



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

LATE

Testimony Presented Before the
Senate Committee on Higher Education
February 3, 2009 at 1:15pm

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawai'i

SB 0505 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Tokuda, Vice Chair Sakamoto and Members of the Committee:

This Bill provides the University with flexibility in procurement. The University had this flexibility from 1998 through 2004 and used it responsibly and to great benefit during that period. This measure would assist us in implementing much needed deferred maintenance and capital renewal projects on all our campuses more quickly, shortening delays in the contracting and procurement process. The University's capital improvements budget request as approved by the Board of Regents includes approximately \$350 million in health and safety, capital renewal and deferred maintenance, and equipment as the top three priorities. These projects are already identified, involve little in the way of permitting and are ready to launch quickly—just the kind of economic stimulus in President Obama's initiative.

In addition, please let me give you the following specific supporting points:

1. Providing the University of Hawaii with administrative flexibility has been accepted public policy embraced by all branches of government and the general public.

In 1997 the Governor, Senate President and Speaker of the House created an unprecedented blue ribbon Economic Revitalization Task Force composed of Hawaii's business, community and government leaders. Their objective was to develop recommendations on how to strengthen Hawaii's economy. Recognizing the importance of the University of Hawaii as a major economic engine for the State, one of the clear conclusions of the task force, accepted by all, was that autonomy for the university would materially enhance the university's performance of its constitutional responsibilities and allow it to contribute more meaningfully to the economic revitalization of the State of Hawaii. In 1998 the Legislature passed and the Governor signed Act 115 granting the University of Hawaii greater flexibility in managing its own affairs and, most notably, exempting the University of Hawaii from the State Procurement Code. This flexibility allowed the Board of Regents to adopt University procurement procedures consistent with State procurement law, but not dependent on the State governmental processes, procedures and resources. Taking this flexibility even further, in the 2000 legislative session a constitutional amendment was approved to provide the University of Hawaii with even greater autonomy. This constitutional amendment was overwhelmingly ratified by Hawaii's voters in the 2000 election.

2. The University has used this flexibility responsibly and effectively.

As required by Act 115, the University developed and implemented its own internal procedures and policies for procurement. The University used its flexibility to create the most advanced and open electronic public sector procurement system in the State of Hawaii. An electronic sourcing system called "SuperQuote" was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including enabling purchases over the Internet. Both SuperQuote and the PCard system have direct electronic interfaces to the University's financial management information system. This eliminates duplicate data entry in purchasing, which further reduces administrative costs and decreases a potential source of errors. The University developed comprehensive and thorough written policies and procedures appropriate for these modern practices. The University's Administrative Procedures on Procurement have been available online for many years and can be found at the following website: <http://www.hawaii.edu/apis/apm/a8200.html>. While the current versions of these procedures reflect the 2005 revocation of the University's Act 115 flexibility, the previous procedures that took advantage of the flexibility are also available in the online archives at <http://www.hawaii.edu/svpa/apm/archives/a8200.html>.

3. The University is fully committed to openness, appropriate public oversight and accountability.

In improving its internal procurement system, the University of Hawaii completely honored the statutory requirement to comply with the intent of the State procurement code. While dramatically increasing open competition and improving operational efficiency, the University has also embraced applicable federal procurement guidelines in its new processes and systems. The University procedures developed to implement the flexibility granted by Act 115, as described above, were all reviewed, discussed and approved by the Board of Regents at duly noticed open public meetings conducted under the State "Sunshine" laws. In addition to a bevy of internal control processes, the University's procurement practices are independently audited each year to ensure fair and equitable treatment of vendors, to foster effective broad-based competition in order to secure best value in purchases, and to maintain the integrity of the procurement process.

4. The public interest is best served by restoring the University's flexibility to establish its own procurement policies.

The widely accepted movement to increase University flexibility has been widely supported by the Legislature over the last decade, by the last two Governors, by the business community and by the voting public. One of the most visible outcomes of this movement was the law passed by the 1998 Legislature granting the University an exemption from the state procurement processes. The University's own procurement system and processes streamlined purchasing to reduce administrative costs, increased competition, reduced the costs of good and services procured, increased openness and auditability, and reduced the costs for vendors to do business with the University. Our faculty and staff used this direct responsibility and accountability to help the University of Hawaii respond to changing

conditions, new opportunities and Hawaii's needs in a more timely and effective manner. In addition, the University's flexibility reduced cost to State Government by relieving DAGS and other agencies of any responsibility for University procurement.

