

STAND. COM. REP. NO. 617

Honolulu, Hawaii

Feb 16, 2007

RE: H.B. No. 963
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 963, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this bill is to provide for a fair and equitable procurement contract between the government (State or county) and an architect, engineer, surveyor, or landscape architect, who is licensed under Chapter 464, Hawaii Revised Statutes (Contractor), by:

- (1) Prohibiting contracts of less than \$1,000,000 with a Contractor from having clauses that require the Contractor to defend the government from liabilities or actions arising from the Contractor's performance under the contract (Defense Clause); and
- (2) Specifically, providing that the contract may require the Contractor to indemnify and hold harmless the government from any liabilities.

The Coalition of Hawaii Engineering and Architectural Professionals; ECS, Inc.; Consulting Structural Hawaii, Inc.; Gray, Hong, Nojima, & Associates, Inc.; The Limtiaco Consulting Group; Masa Fujioka & Associates; and KAI Hawaii, Inc. supported this bill. The American Council of Engineering Companies of

HB963 HD2 HSCR JUD HMS 2007-2268



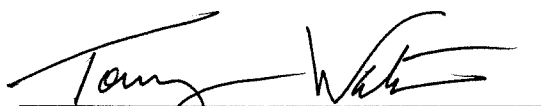
Hawaii supported the intent of this measure. The Small Business Regulatory Review Board submitted comments.

Your Committee has amended this bill by:

- (1) Changing the threshold amount of the procurement contract to less than \$5,000,000;
- (2) Prohibiting Defense Clauses in contracts entered on or after July 1, 2007;
- (3) Clarifying that the Contractor's obligation to indemnify and hold harmless the government covers liabilities arising from the negligent acts and errors or omissions in the performance of the Contractor's professional services;
- (4) Requiring the government to commence legal action against a Contractor that is based on a Defense Clause in a pre-July 1, 2007 contract, within ten years from the date of execution of the contract;
- (5) Changing the effective date to January 1, 2112; and
- (6) Making technical, nonsubstantive changes for clarity, consistency, and style.

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. 963, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as H.B. No. 963, H.D. 2.

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


TOMMY WATERS, Chair



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

HSCR 617

Record of Votes of the Committee on Judiciary

Bill/Resolution No.: HB 963 HD1 (HSCR102)		Date: 2/13/07		
Committee Referral: JUD		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
The recommendation is to: <input type="checkbox"/> Pass, unamended <input checked="" type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommitment for further consideration				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. WATERS, Tommy (C)	✓			
2. OSHIRO, Blake K. (VC)	✓			
3. CALDWELL, Kirk	✓			
4. EVANS, Cindy	✓			
5. GREEN, Josh, M.D.	✓			
6. ITO, Ken	✓			
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.	✓			
9. MORITA, Hermina M.	✓			
10. SONSON, Alex M.	✓			
11. SOUKI, Joseph M.	✓			
12. TSUJI, Clift	✓			
13. YAMANE, Ryan I.	✓			
14. YAMASHITA, Kyle T.	✓			
15. MARUMOTO, Barbara C.	✓			
16. PINE, Kymberly Marcos	✓			
17. THIELEN, Cynthia				✓
TOTAL	16			= 1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – HMSO Duplicate (Pink) – Clerk's Office				