

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

April 9, 2021

LEGISLATIVE Update

Legislative Committee Members

Liaison: Ken Kawahara, Akinaka & Associates, Inc.
Chair: Charles Jury, Okahara and Associates, Inc.
Ikaika Kincad, Consor Engineers, LLC
Janice Marsters, Hart Crowser
Jeff Kalani, Yogi Kwong Engineers
Jeremy Dow, Coffman Engineers, Inc.
Kealohi Sandefur, Yogi Kwong Engineers
Kimo Unten, Coffman Engineers, Inc.
Lester Fukuda, Kaula AE
Michael Kamaka, Bowers + Kubota
Sean Sugai, Ron N.S. Ho & Associates, Inc.
Timothy Goshi, KAI Hawaii, Inc.

The Hawaii State Capitol has been closed to the public this session, but the Legislator was busy introducing over 2,700 bills. The ACECH Legislative Committee identified and tracked 47 bills that had the potential to affect our membership businesses. These bills ranged from family leave, to individual tax clearances for professional licenses, to amendments to the State Procurement law. As usual the Legislative Committee monitored and played defense on several bills. However, during this session, some legislators appeared to take aim at procurement, including Qualification-Based Selection (QBS).

QUALIFICATION-BASED SELECTION UNDER SEIGE

Senate Bill (SB) 788 contained language detrimental to HRS §103D-304, our QBS law. When introduced, this bill focused on past performance issues related to construction. However, as the bill passed through the legislature, language was inserted to add provisions for professional services that would remove the preference for qualifications and allow agencies to select firms based on criteria the agency chooses. Clearly, this would eliminate QBS and would not be in the best interest of public safety. ACECH had little time to mobilize on the offensive. This bill passed through two committees and had gained momentum that was difficult to stop. Over the course of a few days your legislative committee crafted testimony in opposition and solicited additional testimony from ACECH member firms. Much of our member firms leaped into action and flooded the final committee with testimony. The legislative committee also met with key legislators to voice concerns with the bill. Lastly, several representatives of the ACECH Board and our membership testified “in-person” (via Zoom) reinforcing our opposition of the bill. Fortunately, with a lot of hard work and a great response to our call for testimony, this bill was deferred. Thanks to all who responded and got their testimony submitted!

In addition to SB788, SB1329 provided concerning language that, if the State Procurement Office (SPO) can't make a decision on a procurement protest, including protests on professional services awards, in 75 days, the award is overturned, and the protester automatically wins the contract. For engineering firms, this measure could have circumvented QBS. For A/Es and contractors, it would have resulted in a lot more protests and would completely overwhelm the SPO. SB1329 was heard at the same time as SB788, so the same actions taken for SB788 was concurrently taken for this bill. Again, due to hard work and a great response to our call for testimony, this bill was deferred.

COST DATA WITH QBS

House Bill 841 proposed that selection committees that evaluate engineering, architectural, surveying, or landscape architectural professional service submittals for a state or county contract may require the top ranked competing professional service offerors to submit cost or pricing data prior to selection.

ACECH and several member firms, submitted testimony in opposition of this bill. The primary concern was that agencies would prioritize cost over qualifications which would not be in the best interest of the public

After meeting with the Committee Chair this bill was deferred and QBS was protected.

RESURRECTION AFTER BEING DEFERRED

UPDATE: SB1329 found new life and was scheduled for decision making 5 days after it was recommended to be deferred. Fortunately, the measure was passed with amendments that removed the language “*If the protest is not resolved by mutual agreement and the chief procurement officer or designee does not issue a written decision to uphold or deny the protest, the protest shall prevail.*” The measure is now on its way to conference and your legislative committee will continue to monitor in hopes that the removed language will not be reinserted.

COST OVERRUNS AND LIABILITY

House Bill 1355 proposed that in the event of construction cost overruns, a procurement officer shall create a report documenting the determination whether to pursue damages against a design professional.

Your legislative committee met with the representative that introduced the bill to understand the issues that led to this bill and to voice our concerns regarding the contents of the bill. ACECH submitted testimony in opposition to this bill and reached out to other legislators and the bill was successfully deferred.

