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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

**PART I**

SECTION 1. The purpose of this part is to improve transparency and efficiency in the procurement system by:

- (1) Requiring the administrator of the state procurement office to establish an inadequate performance database to identify contractors that habitually perform poorly to help ensure that the public receives a completed project that is delivered on time, on budget, and of acceptable quality;
- (2) Transferring authority for the compliance audit unit to the state procurement office;
- (3) Requiring the compliance audit unit to establish a database of meaningful statewide procurement contract data to be made accessible to each governmental entity and selected non-confidential data to be made accessible to the general public to further transparency and accountability;



1 (4) Authorizing the compliance audit unit to conduct  
2 audits and have authority to access statewide public  
3 contract information; and

4 (5) Establishing a procurement task force to define past  
5 performance, create criteria for adverse performance,  
6 and develop associated rules and processes required  
7 for statewide implementation.

8 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§103D- Inadequate performance database; contractors.

12 (a) The administrator of the state procurement office shall  
13 develop and administer a searchable electronic database to  
14 record instances of inadequate performance by contractors for  
15 public works contracts under chapter 103 and construction  
16 procurement contracts under this chapter.

17 (b) The administrator of the state procurement office  
18 shall establish criteria for the listing of contractors in the  
19 inadequate performance database, which shall include the name  
20 and other relevant information of contractors on projects that:

21 (1) As a result of the contractor:



- 1           (A) Were over budget;  
2           (B) Were not completed as scheduled; or  
3           (C) Involved substandard construction; or  
4        (2) Involved any other criteria of inadequate performance  
5           of the contract, as determined by the administrator of  
6           the state procurement office.

7        (c) The inadequate performance database shall be  
8        accessible to all procurement officers listed in section  
9        103D-203. The administrator of the state procurement office may  
10       make the inadequate performance database accessible to the  
11       public.

12       (d) At the completion of any construction contract under  
13       this chapter, the procurement officer shall review the project  
14       to determine if the project met any of the criteria in  
15       subsection (b). If the procurement officer determines that any  
16       of the criteria in subsection (b) have been met, the procurement  
17       officer shall audit the contractor's performance of the  
18       contract. The contractor shall have the opportunity to respond  
19       to any matter of issue during the audit or before the  
20       procurement officer's final determination. If, after reviewing  
21       the audit and the contractor's response, if any, the contracting



1 officer determines that any of the criteria in subsection (b)  
2 have been met, the contracting officer shall make a final  
3 determination of inadequate performance. The procurement  
4 officer shall notify the administrator of the state procurement  
5 office of the final determination, and the administrator of the  
6 state procurement office shall enter the contractor and any  
7 other relevant information in the inadequate performance  
8 database.

9 (e) The administrator of the state procurement office  
10 shall establish by rule pursuant to chapter 91:

11 (1) Criteria for the removal of a contractor from the  
12 inadequate performance database, including the length  
13 of time that a contractor may be listed in the  
14 database; and

15 (2) Procedures to appeal any final determination by a  
16 contracting officer to list a contractor in the  
17 inadequate performance database.

18 (f) Before the award of any contract under chapter 103 or  
19 a construction contract under this chapter, the procuring  
20 officer shall consult the inadequate performance database. If a  
21 potential awardee appears in the database, the procuring officer



1 may decide to either accept or reject the potential awardee  
2 based on the procurement officer's evaluation of the facts  
3 contained in the database and any additional information the  
4 procurement officer may gather, including an interview with the  
5 potential awardee. Any determination to award the contract to  
6 the potential awardee or reject the potential awardee's bid  
7 shall be made in writing and shall include the reasons for  
8 making the determination. A copy of the written determination  
9 shall be sent to the administrator of the state procurement  
10 office and the accepted or rejected awardee."

