

STAND. COM. REP. NO. 102

Honolulu, Hawaii

Feb 6, 2007

RE: H.B. No. 963
H.D. 1

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

Sir:

Your Committee on Economic Development & Business Concerns,
to which was referred H.B. No. 963 entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this bill is to provide for fairer contracts between the government and architects, engineers, surveyors, or landscape architects, by prohibiting provisions in these contracts that require the contractor to defend the governmental body against any liability, damage, or loss.

Testimony in support of the bill was submitted by the American Council of Engineering Companies of Hawaii, American Institute of Architects/Hawaii State Council, Masa Fujioka & Associates, Akinaka & Associates, Ltd., Gray, Hong, Nojima & Associates, Cedric D. O. Chong and Associates, Finance Insurance, Ltd., Sam O. Hirota, Inc., Engineering Solutions, Inc., Limtiaco Consulting Group, Fukunaga & Associates, Inc., Consulting Structural Hawaii, Inc., Austin, Tsutsumi & Associates, Inc., and Coalition of Hawaii Engineering and Architectural Professionals. The Department of the Attorney General opposed the bill and proposed amendments.

HB963 HD1 HSCR EDB HMS 2007-1759



Your Committee finds that the requirement to defend the government discourages small businesses, in particular, from taking on government contracts. Your Committee has amended this bill as suggested by the Attorney General, by:

- (1) Exempting government contracts under \$1,000,000 with architects, engineers, surveyors, or landscape architects, from the requirement that the contractor defend the governmental body against all liability;
- (2) Reserving the right of the governmental body to contractually require indemnification from the contractor against all liability; and
- (3) Removing provisions that may have been interpreted to apply the bill to contracts that have already been executed.

Your Committee notes that according to the Department of Transportation, in fiscal year 2005, there were five contracts over \$1,000,000 with architectural and engineering firms.

As affirmed by the record of votes of the members of your Committee on Economic Development & Business Concerns that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 963, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 963, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Development & Business
Concerns,



KYLE T. YAMASHITA, Chair