MORE WORK TO PROTECT QBS

Unfortunately, our work is not done. We have seen many bills this year that arose from a procurement study conducted by a mainland consultant to the SPO and published in early 2020, including bills that would damage QBS and would make the SPO investigate design professionals for construction cost overruns. We anticipate the ACECH legislative and risk management committees are going to have to work with various stakeholders over the summer and fall to vet this report and come up with some meaningful suggestions for legislation, or develop a compelling consensus that no changes to the procurement code are needed, so that legislators don't come back next year with the same bad bills.

HAVE YOU DONATED LATELY TO THE ACECH POLITICAL ACTION COMMITTEE (PAC)?

In years like this one, we've worked hard with certain legislators to get bills deferred so they do not negatively affect the way we do business. We need to have funds to support those legislators. Please consider sending a check today to:

ACECH PAC
C/O Taryn Taniguichi
677 Ala Moana Blvd, Suite 701, Honolulu, HI, 96813

SUMMARY BILL TRACKING

<p>SB466 SD2 School Facilities Agency; Department of Education; Construction RELATING TO A SCHOOL FACILITIES AGENCY. Amends Act 72, Session Laws of Hawaii 2020, to require that the school facilities agency complies with the Hawaii Public Procurement Code. Authorizes the school facilities agency to have additional powers and duties. Specifies additional uses for the school facilities special fund. Provides the executive director of the school facilities agency with authority relating to capital improvement projects for the school facilities agency.</p>
<p>SB808 SD2 HD1 School Facilities Agency; School Facilities Authority; Department of Education; Transfer; Appropriation RELATING TO THE SCHOOL FACILITIES AGENCY. Renames the school facilities agency as the school facilities authority. Describes the powers and responsibilities of the school facilities authority by amending chapter 302A, part VI, subpart C and Act 72, Session Laws of Hawaii 2020. Transfers the total fund balance in the state educational improvement fund to the school facilities special fund by an unspecified date. Appropriates funds. Effective 7/1/2051. (HD1)</p>
<p>SB136 SD1 Education; School Facilities Agency; Administrative Rules; CIP; Report; Governor; DOE RELATING TO THE SCHOOL FACILITIES AGENCY. Requires the department of education school facilities agency to adopt and publish administrative rules necessary to implement Act 72, Session Laws of Hawaii 2020, by July 1, 2021. Requires the office of the governor to provide a report to the legislature regarding the process by which the department of education purchases land and executes capital improvement project contracts through the school facilities agency. Effective 7/1/2050. (SD1)</p>
<p>HB374 School Facilities Agency; Department of Education; Construction RELATING TO A SCHOOL FACILITIES AGENCY. Amends Act 72, Session Laws of Hawaii 2020, to require that the school facilities agency complies with the Hawaii Public Procurement Code. Authorizes the school facilities agency to have additional powers and duties. Specifies additional uses for the school facilities special fund. Provides the executive director of the school facilities agency with authority relating to capital improvement projects for the school facilities agency.</p>
<p>SB789 SD2 Procurement Code; Special Procurement RELATING TO PROCUREMENT. Authorizes a special procurement process for the procurement of goods and services. Requires the procurement policy board to establish rules and procedures for the special procurement process by December 31, 2021. Requires the head of a purchasing agency to prepare a procurement plan and submit the plan to the Attorney General or corporation counsel. Requires the head of a purchasing agency to electronically post, for at least one year, all contracts awarded through a special procurement process within seven days of the contract award. Effective 5/6/2137. (SD2)</p>
<p>HB423 Department of Environmental Protection; Establishment; Transfer of Functions; Department of Land and Natural Resources; Department of Agriculture; Department of Health RELATING TO A DEPARTMENT OF ENVIRONMENTAL PROTECTION. Establishes the department of environmental protection. Transfers jurisdiction of certain functions and employees of the department of land and natural resources, department of agriculture, and department of health to the department of environmental protection.</p>
<p>HB640 Procurement; Contract Bids; Joint Contractor and Subcontractor Listing RELATING TO PROCUREMENT. Requires bidders for construction contracts to submit the final list of all joint contractors and subcontractors no later than five days after the bid submission deadline.</p>
<p>SB625 Procurement; Contract Bids; Joint Contractor and Subcontractor Listing RELATING TO PROCUREMENT. Requires bidders for construction contracts to submit the final list of all joint contractors and subcontractors no later than five days after the bid submission deadline.</p>
<p>HB526 HD1 SD1 Procurement; Past Performance; Contractors; State Procurement Office; Appropriation RELATING TO PROCUREMENT. Defines past performance. Requires procurement officers to consider specific factors, including past performance, when available. Requires the state procurement office to establish and administer a past performance database and adopt rules pursuant to this past performance requirement, by 12/31/23. Appropriates funds for the development, implementation, and training of certain procurement resources tools, including a past performance guide and past performance database. (SD1)</p>
<p>SB788 SD2 HD2 Procurement; State Procurement Office; Construction Procurement Policy Review RELATING TO PROCUREMENT. Allows selection committees for procurement of professional services to weigh the selection criteria in the order of importance relevant to their agency and project. Beginning 12/31/2022, requires the state procurement office to develop a vendor past performance information system. Allows a bidder of a public works construction project to clarify and correct non-material or technical issues with subcontractor listings for up to twenty-four hours after the bid submission deadline. Requires bids for construction to be publicly opened no sooner than twenty-four hours after the bid submission deadline. Effective 7/1/2112. (HD2)</p>
<p>HB376 HD1 Procurement; Competitive Sealed Bidding; Second Lowest Bidder RELATING TO PROCUREMENT. Allows purchasing agencies to award a contract to the second lowest bidder in certain cases through the competitive sealed bidding process. Effective 7/1/2112. (HD1)</p>
<p>SB658 Procurement; Competitive Sealed Bidding; Second Low Bid Method RELATING TO PROCUREMENT. Allows purchasing agencies to use the second low bid method for procurement.</p>
<p>HB582 Procurement; Preference; Employment of Individuals with Disabilities RELATING TO PREFERENCES UNDER THE PROCUREMENT CODE. Establishes a preference under the procurement code for employers who pledge to hire individuals with disabilities when contracting for goods, services, or construction through competitive sealed bidding, competitive sealed proposals, or both.</p>
<p>SB248 Hawaii Products; Procurement Preferences; Increase RELATING TO PROCUREMENT. Increases the procurement preferences for class I and class II Hawaii products.</p>

