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TESTIMONY OF BONNIE KAHAKUI, ADMINISTRATOR STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
FEBRUARY 3, 2026, 3:00 PM

SENATE BILL 2601
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2601. The State Procurement Office (SPO) respectfully provides the following comments.

Comments

Section 103D-309, Hawaii Revised Statutes (HRS), promotes fiscal responsibility and effectively prevents the over-obligation of appropriated funds by requiring certification that sufficient appropriated funds – over and above all outstanding contracts – are available to cover the payments under the contract for the current fiscal year or the remaining portion of the fiscal year for each term of the multi-year contract before contracts awarded through competitive sealed bidding, competitive sealed proposals, and sole source procurement.

Senate Bill 2601 proposes to repeal criminal penalties in the Hawaii Public Procurement Code (HRS Chapter 103D), thereby requiring penalties to be imposed through administrative processes. The SPO cautions that repealing criminal penalties in the Hawaii Public Procurement Code may raise significant concerns regarding how, when, and to whom the penalties will be assessed. If the penalties are assessed to an employee, the public labor unions are likely to challenge this issue.

Though the misdemeanor provision is not applied often, its existence reinforces the seriousness of compliance with procurement requirements and serves as an important deterrent to intentional, egregious violators of procurement law. Retaining this provision preserves an enforcement tool for the most serious cases, while still allowing agencies to rely primarily on administrative remedies for routine compliance issues.

To address the aforementioned concerns, the SPO recommends adding language to Section 2, Page 2, lines 19-21, and Page 3, lines 1-6:

- "(a) Any person who intentionally violates this chapter or any rules adopted pursuant to this chapter ~~[shall be guilty of a misdemeanor]~~ shall be:
- (1) Subject to removal from office;
 - (2) Liable to the State or the appropriate county for any sum paid by it in connection with the violation, and that sum together with interest and costs, shall be recoverable by the State and county;
 - (3) Subject to imposition of an administrative fine under subsection (b); and
 - (4) **Subject to prosecution for a misdemeanor in cases of egregious violations of the procurement code."**

Senate Bill 2601 also proposes to amend this statute by adding that the awarded contract amount does not exceed ten per cent of the amount of the available appropriation or balance of an appropriation. Furthermore, a contract that exceeds this ten per cent threshold shall require approval from the Chief Procurement Officer to become binding for the purpose of this section.

This amendment to Section 103D-309, HRS, may have unintended consequences, including administrative burdens and delays by requiring additional approvals for contracts.

Hawaii Administrative Rules (HAR) already impose limitations on contract increases. For example, HAR Section 3-122-82, Sole source approvals and amendments, subsection (d), states that the amendment to a contract that would change the original scope of the contract, or increase the original contract price by ten per cent or more, may only be made with the approval of the Chief Procurement Officer. HAR Chapter 125, Modifications and Terminations of Contracts, also addresses price adjustments for different contracts.

The SPO recommends increasing the threshold to **fifteen per cent**, which provides purchasing agencies greater flexibility to address project requirements while minimizing administrative burden, and thus SPO recommends the following amendment to SECTION 3, Page 3, lines 20-21, through Page 4, lines 1-5:

- (1) The awarded contract amount does not exceed ~~[ten]~~ **fifteen** per cent of the amount of the available appropriation or balance of an appropriation; provided further that a contract that exceeds this ~~[ten]~~ **fifteen** per cent threshold shall require approval from the chief procurement officer to become binding for the purposes of this section; and

Thank you for the opportunity to submit testimony on this measure.