

STAND. COM. REP. NO. **3256**

Honolulu, Hawaii

MAR 22 2024

RE: H.B. No. 2499
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committees on Higher Education and Government Operations, to which was referred H.B. No. 2499, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII,"

beg leave to report as follows:

The purpose and intent of this measure is to make permanent the authority of the President of the University of Hawaii to act as the University of Hawaii's chief procurement officer.

Your Committees received testimony in support of this measure from the University of Hawai'i System, State Procurement Office, and University of Hawaii Professional Assembly.

Your Committees find that Act 87, Session Laws of Hawaii 2013 (Act 87), removed the President of the University of Hawaii's full authority to act as Chief Procurement Officer for the University of Hawaii for all procurement contracts under the Hawaii Public Procurement Code. Pursuant to Act 87, the State Procurement Office reported to the Legislature regarding the extensive oversight, review, and coordination between the University of Hawaii and the State Procurement Office regarding procurements involving construction and professional services related to construction. The State Procurement Office previously initiated an exhaustive analysis that examined both large and small



procurements, including scope of work and change orders. The State Procurement Office determined that the University of Hawaii was "compliant" in its construction procurements with minimal recommendations for improvement. Your Committees further find that Act 42, Session Laws of Hawaii 2018, reinstated and restored full authority to the President of the University of Hawaii to act as Chief Procurement Officer and included a repeal and reenactment date of June 30, 2021. Act 8, Special Session Laws of Hawaii 2021, extended this provision to June 30, 2024.

Your Committees find that it is a matter of statewide concern that the President of the University of Hawaii serves simultaneously as the Chief Procurement Officer for the University of Hawaii System. According to the testimony of the University of Hawaii System, in its current organizational structure, the President serves as the Chief Procurement Officer, which aligns with other state agencies that designate the director of that agency as the Chief Procurement Officer. However, your Committees probed further into the intricacies of how procurement decisions are made at the University.

Your Committees found that since the issuance of a report by the State Procurement Office in 2016 analyzing the University of Hawaii's procurement practices, the Office has not issued additional findings relating to the University of Hawaii's procurement procedures. According to the testimony of the State Procurement Office at a public hearing on this measure, the Office was unaware of additional egregious procurements that the University of Hawaii initiated, with the exception of procurement for the Clarence T.C. Ching Field, of which the State Procurement Office determined that a procurement violation occurred. The University of Hawaii testified that it did not violate the Hawaii Public Procurement Code based on its interpretation of a clause inserted into contracts with contractors hired to work on various projects, including Clarence T.C. Ching Field. Your Committees expressed concerns that out of twelve change orders on the Clarence T.C. Ching Field procurement, only one change order was within the scope of the original procurement. As the Hawaii Public Procurement Code does not provide for change orders outside the scope of work that are justified for convenience or lack of time, your Committees find that the University of Hawaii should acknowledge its violations of the Hawaii Public Procurement Code



to prevent additional disregard for existing provisions relating to procurement.

Your Committees also note a separate, yet similar out-of-scope procurement regarding the PBS Building, which originally sought to move equipment. However, the University of Hawaii noted the derelict condition of the building and subsequently submitted a change order to demolish the building. Despite the change order being out of scope with the original procurement intent, the University of Hawaii did not modify the order until the Legislature raised concerns. While the University of Hawaii testified that it attempts to adhere to the Hawaii Public Procurement Code for the hundreds of procurements and construction projects it undertakes each year, your Committees remain concerned that improvements are needed, rather than retaining practices that reinforce the status quo.

Your Committees also expressed concerns that, while the Hawaii Public Procurement Code establishes criminal penalties for wilful violations of the Procurement Code, there has been minimal enforcement on the University of Hawaii. The State Procurement Office is required to take violations of the Hawaii Public Procurement Code to court to determine if a criminal offence occurred. Additionally, the State Procurement Office noted in its testimony that it does receive correspondence from legal teams from a variety of agencies and jurisdictions. Presently, the University of Hawaii consults with University General Counsel to determine any foreseen issues that may arise with specific procurements. Your Committees note that, to ensure efficiency and accountability, utilization of advice from the State Procurement Office through legal counsel may provide clarity on future decisions made on construction projects or purchases that require procurement.

Your Committees further find that the University of Hawaii did not provide specific reasons to retain the President of the University of Hawaii as the Chief Procurement Officer. During its oversight under the State Procurement Office, the University of Hawaii noted that the bifurcated procurement system added an additional layer of administrative review. Further, there are many responsibilities associated with the role of Chief Procurement Officer beyond approvals for procurement. Other universities across the country do not have university presidents



who concurrently serve as chief procurement officers. Additionally, as the role of Chief Procurement Officer requires significant attention to detail to ensure compliance with existing regulations, an individual who can dedicate time to understand the scope of the project while ensuring accountability over corrective actions and acknowledgement of violations is needed for effective procurement operations at the University of Hawaii. Although the University of Hawaii testified that it wishes to retain authority over its own procurement process, greater oversight into the University of Hawaii's procedures is necessary to ensure accountability, operational efficiency, and adherence to existing procurement law.

Therefore, you Committees recommend that incorporating procurement under the Chief Financial Officer of the University of Hawaii provides a layer of accountability in the oversight of personnel involved in procurement and the ability to ensure that matters are thoroughly vetted before final approval of procurement projects. To address concerns raised over the role of the Chief Procurement Officer at the University of Hawaii, clarifying amendments are needed to this measure to designate the Chief Financial Officer of the University of Hawaii as the Chief Procurement Officer for the University.

Accordingly, your Committees have amended this measure by:

- (1) Inserting language to replace the President of the University of Hawaii with the Chief Financial Officer as the Chief Procurement Officer of the University of Hawaii to serve for the University;
- (2) Extending the sunset date for the designation of the University of Hawaii's Chief Procurement Officer to June 30, 2027;
- (3) Inserting language specifying that this measure is a matter of statewide concern;
- (4) Amending section 1 to reflect its amended purpose; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.



As affirmed by the records of votes of the members of your Committees on Higher Education and Government Operations that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2499, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2499, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Higher Education
and Government Operations,



ANGUS L.K. MCKELVEY, Chair



DONNA MERCADO KIM, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Higher Education
HRE

Bill / Resolution No.:* HB 2499 HD2	Committee Referral: HRE/GVO, WAM	Date: 03-19-24
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The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KIM, Donna Mercado (C)	✓			
KIDANI, Michelle N. (VC)	✓			
FUKUNAGA, Carol	✓			
HASHIMOTO, Troy N.	✓			
FEVELLA, Kurt	✓			
TOTAL	5			

Recommendation:
 Adopted
 Not Adopted

Chair's or Designee's Signature:


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*Only one measure per Record of Votes

The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Government Operations
GVO

Bill / Resolution No.:* HB 2499 HD2	Committee Referral: HRE/GVO, WAM	Date: 3-19-24		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
MCKELVEY, Angus L.K. (C)	✓			
GABBARD, Mike (VC)	✓			
SAN BUENAVENTURA, Joy A.	✓			
WAKAI, Glenn				✓
AWA, Brenton				✓
TOTAL	3	—	—	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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