<p>SB722 <u>Procurement Code; Competitive Sealed Bidding; Competitive Sealed Proposals; Evaluation; State and County Redevelopment; Housing</u> RELATING TO PROCUREMENT. Requires that in evaluating and determining the award for redevelopment of state or county lands through competitive sealed bidding or competitive sealed proposals, the number of housing units proposed shall constitute forty per cent of the evaluation score regardless of whether the development of housing is proposed. Applies to the urban areas of state or county land located within a one-half mile radius of a mass transit station.</p>
<p>SB510 SD1 <u>DLNR; State Historic Preservation Division; Office of Hawaiian Affairs; Project Reviews</u> RELATING TO HISTORIC PRESERVATION REVIEWS. Authorizes the Department of Land and Natural Resources, in consultation with the Office of Hawaiian Affairs, to delegate to the impacted counties the responsibility for certain historic preservation project reviews, provided that certain requirements are met. Allows the Department of Land and Natural Resources to establish a program to certify third-party individuals and organizations to review documents for completeness and compliance prior to submission of those documents to the Department; provided that certain requirements are met. (SD1)</p>
<p>HB65 HD1 <u>Tax Clearance; Professional or Vocational Licensing; DOTAX; DCCA</u> RELATING TO TAXATION. Requires a tax clearance before a professional or vocational license may be issued or renewed. Requires the departments of taxation and commerce and consumer affairs to jointly implement a procedure or system for processing and issuing tax clearances. Effective 1/1/2050. Applies to taxable years after 12/31/2022. (HD1)</p>
<p>HB5 <u>Family Leave Insurance Program; Family Leave Insurance Benefits; Appropriation</u> RELATING TO FAMILY LEAVE. Requires the department of labor and industrial relations to establish and administer a family leave insurance program. Provides family leave insurance benefits and extends period of family leave to 16 weeks for businesses that employs one or more employees who meet the hourly qualifications. Appropriates funds.</p>
<p>HB2 <u>Employment; Paid Sick Leave</u> RELATING TO PAID SICK LEAVE. Requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care and supplemental paid sick leave to employees under certain public health emergency conditions.</p>
<p>HB26 <u>Income Tax; Unemployment Benefits; Exemption; Refund</u> RELATING TO UNEMPLOYMENT BENEFITS. Requires DOTAX to retroactively exempt and refund state income tax amounts received or withheld from unemployment compensation benefits for the period March 1, 2020, to December 31, 2020.</p>
<p>SB141 SD2 <u>State Building Code Council; Department of Business, Economic Development, and Tourism; Hawaii State Energy Office</u> RELATING TO THE STATE BUILDING CODE COUNCIL. Transfers the State Building Code Council from the Department of Accounting and General Services to the Hawaii State Energy Office. Effective 7/1/2050. (SD2)</p>
<p>HB556 HD2 <u>Energy Efficiency; Building Code; State Building Code Council; Counties; Code Adoption</u> RELATING TO ENERGY EFFICIENCY. Requires that the state building code council include voting members with experience and knowledge in building energy efficiency standards and sustainable building, design, construction, and operation. Requires that the counties amend or adopt their respective building codes and standards based upon the International Energy Conservation Code within an unspecified time frame after the adoption of the Hawaii state building energy conservation code. Effective 7/1/2050. (HD2)</p>
