

HB347

HD2 SD1

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587-4703

WRITTEN COMMENTS
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS

March 23, 2010

9:30 AM

HB 347, HD 2, SD 1

RELATING TO THE UNIVERSITY OF HAWAII.

Chair Taniguchi, Vice-Chair Takamine and committee members, thank you for the opportunity to comment on HB 347, HD 2, SD 1.

The State Procurement Office (SPO) does not support the language in SECTION 1 to increase the small purchase ceiling to \$250,000, and SECTION 2 and 3 to exempt the University of Hawaii or their board of regents from HRS §§ 103D-701(f) and 103D-709(e).

ACT 175, SLH 2009 already temporarily amends HRS §103D-305 for the small purchase procurement method by increasing the small purchase thresholds for goods and services to \$100,000 and \$250,000 for construction. Small purchase threshold amounts should be applied consistently and with uniformity to avoid confusion among the various State agencies and in the market place. If the small purchase threshold is to be raised, then it should be raised for all jurisdictions and not just for the University or their board of regents.

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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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.

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 and procedures.

Thank you.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Judiciary and Government Operations
March 23, 2010 at 9:30 a.m.

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

HB347 HD2 SD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Taniguchi, Vice Chair Takamine 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 has a deferred maintenance backlog in excess of \$350 million. These projects are already identified, involve little in the way of permitting and are ready to launch quickly, thus putting Hawai'i's construction workers to work.

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

1. Providing the University of Hawai'i 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 Hawai'i's business, community and government leaders. Their objective was to develop recommendations on how to strengthen Hawai'i's economy. Recognizing the importance of the University of Hawai'i 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 Hawai'i. In 1998 the Legislature passed and the Governor signed Act 115 granting the University of Hawai'i greater flexibility in managing its own affairs and, most notably, exempting the University of Hawai'i 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 Hawai'i with even greater autonomy. This constitutional amendment was overwhelmingly ratified by Hawai'i'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 Hawai'i. 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 Hawai'i 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 Hawai'i respond to changing conditions, new opportunities and Hawai'i'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 Hawai'i'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 Hawai'i to weather these difficult economic times. This will also support President Greenwood's *Project Renovate to Innovate* initiative, which she announced in her State of the University address.

We would like to note that this committee and the Legislature did pass legislation last session which made improvements in procurement. We thank you for those changes and applaud your efforts. We do, however, believe that additional changes can be made which would be beneficial for all state agencies. In addition, as stated earlier, the University has, using flexibility it had in the past, pioneered improvements in procurement practices, which have been adopted by the state subsequently, thus benefiting all public entities. We suggest that we be allowed this flexibility again, for a 5 year period, in the way of a pilot program,

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

March 20, 2010

Senator Taniguchi, Senator Takamine, and Members
Committee on Judiciary and Government Operations
Senate
State Capitol
Honolulu, HI 96813

Dear Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

Subject: HB 0347, HD2 relating to providing the University of Hawai'i from Hawai'i with flexibility in procurement.

I am Jim Donovan, Director of Athletics for the University of Hawai'i at Manoa.

I strongly support HB 0347 HD2 which provides the University of Hawai'i flexibility in procurement 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 Hawai'i 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 both a timely and cost effective manner.

During the past few years we have experienced situations where we couldn't do cash and trade agreement with certain vendors due to the procurement code. Cash and trade agreements allow us the flexibility to reduce overall costs by accepting product as part of the procurement. 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 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."

Athletics is planning to completed several capital renewal and deferred maintenance projects in the near future. University-wide, there is \$350 million in capital renewal and deferred maintenance projects. The University can be a significant part of the solution to Hawai'i's current economic downturn by directly creating or preserving several thousand jobs.

If flexibility in procurement is restored the University of Hawai'i at Manoa Athletics Department will continue to procure items responsibly and effectively. We will continue to work within all University of Hawai'i 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.

I ask your support for the passage of this bill, which is important in helping the University of Hawai'i at Manoa Athletics Department have the facilities and processes to compete in the national marketplace of Colleges and Universities and. The University of Hawai'i at Manoa Athletics Department remains fully committed to openness, appropriate public oversight and accountability.

Sincerely,

Jim Donovan
Director of Athletics

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304

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March 23, 2010

Testimony To: Senate Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair

Presented By: Tim Lyons
President

Subject: H.B. 347, HD 2, SD 1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Taniguchi and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. SAH is composed of nine separate and distinct subcontracting organizations including:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

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 oppose this bill.

We are particularly in opposition to the changes made which exempts the University of Hawaii from the protest provisions and feel that this bill gives them latitude to take any action that they want including being unethical, illegal and flat out disruptive to the process.

If individual bidders are not allowed to successfully protest and have subsequent actions taken relating to that protest then you are in essence, leaving the University of Hawaii free to do whatever they want.

At the request of the Senate Higher Education Committee, we met with officials from the University of Hawaii and were shocked to discover that their real intent in "escaping" the procurement code was to be able to run the system the way that they want to run it without regard to the law or the regulations for fairness. While we have no objection to providing them with access to an electronic procurement system, even for jobs up to \$250,000.00, we do not believe there should be any exemption whatsoever from the protest provisions and particularly as it relates to Section 103d-709e. The provision which allows the University an exemption from the "stay" provision is particularly bothersome.

We are sorry to report to you that of all the government agencies that are doing any contracting work, we get more complaints about the University of Hawaii and its continual attempts to try and subvert the law and the regulations than any other government agency that our contractors deal with. It is based on that complaint that we CANNOT support this bill.

Thank you.