

JAN 21 2022

A BILL FOR AN ACT

RELATING TO THE STATE PROCUREMENT POLICY BOARD.

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

1 SECTION 1. The legislature finds that boards and
2 commissions provide an opportunity for citizens to have a voice
3 in government and provide a means to influence decisions that
4 shape the quality of life for the residents of the State.

5 However, vacancies on these boards and commissions pose
6 challenges for some agencies in fulfilling their duties.

7 The state procurement policy board is one example of where
8 vacancies can hamper state processes. The board was formed to
9 adopt, amend, or repeal administrative rules to carry out and
10 effectuate the purpose and provisions of chapter 103D, Hawaii
11 Revised Statutes, the Hawaii public procurement code, which
12 governs the procurement, management, control, and disposal of
13 any and all goods, services, construction, and chapter 103F,
14 which governs the purchases of health and human services. Other
15 duties of the board are to consider and decide matters of
16 policy, including those referred by a chief procurement officer,
17 audit and monitor the implementation of its rules and the



1 requirements of its statutes, and consider applicants for the
2 position of the state procurement administrator. Unfortunately,
3 because the board has been unable to meet due to several
4 vacancies, such vital tasks are left pending. Repealing the
5 policy procurement board and transferring its duties to the
6 state procurement administrator will increase efficiency in
7 government and facilitate the rule-making process for
8 procurement in the State.

9 The purpose of this Act is to:

- 10 (1) Amend the appointment process of the administrator of
11 the state procurement office;
12 (2) Transfer the authority and responsibilities of the
13 state procurement policy board to the administrator of
14 the state procurement office;
15 (3) Repeal the procurement policy board nominating
16 committee; and
17 (4) Repeal the state procurement policy board.

18 SECTION 2. Section 103D-108, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§103D-108 Compliance audit unit; duties and**
21 **responsibilities.** The compliance audit unit shall:



- (1) Review and assess applicable innovations in procurement methods or processes in other governmental jurisdictions or as described in national or regional publications;
- (2) Review current or proposed statutes and rules to determine whether they promote fairness, efficiency, and accountability in the procurement process;
- (3) Review selected contracts awarded pursuant to section 103D-304;
- (4) Conduct studies, research, and analyses, and make reports and recommendations with respect to existing and new methods of procurement and other matters within the jurisdiction of the ~~[policy board]~~ state procurement office;
- (5) Establish and maintain a procurement library;
- (6) Report to the appropriate agency and the chief procurement officer stating the areas of noncompliance and recommendations for remedial action; and
- (7) Be present at legislative hearings ~~[and policy board meetings]~~ to present the findings of the unit."



SECTION 3. Section 103D-204, Hawaii Revised Statutes, is amended to read as follows:

"§103D-204 Establishment of the state procurement office; administrator. (a) There shall be a state procurement office, placed for administrative purposes only, within the department of accounting and general services, which shall be headed by the administrator of the state procurement office. The administrator shall be the chief procurement officer for those governmental bodies of the executive branch as provided in section [†]103D-203(a)(8)[†]. The administrator shall be a full-time public official. The administrator shall serve a term of four years, and shall be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development, without diminution during the administrator's term of office unless by general law applying to all deputies or assistants to department heads.

(b) The administrator shall be appointed by the governor ~~[from a list of no less than three and no more than five names submitted by the policy board]~~. The appointment of the administrator shall require the advice and consent of the senate. The administrator may only be removed from office by



1 the governor, provided the governor shall give prior
2 notification of ~~[such]~~ the removal to ~~[the chairperson of the~~
3 ~~policy board,~~] the president of the senate~~[,]~~ and the speaker of
4 the house of representatives.

5 (c) The administrator shall have:

6 (1) A minimum of five years experience in public
7 procurement within twelve years preceding the date of
8 appointment; and

9 (2) Demonstrated executive and organizational ability.

10 (d) The administrator shall operate independently of the
11 comptroller. The administrator may appoint and dismiss a
12 private secretary without regard to chapters 76 and 89, who
13 shall serve at the administrator's pleasure. The comptroller
14 shall provide support to permit the administrator to satisfy
15 ~~[all of]~~ the administrator's responsibilities as the chief
16 procurement officer for those governmental bodies of the
17 executive branch of the State for which a chief procurement
18 officer is not otherwise designated.