<p>SB49 <u>State Building Code Council; Repeal</u> RELATING TO THE STATE BUILDING CODE. Repeals the state building code council.</p>
<p>HB4 <u>DLIR; Tax Credit; Small Business; Health Care Costs; Minimum Wage</u> RELATING TO THE MINIMUM WAGE. Establishes a temporary small business income tax credit for qualified employers to offset the cost of providing health care coverage to employees that earn below certain amounts. Raises the minimum wage and establishes an adjusted minimum wage rate for 2027 and after. Repeals the tip credit. Repeals the tax credit on 7/30/2027.</p>
<p>SB6 <u>Minimum Wage; Minimum Wage Commission; Appropriation</u> RELATING TO MINIMUM WAGE. Establishes a minimum wage commission to recommend the annual rate of increase for the minimum wage. Provides that recommended minimum shall go into effect unless affirmatively rejected by concurrent resolution. Makes an appropriation.</p>
<p>HB21 <u>Minimum Wage; Annual Increase</u> RELATING TO MINIMUM WAGE. Provides annual increases to the minimum wage rate beginning on 01/01/2022 through 01/01/2028.</p>
<p>HB28 <u>Minimum Wage; Tip Credit; Adjustment; Repeal</u> RELATING TO THE MINIMUM WAGE. Adjusts the tip credit beginning on January 1, 2022. Repeals the tip credit on January 1, 2024.</p>
<p>HB603 <u>Employment; Individuals with Disabilities; Minimum Wage; Deaf and Blind Task Force</u> RELATING TO THE MINIMUM WAGE. Repeals the exemption of persons with disabilities from minimum wage requirements. Takes effect on 1/1/2022.</p>
<p>HB600 <u>Minimum Wage; Employment; Adjusted Minimum Wage Rate</u> RELATING TO THE MINIMUM WAGE. Increases the minimum wage annually starting 1/1/2022. Beginning on September 30, 2026, and each year thereafter, requires the department of labor and industrial relations to calculate an adjusted minimum wage rate to the nearest five cents using the Honolulu region consumer price index for all urban consumers, subject to certain conditions. Repeals the tip credit.</p>
<p>HB836 <u>Telework; Tax Credits; Employers; Employees</u> RELATING TO INCOME TAX CREDITS. Establishes a telework tax credit for employers who allow telework for at least thirty per cent of their employees. Applies to taxable years beginning after 12/31/20.</p>
<p>HB841 <u>Hawaii Public Procurement Code; Professional Services; Cost or Pricing Data</u> RELATING TO PROCUREMENT. Allows any selection committee that evaluates an engineering, architectural, surveying, or landscape architectural professional service submittal for a state or county contract to require the top ranked competing professional service offerors to submit cost or pricing data on their respective proposals. Specifies that a purchasing agency is not required to disclose competing cost or pricing data to any party.</p>
<p>HB1067 HD1 SD1 <u>University of Hawaii; Chief Procurement Officer</u> RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII. Extends the sunset provision in Act 42, Session Laws of Hawaii 2018 for three years until June 30, 2024. Effective 7/1/2060. (SD1)</p>
<p>SB1221 <u>University of Hawaii; Chief Procurement Officer</u> RELATING TO PROCUREMENT FOR THE UNIVERSITY OF HAWAII. Removes the sunset provision in Act 42, Session Laws of Hawaii 2018.</p>

