

STAND. COM. REP. NO. 1072

Honolulu, Hawaii

March 20, 2009

RE: S.B. No. 687
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Economic Revitalization, Business, & Military Affairs, to which was referred S.B. No. 687, S.D. 2, 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 timely review of procurement code decisions by requiring:

- (1) A final administrative decision to be issued within 30 days of receipt of the request for hearing; and
- (2) A judicial decision within 30 days of filing of the application for judicial review.

In addition, if the 30-day limit is not met, the administrative body or court loses jurisdiction, and the procurement award may not be disturbed.

The Laborers' International Union of North America, Local 368 and Hawaii Building and Construction Trades Council, AFL-CIO supported this bill. The State Procurement Office and the Department of Accounting and General Services supported the intent of this measure. A concerned individual opposed this bill, and the Department of Commerce and Consumer Affairs offered comments.

SB687 HD1 HSCR EBM HMS 2009-3121



Your Committee believes that bills similar to this, intended to streamline and reduce delays in the procurement process, are essential to making state projects "shovel-ready" for federal economic stimulus moneys. In addition, our ability to expend moneys from the American Recovery and Reinvestment Act of 2009 for economic stimulus projects in Hawaii will affect our receipt of federal stimulus funds in the future.

However, your Committee also has concerns that this expedited procedure might not provide sufficient time to resolve protests that are highly technical, or that for some other good reason require more time to decide. Accordingly, your Committee respectfully requests the Committee on Judiciary, to which this bill is next referred, to consider whether establishing a waiver for these kinds of protests is warranted.

Your Committee has amended this bill by inserting the provisions of H.B. No. 638, H.D. 1 into this bill to expedite the awarding of public contracts by discouraging frivolous or bad-faith protests. More specifically, this amendment:

- (1) Requires the dismissal of a protest of an award or contract if the protest is based on an inadvertent error in a bid that is less than one percent of the protester's bid amount;
 - (2) Allows an administrative review of a protest decision if:
 - (A) The protest concerns a matter that is equal to no less than ten percent of the total estimated value of the contract; and
 - (B) The initiating party pays a cash or protest bond in an amount equal to one percent of the total estimated value of the contract for contracts of \$1,000,000 or more;
- and
- (3) Provides that if the initiating party does not prevail, the cash or protest bond is forfeited.

To encourage further discussion, the effective date has been changed to July 1, 2112. Technical, nonsubstantive amendments were also made for consistency.



As affirmed by the record of votes of the members of your Committee on Economic Revitalization, Business, & Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 687, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 687, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Revitalization, Business, &
Military Affairs,



ANGUS L.K. MCKELVEY, Chair



