

THE CHAMBER OF COMMERCE OF HAWAII

1132 Bishop Street, Suite 402

Honolulu, HI 96813

Testimony to the Senate Committee on Economic Development and Technology

Thursday, January 27, 2010

1:15 PM

Conference Room 016

RE: SENATE BILL NO. 2291, RELATING TO ECONOMIC DEVELOPMENT

Chair Fukunaga, Vice Chair Baker, and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's strong support of Senate Bill 2291, Relating To Economic Development.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the US military and its civilian workforce and families, and has provided oversight for the state's multi-billion dollar defense industry since 1985.

The measure proposes to expand the procurement preference for high technology goods and services provided by Hawaii's businesses; specifies a five percent preference; requires the state procurement office to report to the 2012 legislature on implementation of the preference; requires the state procurement office to authorize reseller agreements in multi-state contracting agreements.

It makes absolute good sense for the state to establish a procurement preference for Hawaii technology businesses on grounds similar to those established for set asides by the federal government. Hawaii high technology businesses are every bit as competitive and competent in providing the goods and services, and set asides will also level the procurement opportunities for Hawaii businesses with those from outside the state that are not subject to state taxes in the bidding process.

For these reasons, we respectfully request that the proposed measure be approved for further review and adoption.

Thank you for the opportunity to testify.

**Written Statement of  
MARK GILBERT  
President**

Commercial Data Systems, Inc.

Before the

**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY.**

Wednesday, January 27, 2010

1:15 PM

State Capital, Conference Room 016

In consideration of

**SB 2291 HAWAII SMALL BUSINESS CONCERNS**

Chair Fukunaga, Vice Chair Baker, and Members of the Senate Committee on Economic Development and Technology.

Commercial Data Systems (CDS) supports the majority of SB 2291 that seeks to enhance Hawaii's struggling economy by proposing the following.

1. Part II, creation of a 'Hawaii business' preference program for purchases of high technology goods or services. This proposal will have the effect of increasing business to those high technology firms that have made a commitment to meet the newly stated 'Hawaii business' criteria.

**CDS supports this new preference program but does not support the new definition of a 'Hawaii business'.**

Specifically, there are two criteria to be considered a 'Hawaii business'.

The first is that a firm must have its principal place of business or ancillary headquarters located in the State. **We support this requirement.**

The second is that the business 'proposes to obtain eighty per cent of the labor from persons domiciled in Hawaii'. **We do not support this requirement.**

We feel that mandating a firm must conduct 80% of its business in Hawaii will severely limit local companies from trying to grow their business in other geographies besides Hawaii. We feel this will ultimately punish firms who have successfully expanded their customer base. We believe that a more reasonable standard, which is in line with Federal HUBZone standards, is that 35% of the company's employees must reside in Hawaii. We propose that the definition of a 'Hawaii business' be modified to the following:

“Hawaii business” means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State and that has at least 35% of its employees domiciled in Hawaii.”

2. Part III, the authorization of reseller agreements as part of any multi-state contracting agreement.

**CDS fully supports this revised statute.**

In the past, CDS has successfully acted as a reseller agent under various WSCA contracts. The State Procurement Office (SPO) has recently changed their policy and no longer allow for local resellers to participate under the WSCA program. We actually feel the ability to work with local reseller agents is more important for the Hawaii marketplace than probably any other. Historically, large manufactures have been ill equipped to provide quality service in Hawaii. This is true both in terms of local pre- and post-sales support personnel, and also a general lack of understanding of the Ohana spirit that pervades the Hawaii marketplace. To properly support Hawaii, a firm must have a large and sustained local presence. We therefore believe strongly that the SPO should allow for local resellers to participate in multi-state contracting agreements.

3. Lastly, upon review of Section 4, added subsection (b), we feel the language here is ambiguous. We believe the intent here is that any intellectual property (IP) that is developed or designed when the State has paid for the development should be passed to the State without restriction. As stated it is not clear that this will only apply to original work that was paid for by the State, but rather could be construed to mean any IP developed by a Hawaiian firm, that is at some time purchased by the State, needs to come with an unlimited use license, whether the state paid to have it developed or not. We believe this section should be modified to read something more like:

"(b) Intellectual property specifically developed and designed by any Hawaii business for high technology goods or services where the development or design has been paid for by the State shall be delivered with an unlimited use license to assure maximum benefit to State agencies and the high technology goods or services vendors."