<p>HB1355 HD1 <u>State Procurement Code; Procurement Officers; Training; Design Professionals; Construction Cost Overruns; Task Force</u> RELATING TO STATE PROCUREMENT REFORM. Requires procurement officers to document whether to pursue a design professional or contractor for damages in the event of construction cost overruns. Requires the chief procurement officer to compile a public list of construction companies or design professionals that are in noncompliance with the procurement code or owe penalties. Makes construction cost overruns a tort for purposes of the design claim conciliation panel. Requires bids for a contract under the competitive sealed bidding process to include a liability contingency fund. Requires the state procurement office to include training on the duty of procurement officers to hold design professionals liable for breaches of professional standards. Makes cost overruns a construction defect for the purposes of the contractor repair act. Establishes a procurement professional standards task force. Effective 7/1/2112. (HD1)</p>
<p>HB1212 HD1 <u>Office of Public-Private Partnership; Procurement Code; Appropriation</u> RELATING TO PUBLIC-PRIVATE PARTNERSHIPS. Establishes the office of public-private partnership and the position of state public-private partnership coordinator. Adds design-build-finance-maintain, design-build-operate-maintain, and design-build-finance-operate-maintain project delivery methods to the state procurement code and related conditions and requirements. Appropriates funds. Effective 7/1/2112. (HD1)</p>
<p>SB1329 SD2 HD2 <u>Procurement Protests; Resolution; Chief Procurement Officer; Time Limit</u> RELATING TO PROCUREMENT. Requires the chief procurement officer or designee to address protests as expeditiously as possible. Creates time limits to resolve protests to the award of competitive sealed proposal contracts and procurements of professional services, if the protest is not resolved by mutual agreement. Specifies that a protest shall prevail if the protest is not resolved by mutual agreement and within the established time limits. Effective 5/6/2137. (HD2)</p>
<p>SB1017 <u>Procurement; State Procurement Office; Construction Procurement Policy Review</u> RELATING TO PROCUREMENT. Implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016. Requires the state procurement office to submit a report to the legislature regarding its progress in implementing the procurement policy review recommendations.</p>
<p>HB1385 HD1 <u>Procurement; State Procurement Office; Construction Procurement Policy Review</u> RELATING TO PROCUREMENT. Implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016. Requires the state procurement office to submit a report to the legislature regarding its progress in implementing the procurement policy review recommendations. Effective 7/1/2112. (HD1)</p>
<p>HB1370 <u>Dillingham, Kawaihapai, Airfield, Save</u> RELATING TO AN AIRFIELD AUTHORITY. Establishes an independent authority to be called the Kawaihapai Airfield Authority. The intent of this authority is to allow continued use of Kawaihapai airfield for private and commercial use by the state's residents and tourists.</p>
<p>SB1370 <u>Dillingham, Kawaihapai, Airfield, Save</u> RELATING TO AN AIRFIELD AUTHORITY. Establishes an independent authority to be called the Kawaihapai Airfield Authority. The intent of this authority is to allow continued use of Kawaihapai airfield for private and commercial use by the state's residents and tourists.</p>
<p>HB844 <u>Procurement; Past Performance; Appropriation</u> RELATING TO PROCUREMENT. Requires past performance be considered in future bid selection of contractors for sole source contracts and any competitive sealed bid or proposal contracts that exceed the small purchase threshold. Requires procurement officers to consider specific factors, including past performance, when making a determination of offeror responsibility.</p>
<p>HB849 HD1 <u>Contract Administration Office; Functions; Procurement; State Procurement Office</u> RELATING TO PROCUREMENT. Establishes the functions of the contract administration office. Requires the procurement policy board to adopt rules for the administration of contracts. Requires the state procurement office to submit a progress report to the legislature. Sunsets on 6/30/2026. Effective 7/1/2112. (HD1)</p>
<p>SB1423 SD2 <u>HCDA; Stadium Development District; Stadium Authority; Membership; Appropriation</u> RELATING TO THE STADIUM DEVELOPMENT DISTRICT. Establishes the stadium development district special fund. Provides for the sunset of the stadium special fund. Revises the general development guidance policies for the stadium development district and clarifies the respective roles of the stadium authority and Hawaii community development authority in the development of the stadium development district. Broadens the powers and duties of the stadium authority, including authorizing the stadium authority to acquire and hold title to real property. Exempts land to which the stadium authority holds title from the definition of "public lands." Authorizes the stadium authority, with approval from the governor, to delegate to other state agencies implementation of capital improvement projects, under certain conditions. Increases the representation of the stadium authority by adding 2 members to its membership. Authorizes the Hawaii community development authority to use its special facilities powers to assist in the development of projects led by other public agencies. Amends the general obligation bond authorization made by Act 268, SLH 2019. Makes the financial disclosures of members of the stadium authority public records pursuant to section 84-17(d), HRS. (SD2)</p>
<p>HB1348 HD2 SD1 <u>HCDA; Stadium Development District; Stadium Authority; Membership; Appropriation</u> RELATING TO THE STADIUM DEVELOPMENT DISTRICT. Establishes the stadium development district special fund in chapter 109. Provides for the sunset of the stadium special fund. Revises the general development guidance policies for the stadium development district and clarifies the respective roles the stadium authority and Hawaii community development authority in the development of the stadium development district. Broadens the powers and duties of the stadium authority, including authorizing the stadium authority to acquire and hold title to real property. Exempts land to which the stadium authority holds title from the definition of "public lands." Authorizes the Hawaii community development authority, with approval from the governor, to delegate to other state agencies implementation of capital improvement projects, under certain conditions. Adds two members to the stadium authority. Amends the general bond authorization made by Act 268, Session Laws of Hawaii 2019. Makes the financial disclosures of members of the stadium authority public records. Effective 1/1/2050. (SD1)</p>
<p>HB1131 HD1 <u>State Building Code Council; Building Codes and Standards; Financial Impact Assessment</u> RELATING TO THE STATE BUILDING CODE COUNCIL. Requires the state building code council to make determinations on the financial impact, including the impact on amortized utility costs, of the adoption of a code or standard on single-family and multi-family homes and include the determinations in its annual reports to the governor.</p>
<p>SB1279 <u>State Building Code Council; Building Codes and Standards; Financial Impact Assessment</u> RELATING TO THE STATE BUILDING CODE COUNCIL. Requires the state building code council to: consider the impact of building codes and standards on the cost of single- and multi-family homes built in the State when considering whether to adopt a code or standard; and include with its annual written report to the governor a financial impact assessment on each code and standard adopted by the council.</p>
<p>SB1407 <u>State Building Code Council; Member Configuration; Member Qualification; State Building Code Amendment Process; International Building Code Adoption Cycle</u> RELATING TO THE STATE BUILDING CODE COUNCIL. Requires all members of the state building code council to have significant experience and knowledge of building codes and the cost impacts of building code revisions. Adds two voting council members, representing the National Association of Industrial and Office Properties and the construction trade unions, respectively. Requires the council and its subcommittee to conduct a cost-benefit analysis prior to recommending state code amendments. Requires council members and the drafters of recommended state code amendments to disclose potential conflicts of financial interests. Requires the council to consult with builders of residential, commercial, and industrial buildings. Requires the council to adopt the International Building Code every six years starting with the 2018 edition. Makes a conforming amendment.</p>