guide governmental bodies in  
15               matters relating to procurement;
- 16           (3)   Determine corrective actions; provided that if a  
17               procurement officer under the jurisdiction of the  
18               administrator of the state procurement office or a  
19               chief procurement officer of any of the other state  
20               entities under section 103D-203, fails to comply with  
21               any determination rendered by the administrator within



thirty days from the date of the issuance of the determination, or longer if permitted by the administrator upon request by the procurement officer or a chief procurement officer, the procurement officer or chief procurement officer shall be subject to an administrative fine under section 103D-106, for every day of noncompliance;

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

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

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

SECTION 5. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:



1       "(b) An invitation for bids shall be issued, and shall  
2 include a purchase description [~~and~~], all contractual terms and  
3 conditions applicable to the procurement[~~-~~], and a liability  
4 contingency fund of \_\_\_\_\_ per cent of the project cost to avoid  
5 cost overruns. If the invitation for bids is for construction,  
6 it shall specify that all bids include the name of each person  
7 or firm to be engaged by the bidder as a joint contractor or  
8 subcontractor in the performance of the contract and the nature  
9 and scope of the work to be performed by each. Construction  
10 bids that do not comply with this requirement may be accepted if  
11 acceptance is in the best interest of the State and the value of  
12 the work to be performed by the joint contractor or  
13 subcontractor is equal to or less than one per cent of the total  
14 bid amount."

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

18       ""Construction defect" means a deficiency in, or arising  
19 out of, the design, specifications, surveying, planning,  
20 construction, supervision, or observation of construction of a



1 dwelling or premises. "Construction defect" includes  
2 construction cost overruns."

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

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

16 (b) The task force shall submit a report of its findings  
17 and recommendations, including any proposed legislation, to the  
18 legislature no later than twenty days prior to the convening of  
19 the regular session of 2023.

20 SECTION 9. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# H.B. NO. 2492

1 SECTION 10. This Act shall take effect on July 1, 2022.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to be "C. E. O. G.", written over a horizontal line.

JAN 26 2022



# H.B. NO. 2492

**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 noncompliant or owe penalties. Makes construction cost overruns a tort for purposes of the design claim conciliation panel. Requires the state procurement office to include training on the duty of procurement officers to hold design professionals liable for breaches of professional standards. Requires bids for a contract under the competitive sealed bidding process to include a liability contingency fund. Makes cost overruns a construction defect for the purposes of the contractor repair act. Establishes a procurement professional standards task force.

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