Thank you for the opportunity to submit testimony in support of SB 2291.

LINDA LINGLE  
GOVERNOR



RUSS K. SAITO  
Comptroller

SANDRA L. YAHIRO  
Deputy Director

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING**  
**AND GENERAL SERVICES**  
P.O. BOX 119  
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WRITTEN TESTIMONY  
OF  
RUSS K. SAITO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY  
ON  
January 27, 2010

S.B. 2291

RELATING TO ECONOMIC DEVELOPMENT

Chair Fukunaga and members of the Committee, thank you for the opportunity to provide written testimony on S.B. 2291.

The Department of Accounting and General Services (DAGS) supports the intent of this bill.

Relative to Section 4 (b) DAGS advises that although enterprise wide license agreements are beneficial, requiring Hawaii State businesses to provide unlimited licenses for property they help design and develop may drive the cost of the development so high that the Hawaii business cannot be competitive, even with a preference.

Part III, Section 6. Allowing resellers to participate in multi-state contracting agreements would be beneficial. DAGS defers any amendments in this part to be compliant with the procurement code to the State Procurement Office. The multi-state contracting agreements do not need to be limited to WSCA only. If resellers could, in compliance with the code, participate

in a variety of multi-state pricing agreements, Hawaii could benefit from the hard work, research and negotiation other states have done. Inclusion of Federal programs, in compliance with the code, may also be beneficial.

Thank you for the opportunity to provide written testimony on this matter

Written Statement of  
**YUKA NAGASHIMA**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**  
Wednesday, January 27, 2010  
1:15 PM  
State Capitol, Conference Room 016

In consideration of  
**SB 2291 RELATING TO ECONOMIC DEVELOPMENT.**

Chair Fukunaga, Vice Chair Baker, and Members of the Senate Committee on Economic Development and Technology.

The High Technology Development Corporation (HTDC) supports the intent of SB 2291 to expand the procurement preference for technology products and services by Hawaii businesses.

Local businesses in general are at a disadvantage in bids for procurement compared to mainland counterparts by the General Excise Tax (GET) factor, increasing their pricing by approximately 5%. This bill levels the playing field at least for technology products and services.

This bill also addresses intellectual property created by the Hawaii tech businesses in the course of providing goods or services to the State. The concept of the State having unlimited use license is preferred to “work for hire” for the vendors, because they can use the intellectual property created during this interaction for future work/customers. However, this language should be reviewed by the State Attorney General’s office to ensure that the State has the ability to continue to use the purchased service or product as if it were created as work for hire (e.g., the State’s ability to update the software the vendor was hired to program).

One factor to keep in mind is that various types of preferences already exist in the State procurement code. The bill needs to take into account the ease of implementation and education to ensure that the bill, when it becomes law, be successfully exercised.

Thank you for the opportunity to submit testimony to support the intent of this bill.



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Written Statement of  
**Karl Fooks**  
**President**  
Hawaii Strategic Development Corporation

Before the  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**

Wednesday, January 27, 2010  
1:15 PM  
State Capitol, Conference Room 016

In consideration of

**SB 2291 RELATING TO ECONOMIC DEVELOPMENT**

Chair Fukunaga, Vice Chair Baker and Members of the Committee:

HSDC supports the intent of the bill to use the State procurement preferences to support high technology businesses in Hawaii without increasing the cost to the State.

Thank you for the opportunity to submit testimony.

**Testimony of Thomas J. Smyth, CEcD**  
**Before the**  
**Committee on Economic Development And Technology**  
**Wednesday, January 27, 2010 1:15 p.m. Conference Room 016**  
**on**  
**SB 2291 Relating To Economic Development**

Chair Fukunaga, Vice Chair Baker and Committee Members:

**I support the purpose and intent of this measure, but have some concerns about the feasibility of setting the procurement preference as defined in the bill.**

SB 2291 expands the existing procurement preference for software development to include a broad range of high technology goods and services. It sets the preference at 5% while the Procurement Policy Board set the percentage by Administrative Rule in the existing section.

Some of the existing preferences are fixed, such as those for local printing, biofuels and products with made-in-Hawaii content. Others are established by the Board such as those for purchase of services from community rehabilitation programs.

Given the diversity and complex mix of goods and/or services defined in SB2219, as a technology procurement professional myself, I suggest that the preference be set by Administrative rule. This will allow the Procurement Policy Board to adapt to new technologies, modify or amend definitions and make other changes that might be needed far sooner than can be achieved by a statutory amendment.

