
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 prohibit
2 provisions in certain governmental procurement contracts that
3 require contractors to defend the governmental body, and to
4 allow the contracts to require a contractor to indemnify and
5 hold harmless the governmental body.

6 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§103D- Defense of a governmental body. (a) On or
10 after July 1, 2007, if a governmental body enters into a
11 contract for less than \$5,000,000, with a person licensed under
12 chapter 464, for professional services to be performed by one or
13 more professionals, the contract shall not require the person to
14 defend the governmental body, its officers, employees, or agents
15 against any liability, damage, or loss, in any claim, action, or
16 proceeding.



1 (b) Notwithstanding subsection (a), the contract may
2 require a person to indemnify and hold harmless the governmental
3 body, its officers, and employees, from and against any
4 liability, damage, loss, cost, and expense, including reasonable
5 attorneys' fees, and all claims, suits, and demands therefore,
6 arising out of or resulting from the negligent acts, errors, or
7 omissions of the person, the person's employees, officers, or
8 subcontractors in the performance of their professional
9 services.

10 (c) Any provision in a contract under subsection (a),
11 entered into prior to July 1, 2007, shall be subject to a
12 ten-year statute of limitation on the requirement to defend the
13 governmental body, its officers, agents against any liability,
14 damage, or loss in any claim, action, or proceeding; provided
15 that the ten-year period shall commence with the date of the
16 execution of the contract."

17 SECTION 3. Except as provided in subsection (c) of the new
18 section to chapter 103D, Hawaii Revised Statutes, under section
19 2 of this Act, this Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.

22 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Procurement; Contracts; Defense of a Governmental Body

Description:

Contracts less than \$5,000,000 between a governmental body and professional architects, landscape architects, engineers, and surveyors, shall not require defense of a governmental body; contracts may require indemnification and holding harmless of the governmental body. (SD1)