11 SECTION 3. Section 103D-107, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[~~§~~103D-107~~]~~ **Compliance audit unit; establishment and**  
14 **purpose.** There is established a compliance audit unit within  
15 the [~~office of the auditor.~~] state procurement office. The  
16 purpose of this unit shall be to:

- 17 (1) Periodically review and audit procurement practices  
18 within government to ensure compliance with this  
19 chapter and all applicable rules; and  
20 (2) Advocate competition, fairness, and accountability in  
21 the procurement process.



1 Reports made by this unit shall be a matter of public record.  
2 This unit shall utilize as part of the review process, a review  
3 of records and activities specifically for trends and patterns  
4 of occurrence."

5 SECTION 4. Section 103D-108, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§103D-108 Compliance audit unit; duties and**  
8 **responsibilities.** The compliance audit unit shall:

- 9 (1) Review and assess applicable innovations in  
10 procurement methods or processes in other governmental  
11 jurisdictions or as described in national or regional  
12 publications;
- 13 (2) Review current or proposed statutes and rules to  
14 determine whether they promote fairness, efficiency,  
15 and accountability in the procurement process;
- 16 (3) Review selected contracts awarded pursuant to section  
17 103D-304;
- 18 (4) Conduct studies, research, and analyses, and make  
19 reports and recommendations with respect to existing  
20 and new methods of procurement and other matters  
21 within the jurisdiction of the policy board;



- 1 (5) Establish and maintain a procurement library;
- 2 (6) Establish and maintain a database of meaningful
- 3 statewide procurement contract data; provided that all
- 4 data on the database shall be made accessible to each
- 5 governmental entity and selective non-confidential
- 6 data may be made accessible to the general public to
- 7 further transparency and accountability, as determined
- 8 appropriate by the administrator;
- 9 ~~[(6)]~~ (7) Report to the appropriate agency and the chief
- 10 procurement officer stating the areas of noncompliance
- 11 and recommendations for remedial action; and
- 12 ~~[(7)]~~ (8) ~~[Be present at]~~ Participate in legislative
- 13 hearings and policy board meetings to present the
- 14 findings of the unit."

15 SECTION 5. Section 103D-109, Hawaii Revised Statutes, is  
 16 amended to read as follows:

17 " ~~[+]~~ §103D-109 ~~[+]~~ **Compliance audit unit; government**  
 18 **officers and employees to cooperate.** The officers and employees  
 19 of the State and of each county shall cooperate with this unit  
 20 and furnish to them such information related to procurement  
 21 activities as may be called for in connection with the



1 information gathering and research activities of this unit[-],  
2 including by reporting contract data pursuant to requirements  
3 and procedures established by the administrator, for inclusion  
4 in the database established under section 103D-108(6). The  
5 information shall be provided in a timely manner pursuant to  
6 procedures established by the administrator and shall be free of  
7 charge."

8 SECTION 6. Section 103D-205, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) For their respective jurisdictions and unless  
11 otherwise specifically provided in this chapter, each chief  
12 procurement officer shall serve as the central procurement  
13 officer for the officer's respective jurisdiction and:

- 14 (1) Procure or supervise the procurement of all goods,  
15 services, and construction;
- 16 (2) Exercise general supervision and control over all  
17 inventories of goods;
- 18 (3) Sell, trade, or otherwise dispose of surplus goods;
- 19 [and]





- 1 (4) Establish and maintain programs for the inspection,
- 2 testing, and acceptance of goods, services, and
- 3 construction[-];
- 4 (5) Coordinate with the administrator regarding
- 5 procurement policies, opportunities for statewide
- 6 innovation implementation, and concerns; and
- 7 (6) Report procurement contract data pursuant to
- 8 requirements established by the administrator, in the
- 9 form and manner prescribed by the state procurement
- 10 office, for inclusion in the database established
- 11 under section 103D-108(6)."