When Act 221 was expanded to specify several new technologies, it took DoTAX months to get specific categories clearly defined in these new industries. The same unintended consequence may occur here as challenges to the preferences are made by potential vendors.

Thank you for the opportunity to provide comments.

**TESTIMONY OF WILLIAM G. MEYER, III**

HEARING DATE/TIME: Wednesday, January 27, 2010  
1:15 p.m. in Conference Room 016

TO: Senate Committee on Economic Development and Technology

**RE: Testimony in Support of SB 2291**

Dear Chair, Vice-Chair and Committee Members:

My name is William G. Meyer, III. I am an intellectual property attorney who has been practicing law in Honolulu for over 30 years. I represent both locally based and national and international motion picture and television production companies and high technology businesses.

I support passage of SB 2291.

Respectfully submitted,

**/s/ William G. Meyer, III**

William G. Meyer, III

LINDA LINGLE  
GOVERNOR



PROCUREMENT POLICY BOARD  
DARRYL W. BARDUSCH  
LESLIE S. CHINEN  
DARYLE ANN HO  
KEITH T. MATSUMOTO  
RUSS K. SAITO  
PAMELA A. TORRES

AARON S. FUJIOKA  
ADMINISTRATOR

**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**  
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**LATE**

TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
SENATE COMMITTEE  
ON  
ECONOMIC DEVELOPMENT AND TECHNOLOGY

January 27, 2010

1:15 PM

SB 2291

RELATING TO ECONOMIC DEVELOPMENT.

Chair Fukunaga, Vice-Chair Baker, and committee members, thank you for the opportunity to testify on SB 2291.

As procurement professionals, preferences in the procurement processes are viewed as increased cost to the state. Whether it is the award of the contract to the vendor with a preference or the procurement resources expended in applying, analyzing and reviewing, preferences increases the cost of the contract. However, the State Procurement Office (SPO) understands the purpose of the preference and supports the concept and intent of the preference. The following comments are provided for your consideration.

SECTION 3, page 3, lines, 1, 12, 15, and 17, for purposes of clarity and not to be confused with the other preferences, the term "high technology" be added to the amended term "Hawaii business". Definitions are applicable to the entire PART X, Chapter 103D on Preferences. The definition "Hawaii business" as amended, would also be applicable to other preferences, and in particular may be confusing to the Hawaii product preference. The attachment is provided for the clarifying changes.

SECTION 5, page 4, for the purposes of reporting to the legislature, the SPO recommends the Department of Business, Economic Development and Tourism (DBEDT) submits the report since DBEDT has the knowledge and resources to effectively evaluate and recommend improvements to this preference. The DBEDT currently provides an annual report on the small business set-aside program (HRS Chapter 103D-906), and has provided guidance to the Procurement Policy Board in adopting small business set-aside for identified targeted industry sectors below, and by definition are within the definition for "High Technology".

- Custom Computer Programming/Software Development
- Alternative/ Renewal Energy

The proposed amendment to PART III is unnecessary, and recommend be deleted. Depending on the type of goods or services, WSCA solicitations allow contract manufacturers to name authorized resellers as part of the contractor's proposal. Contract provisions allow manufacturers to identify and designate authorized resellers as part of the master agreement and participating addendum. Currently the SPO permits resellers to participate as part of any multi-state contracting agreement provided the reseller has been authorized and designated by the contractor. It would be inappropriate to require a contractor to accept a reseller for which no agreement has been negotiated between the reseller and contractor.

Thank you.

ATTACHMENT

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"Hawaii [~~software development~~ high technology business" means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State and that proposes to obtain eighty per cent of the labor [~~for software development~~] from persons domiciled in Hawaii."

SECTION 4. Section 103D-1006, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-1006 [~~Software development businesses.~~] High technology goods or services.** (a) In any expenditure of public funds for [~~software development,~~] high technology goods or services that may be provided by a Hawaii business, the use of Hawaii [~~software development~~] high technology businesses shall be preferred. Where a package bid or response to a request for proposal for high technology goods or services contains both Hawaii and non-Hawaii [~~software development~~] high technology businesses, then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii [~~software development~~] high technology business shall be increased by a preference percentage [~~pursuant to rules adopted by the policy board.~~] of five per cent.