19 (e) Except as otherwise provided in this chapter, the
20 state procurement office shall have the authority and
21 responsibility to adopt rules, consistent with this chapter,



1 governing the procurement, management, control, and disposal of
2 any and all goods, services, and construction. All rules shall
3 be adopted in accordance with chapter 91; provided that the
4 state procurement office shall have the power to issue interim
5 rules by procurement directives, which shall be exempt from the
6 public notice, public hearing, and gubernatorial approval
7 requirements of chapter 91. The interim rules shall be
8 effective for not more than eighteen months. The state
9 procurement office shall consider and decide matters of policy
10 within the scope of this chapter including those referred to it
11 by a chief procurement officer. The state procurement office
12 shall have the power to audit and monitor the implementation of
13 its rules and the requirement of this chapter, but shall not
14 exercise authority over the award or administration of any
15 particular contract, or over any dispute, claim, or litigation
16 pertaining thereto."

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

19 "**§103D-206 Additional duties of the administrator of the**
20 **procurement office.** In addition to the duties referred to in
21 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~~
4 ~~board,~~] 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;



1 (5) Develop, distribute, and maintain a procurement manual

2 for all state procurement officials; and

3 (6) Develop, distribute, and maintain a procurement guide

4 for vendors wishing to do business with the State and

5 its counties."

6 SECTION 5. Section 103D-310, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Unless the [~~policy board, by rules, specifies~~] rules

9 adopted by the state procurement office specify otherwise,

10 before submitting an offer, a prospective offeror, not less than

11 ten calendar days prior to the day designated for opening

12 offers, shall give written notice of the intention to submit an

13 offer to the procurement officer responsible for that particular

14 procurement."

15 SECTION 6. Section 103D-408, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) Notwithstanding chapter 91, for the purposes of

18 satisfying the percentage footprint requirements under

19 subsection (c), the purchasing agency may exclude from total

20 plant footprint calculations those areas where available

21 Hawaiian plant species are not appropriate for the particular



1 landscaping needs or environmental conditions of such areas.
2 The exclusion of such areas shall be determined by procedures,
3 standards, or guidelines established by the ~~[policy board]~~ state
4 procurement office at the time of issuance of the invitation for
5 bids, requests for proposals, or other solicitation under this
6 chapter. ~~[Procedures, standards, or guidelines established~~
7 ~~pursuant to this subsection may be established by board action~~
8 ~~notwithstanding chapter 91.] "~~

9 SECTION 7. Section 103F-106, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§103F-106 Authority of the ~~[procurement policy board.]~~
12 state procurement office. The ~~[policy board]~~ state procurement
13 office established under section ~~[103D-201]~~ 103D-204 shall adopt
14 all rules necessary to implement this chapter. All rules shall
15 be adopted in accordance with chapter 91. The ~~[policy board]~~
16 state procurement office shall consider and decide matters of
17 policy within the scope of this chapter including those referred
18 to it by chief procurement officers. The ~~[policy board]~~ state
19 procurement office may audit and monitor implementation of its
20 rules and the requirements of this chapter, but shall not
21 exercise authority over the award or administration of any



1 particular contract, or over any dispute or claim arising from a
2 contract."

3 SECTION 8. Sections 103-211 and 103D-303.5, Hawaii Revised
4 Statutes, are amended by substituting the phrase "state
5 procurement office", or similar term, wherever the phrase
6 "procurement policy board", or similar term, appears, as the
7 context requires.

8 SECTION 9. Sections 103D-102, 103D-106, 103D-205, 103D-
9 208, 103D-209, 203D-211, 103D-213, 103D-302, 103D-304, 103D-305,
10 103D-306, 103D-308, 103D-310, 103D-311, 103D-312, 103D-313,
11 103D-322, 103D-323, 103D-324, 103D-325, 103D-401, 103D-407,
12 103D-501, 103D-601, 103D-701, 103D-702, 103D-703, 103D-704,
13 103D-709, 103D-802, 103D-804, 103D-901, 103D-902, 103D-906,
14 103D-1004, 103D-1005, 103D-1006, 103D-1009, 103D-1103, 103D-
15 1105, 103D-1107, 103D-1201, 103D-1202, 103D-1203, 103F-101,
16 103F-402, 103F-403, 103F-405, 103F-407, 103F-408, 103F-411,
17 103F-501, 103F-504, 201-82, Hawaii Revised Statutes, are
18 amending by substituting the phrase "state procurement office",
19 or similar term, wherever the phrase "policy board", or similar
20 term, appears, as the context requires.



