

STAND. COM. REP. NO. 1467

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 17
S.D. 2
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 S.B. No. 17, S.D. 2, 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 make government contracting less burdensome for small design firms by prohibiting government contracts under \$5,000,000 for design professionals services from requiring that the contractor defend the government against any liability, while maintaining the government's right to contractually require indemnification for any liability resulting from a contractor's negligence.

The Small Business Regulatory Review Board, American Institute of Architects Hawaii State Council, Cedric D.O. Chong & Associates, Incorporated, Coalition of Hawaii Engineering and Architectural Professionals, Engineering Concepts, Inc., Engineering Solutions, Inc., Fukunaga & Associates, Inc., The Limtiaco Consulting Group, Inc., Shigemura, Lau, Sakanashi, Higuchi and Associates, Inc., SSFM International, Inc., Masa Fujioka & Associates, American Society of Civil Engineers, and American Council of Engineering Companies of Hawaii testified in support of this bill. The Department of the Attorney General (AG) supported the intent of this measure. The Department of the Corporation Counsel of the City and County of Honolulu testified in opposition to this bill.

SB17 HD2 HSCR JUD HMS 2007-3331



Requiring design professionals to defend the government against any liability, shifts the risks of a public works project to a private contractor, making it difficult for smaller firms to enter into government contracts. However, your Committee understands the concerns raised by the AG regarding the size of contracts and the effect this bill may have on the State's and counties' ability to require indemnification. Accordingly, your Committee has amended this bill by:

- (1) Clarifying that the purpose of this bill is to prohibit certain types of provisions in governmental contracts entered into on or after July 1, 2007, and also to bar enforcement of certain provisions of existing contracts;
- (2) Reducing the limit of value of a contract subject to the prohibition from \$5,000,000 to \$1,000,000;
- (3) Providing indemnification for intentional or wrongful acts, errors, or omissions of the contractor as part of the allowed indemnification provisions for a governmental contracting agency, in addition to indemnification for negligence;
- (4) Revising the time limit for repose of actions for contracts already containing a defense provision to 10 years from substantial completion of a project, rather than 10 years from execution of the contract; and
- (5) Adding severability and constitutional claims clauses.

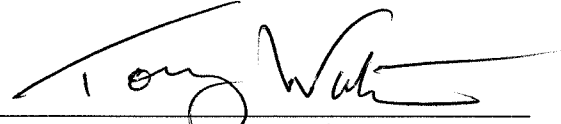
Your Committee has further amended this measure by:

- (1) Changing its effective date to July 1, 2112, to encourage further discussion; and
- (2) 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 S.B. No. 17, S.D. 2, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 17, S.D. 2, H.D. 2.



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



TOMMY WATERS, Chair