5. This flexibility is needed now to help the economy.

With \$350 million in capital renewal and deferred maintenance projects, the University can be a significant part of the solution to Hawaii's current economic downturn by directly creating or preserving several thousand jobs. Now is the moment for bold action. This measure will help the University to address its deferred maintenance needs and assist the people and businesses of Hawaii to weather these difficult economic times.

We ask your support for the passage of this bill, which has both operational and economic importance in helping the University of Hawaii achieve the flexibility it needs to be the major engine for the economic diversification of Hawaii. As President McClain stated in an op-ed in the *Honolulu Advertiser* recently, "The people, projects and programs of the University of Hawai'i are providing a bridge across the valley of recession to a brighter, more productive future for Hawai'i."

Thank you for this opportunity to testify in support of this measure.

LINDA LINGLE
GOVERNOR



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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
HIGHER EDUCATION

February 3, 2009

1:15 P.M.

SB 505

RELATING TO THE UNIVERSITY OF HAWAII.

Chair Tokuda, Vice-Chair Sakamoto and committee members, thank you for the opportunity to testify on SB 505.

The State Procurement Office (SPO) does not support the language to exempt from HRS chapter 103D, the University of Hawaii, or the board of regents of the University of Hawaii.

Statutory exemptions are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part “. . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . .” Any governmental agency with the authority to expend funds should be in compliance with chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

The SPO is against statutorily exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process.

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February 3, 2009
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The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic and confusing to vendors, contractors and service providers that must comply with a variety of different processes and standards. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

In conclusion, there needs to be one single source of public procurement policy. If it is to be the policy and procedures as used by the University, then all other purchasing jurisdictions should also use the same requirements, rather than having multiple policies.

Thank you.



LATE

The Senate

Committee on Higher Education

February 3, 2009

1:15 p.m.

S.B. No. 505 Relating to the University of Hawaii

The University of Hawaii Professional Assembly supports S.B. No. 505. For a number of legislative sessions UHPA has supported allowing the University of Hawaii to establish and effectuate its own procurement process. The University of Hawaii has distinct characteristics and needs that make it practical and efficient for procurement to be undertaken by the institution.

Respectively submitted,

Kristeen Hanselman
Associate Executive Director

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

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AIA Hawaii State Council

A Council of The American Institute of Architects

To HRE
HRE hearing 2/3/098
1:15 pm Rm 225

February 3, 2009

Honorable Jill Tokuda, Chair
Senate Committee on Higher Education
Honorable Norman Sakamoto, Vice Chair
Senate Committee on Higher Education

Re: **Senate Bill 505**
Relating to the University of Hawaii

Dear Chair Tokuda, Vice Chair Sakamoto, and Members of the Committees,

My name is Daniel Chun, Government Affairs Chair of The American Institute of Architects (AIA). The AIA Hawaii State Council is **STRONGLY OPPOSED** to Senate Bill 505 because it grants the University of Hawaii a "wholesale" exemption from the Hawaii public procurement code. Following are our specific concerns:

1. The exemption from chapter 103D-304 will nullify over ten years of efforts by legislators and all of Hawaii's design professional societies to pass an architect-engineer procurement law (Act 52 of 2003) that meets national and federal standards for awarding these types of professional service contracts.
2. The exemption has the potential of increasing business overhead costs in the design and construction industries such as the use of different design and construction procurement methods than are used by other public entities. Our increased overhead costs will have to be borne by other public entities and the private sector.
3. All other procurement statutes and administrative rules and processes that have been developed through years of careful public deliberation are swept away by this bill.

While the bill encourages the University to use the provisions of the Code, there is no guarantee to the private sector that the regents will do this. This legislature is a better public arena for developing state-wide procurement policy that balances the needs of a public entity with that of private businesses that intend to provide design and construction services. In the 1990s AIA supported the University's **INDEPENDENCE** to select its own providers of services, while operating **WITHIN** the provisions of the state procurement code.

We have met with UH to discuss their past unsuccessful attempts at a "wholesale" exemption, but design professionals are still unaware of problems with HRS Chapter 103D that this bill attempts to solve. Thank you for this opportunity to present **STRONGLY OPPOSING** testimony for SB 505.



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February 1, 2009

EMAILED TESTIMONY TO: HRETtestimony@Capitol.hawaii.gov

**Hearing Date: Tuesday, February 3, 1:15 p.m., Conference Room 225
(Committee on Higher Education)**

Honorable Senators Jill Tokuda, Chair, Norman Sakamoto, Vice Chair, and
Members of the Senate Committee on Higher Education

Subject: SB 505, Relating to the University of Hawaii

Honorable Chair Tokuda, Vice Chair Sakamoto, and HRE Committee Members,

The American Public Works Association Hawaii Chapter represents over one hundred engineering design professionals in public and private sector. **We Strongly Oppose SB 505, Relating to the University of Hawaii.** This bill will give the University of Hawaii and exemption from following the State Procurement Code that took many years to bring it closer to the Federal FAR. The State Procurement Code now ensures that the State and Counties follow an open and transparent process and will select the best qualified consultants to perform their professional services.

The University of Hawaii and all public sector agencies should be following the State Procurement Code relating to Qualification Based Selection procedures for Design Professionals as outlined in Chapter 103D. No exceptions... too much flexibility could lead to much problems in the future.

Therefore we ask you to OPPOSE this bill.

Thank you for an opportunity to express our views regarding this bill.

Sincerely,
American Public Works Association, Hawaii Chapter

Lester H. Fukuda, P.E., FACEC

SAH - Subcontractors Association of Hawaii

820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 + Fax: (808) 533-2739

February 3, 2009

Testimony To: Senate Committee on Higher Education
Senator Jill N. Tokuda, Chair

Presented By: Tim Lyons
President

Subject: S.B. 505 - RELATING TO THE UNIVERSITY OF HAWAII

Chair Tokuda and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. Our testimony today represents the collective thoughts of eight separate and distinct subcontracting associations:

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are opposed to this bill. Prior to the establishment of the procurement code for all state agencies, contractors lived daily with a "mix-mash" of rules and regulations on how to do business with the State. Some contractors gave up doing state work because it was so confusing going from one agency to the other. The rules were different, the procedures were different and the requirements were different.

It was based on that then we endorsed the establishment of the Hawaii Procurement Code. Over the years there have been a number of protections built into the public procurement code which protects subcontractors and those who do business with the government. We are, after all, talking about taxpayer money and it is important that it be spent correctly.

On previous occasions when this subject has arisen, the communication offered by the University of Hawaii officials as to why they wanted to get out of the procurement code was that they were tired of protests and that the procedure lengthened the time of the projects. We think that it is important to remember, protest are filed because the unsuccessful contractor feels as if the successful contractor did not play by the same rules that he had to play by. In most cases they tell us that if they were able to do the same things that the successful bidder was to do, then they could have gotten the job. All the procurement code does is make sure that everybody is playing on a level playing field and if in fact they are not, you need to have a provision that allows people to protest. WE do not believe that it is enough to provide in this bill that the UH be encouraged to use the provisions of the procurement code as "guidelines". This doesn't even call for them to use it. They are only encouraged to use it, and then when they do, it is only a guideline.

In conclusion, we do not feel the University of Hawaii should be exempt from the procurement code and if there are problems with the procurement code that detract from having a smooth, transparent and fair system then we should be addressing that for the benefit of all agencies not just the University of Hawaii.

Based on the above, we oppose this bill.

Thank you.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

LATE

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February 2, 2009

EMAILED TESTIMONY TO: HRETestimony@Capitol.hawaii.gov

**Hearing Date: Tuesday, February 3, 1:15 p.m., Conference Room 225
(Committee on Higher Education)**

Honorable Senators Jill Tokuda, Chair, Norman Sakamoto, Vice Chair, and Members of the Senate Committee on Higher Education

Subject: **SB 505, Relating to the University of Hawaii**

Dear Chair Tokuda, Vice Chair Sakamoto, and Committee Members,

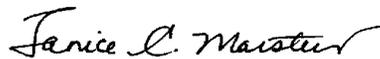
The American Council of Engineering Companies of Hawaii (ACECH), representing 70 consulting engineering firms, **strongly opposes SB 505**, Relating to the University of Hawaii. SB 505 seeks to exempt the University of Hawaii from Hawaii Revised Statutes (HRS) Chapter 103D the State procurement code.

The bill states that the University will develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, ACECH strongly believes that the State procurement code under 103D is the best means for procuring services and products, and should continue to be used by the University of Hawaii. The State procurement code provides for fair and proper award of public contracts, in a manner open and transparent to the public. The procedure of "Qualifications-based selection" under 103D provides the nationally recognized best method for procurement of professional design and other services. We believe the University has not provided sufficiently compelling reasons to sidestep the State Procurement Code and are concerned that this bill is counter to the public interest in an open and transparent procurement process.

We appreciate your time and the opportunity to present our case in opposition of SB 505. Please do not hesitate to contact us if you have any questions regarding our testimony.

Respectfully submitted,

ACEC Hawaii



Janice Marsters
National Director

IRONWORKERS STABILIZATION FUND

LATE

Honorable Representative Jill Tokuda, Chair
Members of the Senate Committee on Higher Education
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: IN OPPOSITION OF SB505, RELATING TO THE UNIVERSITY OF HAWAII

Hearing: Tuesday, February 3, 2009

Dear Chair Tokuda, and the Senate Committee on Higher Education:

The Ironworkers Stabilization Fund Local 625 OPPOSES the passage of SB505, which exempts the University of Hawaii from Hawaii public procurement code requirements.

The State of Hawaii Procurement Code was enacted to ensure that public funds would be used in a fiscally prudent manner. This Procurement Code is meant to protect the welfare and safety of the workingmen and women of Hawaii. If this bill passes in its current form, there is no true review and appeal process in place if there is a situation that may occur.

We believe that if the University of Hawaii would like their own public procurement policy they should do the following:

- 1) Draft a policy that can be reviewed by all community stake holders including the State Legislature, Procurement Board and those affected;
- 2) Have in their draft a provision to allow local companies to have preference in the bidding process;
- 3) Ensure public safety by using all of the language regarding construction and the Davis Bacon/Fair Labor Standards; and
- 4) Have an appeal process in place.

We believe to ensure that our local economy is not hurt that a buy local preference should be enacted.

Thank you for the opportunity to submit this testimony for Senate Bill 505

From: Joel Fischer [jfischer@hawaii.edu]
Sent: Saturday, January 31, 2009 2:05 PM
To: HRE Testimony
Subject: SB505; 2/3/09; 1:15PM; Rm 225

Importance: High

SB505, Relating to the UH
Committee on Higher Education; Chair, Sen. Tokuda

PLEASE KILL THIS BILL AND THIS IDEA...for now!

I oppose loosening restrictions on the UH AT THIS TIME. The current administration and holdover Board members are corrupt. There just is no other way to put it. These folks simply do not have the moral or fiscal compass to be able to go about the procurement process without very strict guidelines and oversight.

I am not trying to keep the UH, my beloved university, from progressing. I just believe that under the current gang, we cannot trust them to handle more fiscal freedom.

Perhaps we can revisit this issue after we give a new President a year or so to see how he or she can handle the pressures.

Thank you.

Aloha, joel

Dr. Joel Fischer, ACSW
President, 19-3, Democratic Party

Professor
University of Hawai'i, School of Social Work
Henke Hall
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."
Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill

February 2, 2009

Senator Jill N. Tokuda, Chair and Members
Committee on Higher Education
Senate
State Capitol
Honolulu, HI 96813

Dear Chair Tokuda and Members:

Subject: S.B. No 505, relating to authorizing the issuance of general obligation bonds for capital improvement projects to improve certain UH athletic facilities.

I am Jim Donovan, Director of Athletics for the University of Hawaii at Manoa.

I strongly support S.B. No 505, relating to exempting the University of Hawaii from Hawaii public procurement requirements.

This Bill restores the University's ability to establish its own procurement policies in support of the widely accepted public policy of greater administrative flexibility for the University. The University was granted this flexibility by the Legislature in 1998 and had used it responsibly and to great benefit until its revocation as of January 1, 2005.

The University of Hawaii at Manoa Athletics Department was exempt from the procurement code prior to 1998 and we had a track record of acting in the best interest of all our constituencies to order items in a timely and cost effective manner.

During the past few years we have experienced situations where we couldn't do a cash and trade agreement with certain vendors due to the procurement code. Cash and trade agreements allow us the flexibility to reduce overall costs. The procurement code requires that the cash part be competitively bid which often precludes vendors from providing a trade component.

The procurement code also provides a challenging timeline. Having to begin the procurement process often times 6 to 9 months in advance for items such as media guides and athletic supplies does not allow us the flexibility to reduce potential costs by having additional time for the vendor to "sharpen the pencil."

If the procurement exemption is restored the University of Hawaii at Manoa Athletics Department will use this flexibility responsibly and effectively. We will continue to work within all University of Hawaii purchasing policies including an electronic sourcing system called "SuperQuote" that was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including by enabling purchases over the Internet.

The University of Hawaii at Manoa Athletics Department remains fully committed to openness, appropriate public oversight and accountability and will honor the statutory requirement to comply with the intent of the State procurement code.

I ask your support for the passage of this bill, which is important in helping the University of Hawaii Athletics Department have the facilities and processes to compete in the national marketplace of Colleges and Universities.

Thank you for this opportunity to testify in support of this measure.

Sincerely,

Jim Donovan
Director of Athletics