



GOV. MSG. NO. 1365

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 7, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB1518, without my approval and with the statement of objections relating to the measure.

SB1518

RELATING TO THE DEPARTMENT OF
EDUCATION.

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 7, 2023

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1518

Honorable Members
Thirty-Second Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 1518, entitled "A Bill for an Act Relating to the Department of Education."

The purpose of this bill is to provide procurement exemptions for the Department of Education for certain goods, services, and construction.

This bill is objectionable because the general exemption of the Department of Education's procurement of certain educational materials from chapter 103D, Hawaii Revised Statutes (Hawaii Public Procurement Code), is contrary to the principles of public procurement to foster public confidence and promote government accountability. Purchases of a wide range of educational materials by the Department of Education should be competitively procured, not exempted from the procurement code. Moreover, research and reference materials are already exempt from the procurement code under section 103D-102(b)(4)(C), Hawaii Revised Statutes, to allow governmental bodies, including the Department of Education, to obtain the latest books and related materials for the public in the best possible manner. Consequently, it is not necessary to create a new statutory exemption for these materials.

For the foregoing reasons, I am returning Senate Bill No. 1518 without my approval.

Respectfully,



JOSH GREEN, M.D.
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF EDUCATION.

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

1 SECTION 1. The legislature finds that the department of
2 education is the largest department in the State with two
3 hundred ninety-five schools and forty-two thousand salaried and
4 part-time employees. As such, the department of education must
5 procure numerous goods, services, and construction to run its
6 operations. The legislature also finds that the Hawaii public
7 procurement code mandates that the department of education
8 comply with procurement laws for its purchases when triggered by
9 certain threshold amounts. Exempting the department of
10 education from certain small purchase procurement requirements
11 will help the department to timely procure necessary goods,
12 services, and construction.

13 The legislature further finds that the electronic
14 procurement system, due to its complicated and onerous nature,
15 places a heavy burden on school administrators seeking to
16 address repair and maintenance backlogs and further strains the
17 already limited time and resources of these school
18 administrators. Additionally, with the recent influx of federal



1 funding and the various conditions attached thereto, including
2 the maintenance of effort provisions within the Coronavirus Aid,
3 Relief, and Economic Security Act, the department of education
4 requires greater flexibility to expend federal funds in a timely
5 manner.

6 The purpose of this Act is to provide procurement
7 exemptions for the department of education.

8 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
9 amended by adding a new section to part V to be appropriately
10 designated and to read as follows:

11 "§302A- Procurement; educational goods and services;
12 small purchases. Notwithstanding section 103D-305(c) or any
13 other law to the contrary, the department may procure goods and
14 services of less than \$100,000 without using an electronic
15 procurement system; provided that the procurement shall be
16 subject to the rules governing procurements of less than
17 \$25,000; provided further that, based on specifications and with
18 adequate reasonable competition, a procurement of:

19 (1) At least \$5,000 but less than \$15,000 shall require at
20 least three quotations; and



1 (2) At least \$15,000 but less than \$100,000 shall require
2 at least three quotations in writing."

3 SECTION 3. Chapter 302A, Hawaii Revised Statutes, is
4 amended by adding a new section to subpart A of part VI to be
5 appropriately designated and to read as follows:

6 "§302A- Procurement; educational construction; small
7 purchases. Notwithstanding section 103D-305(c) or any other law
8 to the contrary, the department may procure construction of less
9 than \$250,000 without using an electronic procurement system;
10 provided that the procurement shall be subject to the rules
11 governing procurements of less than \$25,000; provided further
12 that, based on specifications and with adequate reasonable
13 competition, a procurement of:

14 (1) At least \$5,000 but less than \$15,000 shall require at
15 least three quotations; and

16 (2) At least \$15,000 but less than \$250,000 shall require
17 at least three quotations in writing."

