

Honolulu, Hawaii

Feb 17, 2006

RE: H.B. No. 2594
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2594 entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this bill is to reduce the insurance burden on design professionals who contract with government bodies. Specifically, this bill prohibits a government contract entered into by a government body with a licensed design professional for construction design professional services from requiring the design professional to defend the government body from liability, damage, loss, or claim, action, or proceeding. In addition, this bill allows the contract to require the licensed design professional to indemnify the government body from and against any liability, loss, damage, cost, and expense arising out of the negligent and other wrongful acts of the design professional.

The American Council of Engineering Companies, Belt Collins Hawaii, Ltd., Coalition of Hawaii Engineering and Architectural Professionals, Engineering Concepts, Inc., Environet, Inc., Fukunaga & Associates, KAI Hawaii, Inc., The Limtiaco Consulting Group, Lincolne Scott, Masa Fujioka & Associates, Miyasato Kuniyoshi Engineers LLC, Pacific Geotechnical Engineers, Inc., Shigemura, Lau, Sakananishi, Higuchi and Associates, Inc., and the Structural Engineers Association of Hawaii supported this bill. The Department of Transportation opposed this bill. The



Department of Accounting and General Services and the State Procurement Office submitted comments.

Your Committee remains concerned that many businesses, especially small businesses, that contract with the State or county governments for design professional services are unable to obtain business insurance that provides coverage for defense of the government body. However, such businesses are able to obtain standard errors and omission policies for negligence that would indemnify the government body. Prohibiting contracts that require defense of government body provisions will greatly assist these businesses by removing such onerous insurance requirements.

Your Committee notes that some concerns have been raised regarding the scope and intent of this bill.

Accordingly, your Committee has amended this measure by:

- (1) Clarifying that if a government body enters into a contract with a person for professional services to be performed by one or more construction design professionals, the contract shall not require the person to defend the government body against any liability, damage, or loss, in any claim, action, or proceeding;
- (2) Defining "person" to mean any person, partnership, corporation, or other entity conducting business in the state;
- (3) Changing its effective date to July 1, 2096, to promote further discussion of this matter; and
- (4) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2594, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as H.B. No. 2594, H.D. 1.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,


SYLVIA LUKE, Chair



