

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 1414, RELATING TO THE UNIVERSITY OF HAWAII.

BEFORE THE:
SENATE COMMITTEE ON HIGHER EDUCATION

DATE: Thursday, February 9, 2023 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Candace J. Park, Deputy Attorney General

Chair Kim and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to (1) exempt the University of Hawaii and the Board of Regents of the University of Hawaii from chapter 103D, Hawaii Revised Statutes (HRS), for contracts that involve research and training; (2) require the Board of Regents to develop internal policies and procedures for the procurement of goods and services for research and training; and (3) authorize the President of the University of Hawaii to delegate procurement authority for research and training contracts to the Vice President.

If the intent of this bill is to provide the University an exemption from chapter 103D, HRS, for research and training contracts procured using grant money received by the University for research and training, then we recommend amending section 103D-102(c) as amended by section 2, on page 2, lines 8-9, as follows: "provided that the contracts involve research and training [~~grants and contracts~~] and are procured using grant money received for research and training".

We also identify the following provisions that may need similar clarification to ensure that the proposed exemption from chapter 103D, HRS, applies only to research and training contracts procured using grant money received for research and training:

(1) Section 103D-102(c)(3) as amended by section 2, on page 2, lines 9-12: "or University of Hawaii research and training revolving fund moneys expended in direct support of research and training contracts and grants."

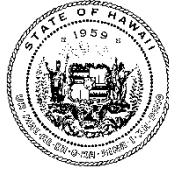
(2) Section 304A-105(b) as amended by section 3, on page 2, line 20, to page 3, line 4: "provided that the board of regents shall develop internal policies and procedures exempt from chapter 103D for the procurement of goods and services for research and training contracts and grants and research and training revolving funds expended in direct support of research and training grants and contracts."

(3) Section 304A-105(b) as amended by section 3, on page 3, lines 4-7: "provided further that the president of the university may delegate procurement authority for research and training contracts and grants to the vice president for research and innovation."

We are happy to work with you to clarify the wording of this bill.

Also, we believe there is a constitutional issue with this bill. Section 6 of article X of the Hawai'i State Constitution gives the Board of Regents of the University of Hawai'i "exclusive jurisdiction over the internal structure, management, and operation of the university." Section 6 further provides: "[t]his section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern." If the Committee decides to pass this bill, we recommend an amendment that adds a statement identifying this bill as a law of statewide concern.

Thank you for the opportunity to provide these comments.



STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state_procurement_office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

SENATE COMMITTEE
ON
HIGHER EDUCATION
February 9, 2023, 3:00 P.M.

SENATE BILL 1414
RELATING TO THE UNIVERSITY OF HAWAII

Chair Kim, Vice Chair Kidani, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1414. The State Procurement Office (SPO) provides the following comments and recommendations:

Comments: The SPO comments to the procurement exemption and testifies that the added procurement exemption language is unnecessary as statutes and rules already exist that allows for exemptions for goods and services (except construction) via HRS §103D-102 and HAR §3-120-5, in a process that is open and transparent instead of a blanket exemption. Additionally, HRS §103D-208 and HAR §3-121-16 already allows for the president of the university of Hawaii, as the Chief Procurement Officer of the University of Hawaii (UH) pursuant to HRS §103D-203, to delegate procurement authority or duty to designees or to any department, within their respective jurisdiction.

Furthermore, according to UH's A8.220 General Principles, prepared by the Office of Procurement and Real Property Management (OPRPM), administrative procedures already exist regarding delegation of procurement authority as well as a list of exempt procurement actions that have been approved by the UH President, and procedures to request for exemption from HRS chapter 103D as well as amendments to contracts exempted by the UH President from HRS 103D, with forms specified to be used for each purpose (i.e., OPRPM Form 138, Request for Exemption from Chapter 103D, HRS, and OPRPM Form 150, Notice of Exemption from Chapter 103D, HRS).

Section 1 of this bill states the exemption from certain provisions of the Hawaii Public Procurement Code (the Code) will enable the UH to handle its own affairs should the Research Corporation of the University of Hawaii (RCUH) carry out its strategic plan to diversify the corporation's customer base. In 2006 via Act 75, RCUH was also granted certain exceptions from HRS chapter 103D to improve the organizational framework for statutes related to higher

educations to provide consistency and clarity, yet in 2013, the legislature found concerns raised that the RCUH and its board of directors' current authority and flexibility were other than originally intended and enacted Act 288 to clarify the authorization of the board of directors with respect to the employment of an executive director and construction contracts. As a result, all goods, services, and construction procurements for the UH should be competitively procured pursuant to HRS chapter 103D, the Hawaii Public Procurement Code (Code), and should not be exempt. Furthermore, granting UH a blanket exemption, may lead to the agency only going to the same vendors repeatedly, which would be in violation of HRS 103D-101(a)(6)(A). Encourage economic competition by:

“(A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.”

The Code is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government. The statutes and rules should apply uniformly for government entities and should not carve out a special process for the UH. Procurement of goods and services for research and training contracts should be treated no different than other procurements.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law's application.

Exemptions to the Code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning, or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

The National Association of State Procurement Officials states that “Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments.”

When public bodies are removed from the Hawaii Public Procurement Code, it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the

benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Recommendations: The SPO recommends removing in its entirety, Section 2, page 2, lines 7 to 12 as stated below.

~~“(c) Notwithstanding subsection (a), this chapter shall not apply to contracts made by: (3) The University of Hawaii or the board of regents of the University of Hawaii; provided that the contracts involve research and training grants and contracts or University of Hawaii research and training revolving fund moneys expended in direct support of research and training contracts and grants.”~~

The SPO also recommends removing in its entirety, Section 3, page 2, lines 20 to 21, continued to page 3, lines 1 to 7 as stated below.

~~“...provided that the board of regents shall develop internal policies and procedures exempt from chapter 103D for the procurement of goods and services for research and training contracts and grants and research and training revolving funds expended in direct support of research and training grants and contracts; provided further that the president of the university may delegate procurement authority for research and training contracts and grants to the vice president for research and innovation.”~~

Thank you.



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'olelo

Testimony Presented Before the
Senate Committee on Higher Education
Thursday, February 9, 2023 at 3:00 p.m.

by

Vassilis L. Syrmos
Vice President for Research and Innovation
University of Hawai'i System

SB 1414 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Kim, Vice Chair Kidani, and Members of the Committee:

The University of Hawai'i (UH) strongly supports SB 1411 and greatly appreciates the Hawai'i State Legislature's intent to help strengthen UH's sponsored research and training activities by granting exemptions to the university and the Board of Regents from certain provisions of the Hawai'i Public Procurement Code.

Thank you for the opportunity to testify on this measure.