



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Higher Education and
Senate Committee on Economic Development, Government Operations and Housing
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by
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HB 114 HD3 (Part II) – RELATING TO HIGHER EDUCATION

Chairs Taniguchi and Dela Cruz, Vice Chairs Kahele and Slom, and members of the committees:

Thank you for the opportunity to testify in opposition to this measure.

HB 114 HD3 Part II proposes repealing the President of the University of Hawai'i's authority to serve as the chief procurement officer for construction contracts and professional services related to construction contracts for the University of Hawai'i and requires the state administrator of the state procurement office of the department of accounting and general services to serve as the chief procurement officer for such contracts.

This bill proposes to amend Section 103D-203 of the state procurement code which currently appoints separate chief procurement officers for the University of Hawai'i and other semi-autonomous entities in the state such as the Department of Education, the Hawai'i Health Systems Corporation, county boards or departments of water supply and public transit agency, as well the Senate, the House of Representatives, the Judiciary, the Office of Hawaiian affairs and the executive and legislative branches of the counties. This measure would remove the authority for procuring construction contracts and professional services related to construction contracts only from the University of Hawai'i.

This would mean that the ability to prioritize, execute and administer the procurement of construction contracts and professional services related to construction contracts for the University would no longer be within the authority and responsibility of the Board of Regents and the University's administration. The University would no longer have the ability to direct resources necessary to ensure the timely procurement of construction contracts and professional services related to construction contracts.

Currently, the University has \$206 million in major construction underway, \$229 million of major projects soon to be procured and \$187 million of health, safety, code, and repairs and maintenance projects in various stages of design and construction, for a total in excess of \$622 million. We are concerned that removing the University's authority to procure its own construction projects will adversely impact the upcoming procurement of these construction projects. The University is operating in compliance

with the procurement code and has demonstrated that it is quite capable of expeditiously procuring its own construction projects. Accordingly, we do not see the need or benefit for this amendment to the procurement code which would differentiate the University from other entities with separate chief procurement officers and authority.

If this measure is a result of concern over the limited flexibility the University previously had in procurement, which was sunset on June 30, 2012, we provide the following information:

The Legislature, through Act 82, SLH 2010, provided the University of Hawai'i flexibility from certain requirements of the Hawai'i Public Procurement Code (HRS Chapter 103D), effective as of July 1, 2010. The intent of providing this limited flexibility to the University was to allow it to pilot innovative procedures to expedite procurement of goods and services, especially construction services while maintaining fairness and transparency. It was intended to aid the economy while helping the University with its capital improvement needs at a time when costs were low and financing favorable. And the procurement processes piloted by the University could be adopted in the future by the legislature for other state agencies.

Since Act 82 only provided the limited flexibility to the University from July 1, 2010 through June 30, 2012, University administration proposed initial revisions to its procurement procedures to be effective July 1, 2010 on an interim basis while further revised processes were being developed for piloting. These initial revisions were approved by the Board of Regents at its meeting of June 28, 2010.

Following that meeting, the President of the University appointed a Procurement Task Group to review the interim procedures and develop further revised procedures for recommendation to the Board of Regents. Members of this Task Group included two members of the Board of Regents, the executive vice president of the General Contractors Association of Hawai'i, a representative of the American Council of Engineering Companies of Hawai'i, and two construction managers, one from the U.S. Army Corps of Engineers and one from the State of Hawai'i Department of Education. After several meetings during which discussions focused on expediting construction projects while maintaining fairness and transparency, the Task Group recommended further revisions to the procedures for the procurement of construction. They proposed three new alternative procedures for qualification-based construction procurement in addition to the revisions previously approved by the Board. These additional revisions were approved by the Board of Regents at its meeting of September 16, 2010.

Subsequently, numerous outreach presentations on several islands were made to approximately 250 members of the General Contractors Association of Hawai'i, Kaua'i Contractors Association, and Hawai'i Island Contractors Association, the Building Industry Association, the Subcontractors Association of Hawai'i, Construction Managers Association of America, and Painters and Decorating Contractors Association of Hawai'i.

The University's interim procedures for qualifications-based construction procurement may be viewed in their entirety at:

<http://www.hawaii.edu/apis/apm/abol/a8200.201207/proc/A82801.pdf>;
<http://www.hawaii.edu/apis/apm/abol/a8200.201207/proc/A82802.pdf>;
<http://www.hawaii.edu/apis/apm/abol/a8200.201207/proc/A82803.pdf>.

The interim procurement procedures are no longer in effect as the limited flexibility provided by Act 82 ended on June 30, 2012. However, during the two years of the interim construction procurement procedures, the University successfully procured 21 projects system wide for a total construction cost of \$192 million.

Even with this limited implementation timeframe, this limited flexibility allowed the University to pilot innovative procedures to expedite procurement of goods and services, especially construction services while maintaining fairness and transparency. The University also believes that these construction projects aided the economy while helping the University with its capital improvement needs at a time when costs were low and financing was favorable. Furthermore, the University feels the pilot was successful and processes piloted were appropriate and effective, and hopes that they may be adopted in the future by the legislature for other state agencies.

In conclusion, while we believe the pilot allowed by Act 82, SLH 2010 was successful, the legislation has ended and the University has been operating in compliance with the state procurement code since July 1, 2012. Accordingly, we do not see the need or benefit for this amendment to the procurement code which would differentiate the University from other entities with separate chief procurement officers and authority. This would mean that the ability to prioritize, execute and administer the procurement of construction contracts for the University would no longer be within the authority and responsibility of the Board of Regents and the University's administration. The University would no longer have the ability to direct resources necessary to ensure the timely procurement of construction contracts.

The University is cognizant of the allegations made by Mr. Dennis Mitsunaga in his testimony on SB 1383 and is in the process of performing a full investigation of his allegations. We do not believe that changes to statute differentiating the University from other state entities should be made based on at this point unsubstantiated allegations against an individual.

For these reasons the University is in opposition to this bill. Thank you for the opportunity to testify on this measure.