1 SECTION 10. Section 103D-104, Hawaii Revised Statutes, is
2 amended by deleting the definition of "policy board".

3 ~~["Policy board" means the procurement policy board created~~
4 ~~in section 103D-201."]~~

5 SECTION 11. Section 103D-201, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§103D-201 Creation and membership of the procurement~~
8 ~~policy board. (a) There is hereby created an autonomous state~~
9 ~~procurement policy board. The policy board shall be assigned,~~
10 ~~for administrative purposes only, to the department of~~
11 ~~accounting and general services.~~

12 ~~(b) The policy board shall consist of seven members.~~
13 ~~Notwithstanding the limitations of section 78-4, the members of~~
14 ~~the board shall include:~~

15 ~~(1) The comptroller;~~

16 ~~(2) A county employee with significant high-level~~
17 ~~procurement experience; and~~

18 ~~(3) Five persons who shall not otherwise be full-time~~
19 ~~employees of the State or any county; provided that at~~
20 ~~least one member shall be a certified professional in~~
21 ~~the field of procurement, at least one member shall~~



1 ~~have significant high-level, federal procurement~~
2 ~~experience, and at least two members shall have~~
3 ~~significant experience in the field of health and~~
4 ~~human services.~~

5 ~~Each appointed member shall have demonstrated sufficient~~
6 ~~business or professional experience to discharge the functions~~
7 ~~of the policy board. The initial and subsequent members of the~~
8 ~~policy board, other than the comptroller, shall be appointed by~~
9 ~~the governor from a list of three individuals for each vacant~~
10 ~~position, submitted by a nominating committee composed of four~~
11 ~~individuals chosen as follows: two persons appointed by the~~
12 ~~governor, one person appointed by the president of the senate,~~
13 ~~and one person appointed by the speaker of the house. Except as~~
14 ~~provided in this section, the selection and terms of the policy~~
15 ~~board members shall be subject to the requirements of section~~
16 ~~26-34. No member of the policy board shall act concurrently as~~
17 ~~a chief procurement officer. The members of the policy board~~
18 ~~shall devote such time to their duties as may be necessary for~~
19 ~~the proper discharge thereof.~~

20 ~~(c) The policy board shall be assisted by employees of the~~
21 ~~department of accounting and general services, which shall~~



1 ~~provide at least one full-time support staff and funding~~

2 ~~necessary to support the policy board.~~

3 ~~(d) Members of the policy board shall be reimbursed for~~
4 ~~any expenses, including travel expenses, reasonably incurred in~~
5 ~~the performance of their duties.~~

6 ~~(e) The chairperson of the policy board shall be elected~~
7 ~~annually by a majority of its members from among all of its~~
8 ~~members; provided that the state comptroller shall not be~~
9 ~~eligible to serve as the chairperson."]~~

10 SECTION 12. Section 103D-202, Hawaii Revised Statutes, is
11 repealed.

12 ~~["§103D-202 Authority and duties of the policy board.~~
13 ~~Except as otherwise provided in this chapter, the policy board~~
14 ~~shall have the authority and responsibility to adopt rules,~~
15 ~~consistent with this chapter, governing the procurement,~~
16 ~~management, control, and disposal of any and all goods,~~
17 ~~services, and construction. All rules shall be adopted in~~
18 ~~accordance with chapter 91; provided that the policy board shall~~
19 ~~have the power to issue interim rules by procurement directives,~~
20 ~~which shall be exempt from the public notice, public hearing,~~
21 ~~and gubernatorial approval requirements of chapter 91. The~~



~~interim rules shall be effective for not more than eighteen months. The policy board shall consider and decide matters of policy within the scope of this chapter including those referred to it by a chief procurement officer. The policy board shall have the power to audit and monitor the implementation of its rules and the requirements of this chapter, but shall not exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto."]~~

SECTION 13. The revisor of statutes shall substitute the phrase "state procurement office", or similar term, wherever the phrase "procurement policy board", or similar term, appears, as the context requires, in any Acts of the Session Laws of Hawaii 2022.

15 SECTION 14. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 15. This Act shall take effect upon its approval.

INTRODUCED BY:

John W. Miller



S.B. NO. 2303

Report Title:

Procurement; State Procurement Policy Board; Repeal

Description:

Amend the appointment process of the administrator of the state procurement office. Transfers the authority and responsibility of the state procurement policy board to the administrator of the state procurement office. Repeal the procurement policy board nominating committee and the state procurement policy board.

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