18 SECTION 4. Section 103D-102, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) Notwithstanding subsection (a), this chapter shall
21 not apply to contracts by governmental bodies:



- 1 (1) Solicited or entered into before July 1, 1994, unless
- 2 the parties agree to its application to a contract
- 3 solicited or entered into prior to July 1, 1994;
- 4 (2) To disburse funds, irrespective of their source:
- 5 (A) For grants as defined in section 42F-101, made by
- 6 the State in accordance with standards provided
- 7 by law as required by article VII, section 4, of
- 8 the state constitution; or by the counties
- 9 pursuant to their respective charters or
- 10 ordinances;
- 11 (B) To make payments to or on behalf of public
- 12 officers and employees for salaries, fringe
- 13 benefits, professional fees, or reimbursements;
- 14 (C) To satisfy obligations that the State is required
- 15 to pay by law, including paying fees, permanent
- 16 settlements, subsidies, or other claims, making
- 17 refunds, and returning funds held by the State as
- 18 trustee, custodian, or bailee;
- 19 (D) For entitlement programs, including public
- 20 assistance, unemployment, and workers'



- 1 compensation programs, established by state or
2 federal law;
- 3 (E) For dues and fees of organizations of which the
4 State or its officers and employees are members,
5 including the National Association of Governors,
6 the National Association of State and County
7 Governments, and the Multi-State Tax Commission;
- 8 (F) For deposit, investment, or safekeeping,
9 including expenses related to their deposit,
10 investment, or safekeeping;
- 11 (G) To governmental bodies of the State;
- 12 (H) As loans, under loan programs administered by a
13 governmental body; and
- 14 (I) For contracts awarded in accordance with
15 chapter 103F;
- 16 (3) To procure goods, services, or construction from a
17 governmental body other than the University of Hawaii
18 bookstores, from the federal government, or from
19 another state or its political subdivision;
- 20 (4) To procure the following goods or services which are
21 available from multiple sources but for which



- 1 procurement by competitive means is either not
2 practicable or not advantageous to the State:
- 3 (A) Services of expert witnesses for potential and
4 actual litigation of legal matters involving the
5 State, its agencies, and its officers and
6 employees, including administrative
7 quasi-judicial proceedings;
 - 8 (B) Works of art for museum or public display;
 - 9 (C) Research and reference materials including books,
10 maps, periodicals, and pamphlets, which are
11 published in print, video, audio, magnetic, or
12 electronic form;
 - 13 (D) Meats and foodstuffs for the Kalaupapa
14 settlement;
 - 15 (E) Opponents for athletic contests;
 - 16 (F) Utility services whose rates or prices are fixed
17 by regulatory processes or agencies;
 - 18 (G) Performances, including entertainment, speeches,
19 and cultural and artistic presentations;
 - 20 (H) Goods and services for commercial resale by the
21 State;



- 1 (I) Services of printers, rating agencies, support
- 2 facilities, fiscal and paying agents, and
- 3 registrars for the issuance and sale of the
- 4 State's or counties' bonds;
- 5 (J) Services of attorneys employed or retained to
- 6 advise, represent, or provide any other legal
- 7 service to the State or any of its agencies, on
- 8 matters arising under laws of another state or
- 9 foreign country, or in an action brought in
- 10 another state, federal, or foreign jurisdiction,
- 11 when substantially all legal services are
- 12 expected to be performed outside this State;
- 13 (K) Financing agreements under chapter 37D; [and]
- 14 (L) Department of education educational materials
- 15 including textbooks, supplies, implements, tools,
- 16 machinery, computers, electronic devices, or
- 17 other goods related to any education, training,
- 18 or experience required for participation in an
- 19 educational program; and
- 20 [~~L~~] (M) Any other goods or services which the policy
- 21 board determines by rules or the chief



1 procurement officer determines in writing is
2 available from multiple sources but for which
3 procurement by competitive means is either not
4 practicable or not advantageous to the State; and

5 (5) Which are specific procurements expressly exempt from
6 any or all of the requirements of this chapter by:

7 (A) References in state or federal law to provisions
8 of this chapter or a section of this chapter, or
9 references to a particular requirement of this
10 chapter; and

11 (B) Trade agreements, including the Uruguay Round
12 General Agreement on Tariffs and Trade (GATT)
13 which require certain non-construction and
14 non-software development procurements by the
15 comptroller to be conducted in accordance with
16 its terms."

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval,
20 and shall be repealed on June 30, 2026; provided that
21 section 103D-102(b), Hawaii Revised Statutes, shall be reenacted



1 in the form in which it read on the day before the effective
2 date of this Act.

APPROVED this day of , 2023

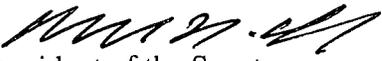
GOVERNOR OF THE STATE OF HAWAII



THE SENATE OF THE STATE OF HAWAI'I

Date: May 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate

SB No. 1518, SD 2, HD 3, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives