



GOV. MSG. NO. 886

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2824 SD2 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2824 SD2 HD1 CD1

A BILL FOR AN ACT RELATING TO
PROCUREMENT.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2824

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval Senate Bill No. 2824, entitled "A Bill for an Act Relating to Procurement."

The purposes of Senate Bill No. 2824 are to: (1) remove the voting powers of the Comptroller and the county employee as members of the State Procurement Policy Board; (2) require the Board to annually audit a minimum of two executive departments, divisions, or agencies for compliance with chapter 103D, Hawaii Revised Statutes; and (3) require the Legislative Auditor to conduct a compliance, performance, and management audit of the State Procurement Office and the executive branch of the State to determine compliance with chapter 103D.

This bill is objectionable because by removing the voting rights of the Comptroller and the county employee who sit as members of the State Procurement Policy Board, this bill denies the State and county government from fully participating in the decisions of the Board and deprives the State and county government of full representation. The other five members of the Board are specifically designated by law not to be full-time State or county employees, provided that one member must be a certified professional in the field of procurement. There does not seem to be a basis to remove the voting rights of the Comptroller, whose department is responsible for procurement and

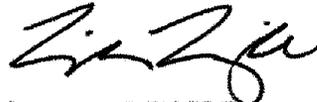
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who oversees the State Procurement Office. Depriving the counties of a voice on the Board is counter to homerule and erroneously presumes their contributions are irrelevant to the successful functioning of this body.

Given the public attention paid to government procurement, the goal of the State Procurement Code (chapter 103D, Hawaii Revised Statutes) to provide transparency in State and county procurements, and the public's concern that the Legislature exempts itself from laws requiring its decision-making to be more transparent, such as the Sunshine Law (part I of chapter 92, Hawaii Revised Statutes), this bill is ill-conceived by requiring the Auditor to determine procurement compliance by the State Procurement Office and the executive branch, but not of the judicial and legislative branches.

For the foregoing reasons, I am returning Senate Bill No. 2824 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

1 (3) Five persons who shall not otherwise be full-time
2 employees of the State or any county; provided that at
3 least one member shall be a certified professional in
4 the field of procurement, at least one member shall
5 have significant high-level, federal procurement
6 experience, and at least two members shall have
7 significant experience in the field of health and
8 human services.

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



1 members of the state procurement policy board shall devote such
2 time to their duties as may be necessary for the proper
3 discharge thereof."

4 PART II.

5 SECTION 3. The legislature finds that the State
6 procurement policy office, in order to fully discharge its
7 responsibilities, must take further steps to ensure compliance
8 with chapter 103D, Hawaii Revised Statutes, by the executive
9 agencies.

10 The purpose of this part is to require the State
11 procurement policy board to ~~conduct compliance audits.~~

12 SECTION 4. Section 103D-202, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§103D-202 Authority and duties of the state procurement
15 policy board. (a) Except as otherwise provided in this
16 chapter, the state procurement policy board shall have the
17 authority and responsibility to adopt rules, consistent with
18 this chapter, governing the procurement, management, control,
19 and disposal of any and all goods, services, and construction.
20 All rules shall be adopted in accordance with chapter 91;
21 provided that the state procurement policy board shall have the
22 power to issue interim rules by procurement directives, which



1 shall be exempt from the public notice, public hearing, and
2 gubernatorial approval requirements of chapter 91. The interim
3 rules shall be effective for not more than eighteen months.

4 (b) The state procurement policy board shall consider and
5 decide matters of policy within the scope of this chapter
6 including those referred to it by a chief procurement officer.

7 (c) The state procurement policy board shall [~~have the~~
8 ~~power to~~] audit and monitor the implementation of its rules and
9 the requirements of this chapter; but shall not exercise
10 authority over the award or administration of any particular
11 contract, or over any dispute, claim, or litigation pertaining
12 thereto.

13 The state procurement policy board shall annually audit a
14 minimum of two executive departments, divisions, or agencies,
15 to ensure compliance with this chapter, as follows:

16 (1) Based upon a pattern of noncompliance; or

17 (2) Based upon circumstances of a particular procurement
18 that may indicate an intention to circumvent this
19 chapter;

20 provided that there shall be follow-up audits of a department,
21 division, or agency that has been previously audited under
22 paragraph (1) or (2).



1 training program, procurement manual, and a periodic review
2 of the procurement process. Because rules were issued late
3 and insufficient attention was paid to interpreting the law
4 and communicating the rules clearly, we found a number of
5 instances of noncompliance and confusion about the law and
6 rules. . . .

7 The new procurement organization structure is
8 ineffective with conflicting and unclear roles and
9 responsibilities. The division of responsibility and
10 authority between the administrator and the policy office
11 is not clear in law or practice. Both have a
12 responsibility to audit procurement practices. In
13 addition, we found that the administrator has conflicting
14 roles as the chief procurement officer (CPO) for the
15 Executive Branch and as the individual responsible for
16 reviewing procurement practices of all governmental
17 agencies."

18 The legislature finds that a new audit is timely and
19 necessary, given that thirteen years have elapsed since the 1993
20 audit and the recent problems in state procurement practices
21 brought to light during the interim hearings by the senate
22 committee on tourism and government operations. One of the



1 concerns is the apparent noncompliance with procurement laws in
2 the award of contracts, which is a critical element of public
3 procurement.

4 The purpose of this part is to require the auditor to
5 conduct a compliance, performance, and management audit of
6 executive agency compliance with chapter 103D, Hawaii Revised
7 Statutes, and the administrative rules adopted thereto.

8 SECTION 6. The auditor shall conduct a compliance,
9 performance, and management audit of chapter 103D, Hawaii
10 Revised Statutes, and the administrative rules adopted pursuant
11 to chapter 103D. The audit shall be limited to the state
12 procurement office and the purchasing agencies, as defined in
13 section 103D-104, Hawaii Revised Statutes, of the State, not
14 including the legislature, judicial branch, office of Hawaiian
15 affairs, and the several counties.

16 The purpose of the audit, among other relevant issues as
17 determined by the auditor, shall be to determine compliance with
18 chapter 103D, Hawaii Revised Statutes, including but not limited
19 to:

20 (1) Compliance with requirements that contracts be awarded
21 to the highest ranking bidder;



1 (2) The use of an evaluation committee by a procurement
2 purchasing agency to score proposals based on
3 evaluation criteria;

4 (3) Whether awards are based solely on qualifications, and
5 not on other considerations such as personal judgments
6 and biased preferences when selecting another bidder
7 with a lower score;

8 (4) The proper documentation of each step of the
9 procurement process by a purchasing agency and its
10 chief procurement officer, including but not limited
11 to decisions and justifications to select a bidder and
12 to award a contract;

13 (5) Whether adequate procurement practices training is
14 made available to and regularly attended by
15 appropriate procurement officials of state agencies;
16 and

17 (6) The proper use of an alternative procurement method.

18 SECTION 7. The auditor may contract with a private entity
19 for purposes of conducting the audit and studies required under
20 this part.

21 SECTION 8. The auditor shall make an interim report of the
22 findings and recommendations to the legislature no later than



1 twenty days prior to the convening of the regular session of
2 2009, and a final report on findings and recommendations,
3 including proposals for statutory amendments, to the legislature
4 no later than twenty days prior to the convening of the regular
5 session of 2010.

6 **PART IV.**

7 SECTION 9. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect on January 1, 2009;
10 provided that part III of this Act shall take effect upon the
11 approval of this Act.