12 SECTION 7. Section 103D-206, Hawaii Revised Statutes, is  
 13 amended to read as follows:

14 "§103D-206 Additional duties of the administrator of the  
 15 procurement office. In addition to the duties referred to in  
 16 section 103D-205, the administrator shall:

- 17 (1) Perform periodic review of the procurement practices
- 18 of all governmental bodies;
- 19 (2) Assist, advise, and guide governmental bodies in
- 20 matters relating to procurement;



- 1           (3) Determine corrective actions; provided that if a  
2           procurement officer under the jurisdiction of the  
3           administrator of the state procurement office or a  
4           chief procurement officer of any of the other state  
5           entities under section 103D-203, fails to comply with  
6           any determination rendered by the administrator within  
7           thirty days from the date of the issuance of the  
8           determination, or longer if permitted by the  
9           administrator upon request by the procurement officer  
10          or a chief procurement officer, the procurement  
11          officer or chief procurement officer shall be subject  
12          to an administrative fine under section 103D-106, for  
13          every day of noncompliance;
- 14          (4) Develop and administer a statewide procurement  
15          orientation and training program;
- 16          (5) Develop, distribute, and maintain a procurement manual  
17          for all state procurement officials; [~~and~~]
- 18          (6) Develop, distribute, and maintain a procurement guide  
19          for vendors wishing to do business with the State and  
20          its counties [~~-~~]; and



1           (7) Develop and administer an inadequate performance  
2           database pursuant to section 103D- ."

3           SECTION 8. (a) The comptroller shall convene a  
4 procurement task force to examine the cost impacts that the  
5 procurement process has had for public works construction  
6 projects, and specifically to examine and recommend past  
7 performance standards and statewide processes in order to  
8 promote economy, efficiency, effectiveness, and impartiality in  
9 procurement for state and county governments.

10           (b) The comptroller, or the comptroller's designee shall  
11 serve as the chair of the task force and the comptroller shall  
12 solicit representatives from the following entities to serve on  
13 the task force, provided that those persons designated shall be  
14 knowledgeable of procurement procedures and issues within their  
15 respective organizations:

- 16           (1) The state procurement office;
- 17           (2) The University of Hawaii;
- 18           (3) The department of education;
- 19           (4) The office of Hawaiian affairs;
- 20           (5) The department of transportation;
- 21           (6) A county procurement department;



- 1 (7) A county board or department of water supply;
- 2 (8) The semi-autonomous public transit agency of the City
- 3 and County of Honolulu;
- 4 (9) The Subcontractors Association of Hawaii;
- 5 (10) The General Contractors Association of Hawaii;
- 6 (11) The Hawaii Building and Construction Trades Council;
- 7 (12) AFL-CIO;
- 8 (13) The Hawaii Construction Alliance; and
- 9 (14) Any additional representatives deemed necessary by the
- 10 comptroller.

11 (c) The task force shall define past performance, create  
12 criteria for adverse performance, and develop associated rules  
13 and processes required for statewide implementation.

14 (d) The task force shall submit its definition of past  
15 performance, criteria, and rules to the procurement policy board  
16 no later than one hundred eighty days after the effective date  
17 of this Act. In the event that the task force fails to submit  
18 its definition, criteria, and rules no later than one hundred  
19 eighty days after the effective date of this Act, the  
20 procurement policy board shall define past performance, create  
21 criteria for adverse performance, and develop associated rules



1 and processes required for statewide implementation. The  
2 procurement policy board shall enact permanent rules no later  
3 than January 1, 2018.

4 SECTION 9. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$3,000,000 or so much  
6 thereof as may be necessary for fiscal year 2015-2016 for the  
7 compliance audit unit to establish a procurement database  
8 pursuant to section 4 of this Act.

9 The sum appropriated shall be expended by the state  
10 procurement office for the purposes of this Act.

11 SECTION 10. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$780,000 or so much  
13 thereof as may be necessary for fiscal year 2015-2016 and the  
14 same sum or so much thereof as may be necessary for fiscal year  
15 2016-2017 for operation and maintenance of the compliance audit  
16 unit's procurement database, including one full-time equivalent  
17 (1.0 FTE) position to conduct database operations and  
18 maintenance.

19 The sums appropriated shall be expended by the state  
20 procurement office for the purposes of this Act.



1 SECTION 11. There is appropriated out of the general  
 2 revenues of the State of Hawaii the sum of \$260,000 or so much  
 3 thereof as may be necessary for fiscal year 2015-2016 and the  
 4 same sum or so much thereof as may be necessary for fiscal year  
 5 2016-2017 for staffing and operation of the compliance audit  
 6 unit within the state procurement office, including three full-  
 7 time equivalent (3.0 FTE) positions.

8 The sums appropriated shall be expended by the state  
 9 procurement office for the purposes of this Act.

10 **PART II**

11 SECTION 12. The legislature finds that creative problem  
 12 solving is necessary to address growing concerns arising from  
 13 the State's fiscal deficit. Hawaii is responsible for unfunded  
 14 liabilities totaling billions of dollars. Like many states,  
 15 Hawaii must balance its budget while managing the demands of  
 16 infrastructure maintenance and public service needs. Budget  
 17 shortfalls result in postponed maintenance and reduced social  
 18 services despite a growing population driving the demand for  
 19 services and adding stress to the public infrastructure.

20 The legislature finds that the State's process of acquiring  
 21 goods and services must be flexible to accommodate circumstances



1 where other than full competition is necessary to address a  
2 unique need, such as local food purchasing, or where  
3 nontraditional procurement practices, such as public-private  
4 partnerships, can help government maintain infrastructure,  
5 provide services, and operate more efficiently.

6 A public-private partnership is a contractual agreement  
7 between a public agency and a private sector entity where skills  
8 and assets of each sector are combined to deliver services to  
9 the public. Both entities share in the risks and rewards of the  
10 venture. A public-private partnership is not a privatization of  
11 a government function. The partnership provides for a level of  
12 public control and oversight of operations not typical of  
13 privatization.

14 While public-private partnerships are widely employed  
15 around the world, only five states have adopted comprehensive  
16 legislation authorizing governmental entities to contract with  
17 private partners to design, build, finance, operate, and  
18 maintain public facilities. Public-private partnerships have  
19 been created to address social infrastructure, transportation,  
20 water treatment, energy, and financial management concerns. The  
21 private sector contributes management efficiency, technology,



1 cash flow management, and personnel development to complement  
2 the government's legal authority, capital resources, procurement  
3 policies, and broad perspective.

4 The purpose of this part is to provide the State greater  
5 flexibility in procurement by establishing a process for special  
6 innovative procurement and generating a framework for public-  
7 private partnerships in Hawaii.

8 SECTION 13. Chapter 103D, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§103D- Special innovative procurement. (a) Contracts  
12 for supplies, services, professional services, or construction  
13 may be awarded with other than full competition using a special  
14 innovative procurement process in accordance with this section  
15 and procedures set forth in rules adopted by the procurement  
16 policy board. The special innovative procurement process  
17 authorized by this section shall only be used when the chief  
18 procurement officer determines in writing that it is  
19 advantageous to the State to use the process for procurement of  
20 new or unique requirements of the State, new technologies, or to  
21 achieve best value.





1       (b) The head of the purchasing agency shall submit a  
2 procurement plan developed pursuant to this section to the  
3 attorney general for review and approval as to form before  
4 issuing the notice required under subsection (c).

5       (c) Notice of the invitation for bids shall be given in  
6 the same manner as provided in section 103D-302(c).

7       (d) Nothing in this section shall preclude the adoption of  
8 rules providing for the use of bonuses instead of preferences in  
9 a procurement of construction.

10       (e) A written determination of the basis for the  
11 procurement and for the selection of the particular contractor  
12 shall be included by the head of the purchasing agency in the  
13 contract file, and a report shall be made by the head of the  
14 purchasing agency at least annually describing all  
15 determinations made since the last annual report. The report  
16 shall be transmitted to the administrator of the state  
17 procurement office who shall make the report publicly  
18 available."

