
A BILL FOR AN ACT

RELATING TO STATE PROCUREMENT REFORM.

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

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

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

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

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

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



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

The program shall include [a]:

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

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

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

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



- 1 (1) Perform periodic review of the procurement practices
2 and procedures of all governmental bodies, in
3 collaboration with the state procurement policy board,
4 for compliance with the procurement code;
- 5 (2) Assist, advise, and guide governmental bodies in
6 matters relating to procurement;
- 7 (3) Determine corrective actions; provided that if a
8 procurement officer under the jurisdiction of the
9 administrator of the state procurement office or a
10 chief procurement officer of any of the other state
11 entities under section 103D-203, fails to comply with
12 any determination rendered by the administrator within
13 thirty days from the date of the issuance of the
14 determination, or longer if permitted by the
15 administrator upon request by the procurement officer
16 or a chief procurement officer, the procurement
17 officer or chief procurement officer shall be subject
18 to an administrative fine under section 103D-106, for
19 every day of noncompliance;
- 20 (4) Develop and administer a statewide procurement
21 orientation and training program[+], which shall



1 include training on the use of contractors for
2 program, project, construction, and liability
3 management services, and which shall align with
4 current federal practices;

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

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

10 SECTION 5. Section 672E-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "construction defect" to
12 read as follows:

13 "Construction defect" means a deficiency in, or arising
14 out of, the design, specifications, surveying, planning,
15 construction, supervision, or observation of construction of a
16 dwelling or premises. "Construction defect" includes
17 construction cost overruns."

18 SECTION 6. The chief procurement officer shall adopt or
19 amend rules pursuant to chapter 91, Hawaii Revised Statutes, to
20 allow state procurement officers to request that cost or pricing



1 data be certified upon the initial bid submission and not after
2 the conclusion of contract negotiations.

3 SECTION 7. (a) The state procurement office shall conduct
4 a study to gather data on the appropriateness of requiring bids
5 for a contract with the State to include a liability contingency
6 fund to avoid cost overruns, including the appropriate percent
7 of the project cost to be deposited into the project's liability
8 contingency fund.

9 (b) The state procurement office shall submit a report on
10 the study, including its findings, recommendations, and any
11 proposed legislation, to the legislature no later than twenty
12 days prior to the convening of the regular session of 2023.

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



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

5 SECTION 9. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so
7 much thereof as may be necessary for fiscal year 2022-2023 for:

8 (1) Research and development of training manuals and for a

9 design training workshop as required pursuant to

10 sections 103D-110(b)(1) and 103D-206(4), Hawaii

11 Revised Statutes;

12 (2) Two full-time equivalent (2.00 FTE) positions; and

13 (3) The procurement professional standards task force

14 established pursuant to section 8 of this Act.

15 The sum appropriated shall be expended by the state
16 procurement office for the purposes of this Act.

17 SECTION 10. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 11. This Act shall take effect on July 1, 2112.

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Report Title:

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

Description:

Requires procurement officers to document whether to pursue a design professional or contractor for damages in the event of construction cost overruns. Makes cost overruns a construction defect for the purposes of the contractor repair act. 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 the state procurement office to conduct a study on the appropriateness of a liability contingency fund for cost overruns in bids for state contracts and report to the legislature. Establishes a procurement professional standards task force. Appropriates funds. Effective 7/1/2112. (HD1)

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

