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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

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**PART I.**

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SECTION 1. Chapter 103D, Hawaii Revised Statutes, is

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amended by adding a new section to part I to be appropriately

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designated and to read as follows:

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**"§103D- Moneys for trade missions and goodwill trips.**

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Notwithstanding any provision of this chapter to the contrary,

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any moneys received by, on behalf of, or for the benefit of a

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governmental body pursuant to a solicitation of funds by the

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governmental body to cover the costs and expenses of trade

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missions and goodwill trips, shall be deposited into the general

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fund and disbursed pursuant to legislative appropriation. This

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section shall not apply to payments received by the State for

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booths and participation fees for trade shows."

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SECTION 2. There is appropriated out of the general

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revenues of the State of Hawaii the sum of \$                    or so

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much thereof as may be necessary for fiscal year 2008-2009 to



1 cover the costs and expenses of trade missions and goodwill  
2 trips of the State.

3 The sum appropriated shall be expended by the department of  
4 business, economic development, and tourism for the purposes of  
5 this part.

6 **PART II.**

7 SECTION 3. The legislature finds that the comptroller  
8 should be an ex-officio nonvoting member of the state  
9 procurement policy board in order to ensure the board's  
10 independence.

11 The purpose of this part is to make the comptroller an ex-  
12 officio nonvoting member of the procurement policy board.

13 SECTION 4. Section 103D-201, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) The state procurement policy board shall consist of  
16 seven members. Notwithstanding the limitations of section 78-4,  
17 the members of the board shall include:

18 (1) The comptroller[+] as an ex-officio nonvoting member;

19 (2) A county employee with significant high-level  
20 procurement experience; and

21 (3) Five persons who shall not otherwise be full-time

22 employees of the State or any county; provided that at



1           least one member shall be a certified professional in  
2           the field of procurement, at least one member shall  
3           have significant high-level, federal procurement  
4           experience, and at least two members shall have  
5           significant experience in the field of health and  
6           human services.

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



1 time to their duties as may be necessary for the proper  
2 discharge thereof."

3 **PART III.**

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

9 The purpose of this part is to require the procurement  
10 policy office to conduct compliance audits.

11 SECTION 6. Section 103D-202, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§103D-202 Authority and duties of the state procurement**  
14 **policy board.** (a) Except as otherwise provided in this  
15 chapter, the state procurement policy board shall have the  
16 authority and responsibility to adopt rules, consistent with  
17 this chapter, governing the procurement, management, control,  
18 and disposal of any and all goods, services, and construction.  
19 All rules shall be adopted in accordance with chapter 91;  
20 provided that the state procurement policy board shall have the  
21 power to issue interim rules by procurement directives, which  
22 shall be exempt from the public notice, public hearing, and



1 gubernatorial approval requirements of chapter 91. The interim  
2 rules shall be effective for not more than eighteen months.

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

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

12 The state procurement policy board shall annually audit a  
13 minimum of two executive departments, divisions, or agencies, to  
14 be randomly selected, to ensure compliance with this chapter.  
15 In addition, the state procurement policy board shall select any  
16 department, division, or agency for compliance audits:

- 17 (1) Based upon a pattern of noncompliance;  
18 (2) Based upon circumstances of a particular procurement  
19 that may indicate an intention to circumvent this  
20 chapter; or  
21 (3) As otherwise authorized by law;



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

4 The state procurement office shall report the results of  
5 all compliance audits to the legislature no later than twenty  
6 days before the convening of each regular session."

7 **PART IV.**

8 SECTION 7. The Hawaii public procurement code was  
9 originally enacted by Act 8, Special Session Laws of Hawaii  
10 1993, codified as chapter 103D, Hawaii Revised Statutes. Since  
11 1993, only one audit has been performed on the State's  
12 procurement practices. That audit in 1995, Auditor's Report  
13 No. 95-8, states in pertinent part in the summary:

14 We found that the administration has been slow in  
15 implementing the procurement code and has not taken the  
16 necessary steps to ensure effective implementation. The  
17 late start of the Procurement Policy Office without  
18 appropriate staff has limited the ability of the policy  
19 board to carry out its responsibilities. Furthermore, the  
20 late appointment of the interim administrator of the  
21 Procurement Office delayed development of an on-going  
22 training program, procurement manual, and a periodic review



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

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

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



1 the award of contracts, which is a critical element of public  
2 procurement.

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

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

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

19 (1) Compliance with requirements that contracts be awarded  
20 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  
12          and 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 usage of an alternative procurement method.

18          SECTION 9. The auditor may contract with a private entity  
19          for purposes of conducting the audit and studies as may be  
20          required under this part.

21          SECTION 10. The auditor shall make an interim report of  
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 SECTION 11. There is appropriated out of the general  
7 revenues of the State of Hawaii the sum of \$ or so  
8 much thereof as may be necessary for fiscal year 2008-2009 for  
9 the auditor to contract for an audit pursuant to section 4 of  
10 this part.

11 The sum appropriated shall be expended by the office of the  
12 auditor for the purposes of this part.

13 **PART V.**

14 SECTION 12. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 13. This Act shall take effect upon its approval;  
17 provided that sections 2 and 11 shall take effect on July 1,  
18 2008.



**Report Title:**

Procurement Code; Auditor Review; Comptroller; State-Sponsored  
Trips; Appropriation

**Description:**

Requires private moneys received by the State to cover costs and expenses of state-sponsored trips and goodwill endeavors be deposited into the general fund. Clarifies that comptroller serves as ex-officio nonvoting member of state procurement policy board. Requires the state procurement office to audit state purchasing agencies to ensure compliance with procurement code and appropriates funds. Requires the auditor to conduct an audit of the state procurement office to ensure compliance with the Hawaii public procurement code. (SB2824 SD2)