19       SECTION 14. Section 103D-301, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§103D-301 Methods of source selection. Unless otherwise  
2 authorized by law, all contracts shall be awarded pursuant to  
3 the following sections, as applicable:

- 4           (1) Section 103D-302 (Competitive sealed bids);
- 5           (2) Section 103D-303 (Competitive sealed proposals);
- 6           (3) Section 103D-304 (Professional services procurement);
- 7           (4) Section 103D-305 (Small purchases);
- 8           (5) Section 103D-306 (Sole source procurement); [~~and~~]
- 9           (6) Section 103D-307 (Emergency procurements) [~~-~~]; and
- 10          (7) Section 103D- (Special innovative procurement)."

11          SECTION 15. (a) The procurement policy board shall draft  
12 rules for special innovative procurements, including but not  
13 limited to public-private partnership contracts.

14          (b) The rules for public-private partnerships shall  
15 include but not be limited to the following:

- 16          (1) A requirement that a public-private partnership  
17 contract include a long-term maintenance and  
18 operations scope;
- 19          (2) Provisions that require a suitability test wherein a  
20 centralized governmental entity with expertise in  
21 public-private partnership delivery and financial



1 modeling compares the value of long-term leases to  
2 existing project delivery models before issuing any  
3 requests for qualifications or proposals, which would  
4 be triggered after satisfaction of basic threshold  
5 requirements for public-private partnerships;

6 (3) Provisions that require the government to have an  
7 independent consultant or in-house expert in  
8 facilities planning, design, and construction assess  
9 the long-term projected needs of the government before  
10 considering the use of a public-private partnership;  
11 advise the government prior to solicitation; and  
12 continue serving as advisor to the government  
13 throughout the planning, design, and construction  
14 phases;

15 (4) Comprehensive statutory guidelines that apply to all  
16 state entities to provide a uniform, fair process that  
17 enables private developers to properly assess the  
18 risks and rewards of engagement;

19 (5) Provisions that encourage communication between design  
20 professionals and the end user during the request for  
21 proposals phase so the government end user is



1 empowered to provide direct, meaningful input to the  
2 competitor design teams developing the proposed  
3 designs; and

4 (6) Provisions that enable small businesses to compete.

5 (c) The procurement policy board shall submit a report on  
6 its draft rules for public-private partnerships and any proposed  
7 legislation to the legislature no later than twenty days prior  
8 to the convening of the regular session of 2017.

9 SECTION 16. There is appropriated out of the general  
10 revenues of the State of Hawaii the sum of \$65,000 or so much  
11 thereof as may be necessary for fiscal year 2015-2016 for a  
12 temporary position within the department of accounting and  
13 general services, not to exceed two years from the effective  
14 date of this Act, with duties to include but not be limited to  
15 assisting the procurement policy board in the research and  
16 development of special innovative procurements and public-  
17 private partnership rules.

18 The sums appropriated shall be expended by the department  
19 of accounting and general services for the purposes of this  
20 part.



1           SECTION 17. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 18. This Act shall take effect on July 1, 2030.



**Report Title:**

Procurement; Inadequate Performance; Procurement Database;  
Compliance Audit Unit; Procurement Task Force; Special  
Innovative Procurement; Public-Private Partnership;  
Appropriation

**Description:**

Requires the state procurement office to establish a database to record inadequate past performance by contractors on public works projects. Requires the compliance audit unit to establish a database of meaningful statewide procurement contract data. Transfers authority for the compliance audit unit to the state procurement office and authorizes the compliance audit unit to conduct audits and have authority to access statewide public contract information. Establishes a procurement task force. Appropriates funds for the compliance audit unit to establish a procurement database; operations and maintenance of the procurement database, include one full time equivalent (1.0 FTE) position; and staffing and operation of the compliance audit unit within the state procurement office, including three full-time equivalent (3.0 FTE) positions. Establishes a process for special innovative procurement and requires the procurement policy board to draft rules for special innovative procurements, including rules regarding public-private partnerships. Appropriates funds for a temporary position within the department of accounting and general services. Takes effect on 7/1/2030. (SD1)

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