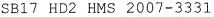
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. The purpose of this Act is to:	
2	(1)	Prohibit certain types of provisions in governmental
3		procurement contracts entered into on or after July 1,
4		2007, that require contractors to defend the
5		<pre>governmental body;</pre>
6	(2)	Allow the contracts to require an individual licensed
7		pursuant to chapter 464, Hawaii Revised Statutes,
8		indemnify and hold harmless the governmental body; and
9	(3)	Bar enforcement of certain provisions of existing
10		contracts.
11	SECTION 2. Chapter 103D, Hawaii Revised Statutes, is	
12	amended by adding a new section to be appropriately designated	
13	and to read as follows:	
14	"§103D- Defense of a governmental body. (a) No	
15	contract of less than \$1,000,000 that is entered into on or	
16	after July 1, 2007, by any governmental body, and is exclusively	
17	for services that may only lawfully be provided by a person	

- 1 licensed under chapter 464, may require the contractor to defend
- 2 the governmental body, or its officers, employees, or agents,
- 3 from any liability, damage, loss, or claim, action, or
- 4 proceeding arising out of the contractor's performance under the
- 5 contract.
- 6 (b) Subsection (a) notwithstanding, the contract may
- 7 require the contractor providing the services to indemnify and
- 8 hold harmless the governmental body and its officers, employees,
- 9 and agents from and against any liability, damage, loss, cost,
- 10 and expense, including reasonable attorneys' fees, and all
- 11 claims, suits, and demands therefor arising out of or resulting
- 12 from the negligent, reckless, intentional, or wrongful acts,
- 13 errors, or omissions of the contractor, the contractor's
- 14 employees, officers, agents, or subcontractors in the
- 15 performance of the contract or the contractor's professional
- 16 services, and the provisions may remain in full force and effect
- 17 notwithstanding the expiration or early termination of the
- 18 contract.
- (c) No person licensed under chapter 464 that has agreed
- 20 in any contract to defend a governmental body, including those
- 21 contracts entered into before or after July 1, 2007, shall be
- 22 required to defend the governmental body in a lawsuit filed more





- 1 than ten years beyond the substantial completion of the project,
- 2 except that this subsection shall not apply to any lawsuit that
- 3 has been filed prior to July 1, 2007.
- 4 (d) As used in this section, "person" means any person,
- 5 partnership, corporation, or other entity conducting business in
- 6 the state."
- 7 SECTION 3. Except as provided in subsection (c) of the new
- 8 section added to chapter 103D, Hawaii Revised Statutes, under
- 9 section 2 of this Act, this Act does not affect rights and
- 10 duties that matured, penalties that were incurred, and
- 11 proceedings that were begun, before its effective date.
- 12 SECTION 4. If any provision of this Act, or the
- 13 application thereof to any person or circumstance is held
- 14 invalid, the invalidity does not affect other provisions or
- 15 applications of the Act, which can be given effect without the
- 16 invalid provision or application, and to this end the provisions
- 17 of this Act are severable.
- 18 SECTION 5. In the event any provision in this Act is held
- 19 illegal or unconstitutional, including as violative of article
- 20 I, section 5 of the Hawaii Constitution, such provision shall be
- 21 void and of no effect, but under no circumstances shall such

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- 1 provision, by operation of law, be deemed to extend protections
- 2 to any other class or group of persons.
- 3 SECTION 6. New statutory material is underscored.
- 4 SECTION 7. This Act shall take effect on January 1, 2112.

Report Title:

Procurement; Contracts; Defense of a Governmental Body

Description:

Prohibits contracts less than \$1,000,000 between a governmental body and professional architects, landscape architects, engineers, and surveyors, from requiring defense of a governmental body. Contracts may require indemnification and holding harmless of the governmental body. (SB17 HD2)