

JAN 21 2011

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Section 103D-713, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§103D-713[+] Defense of a governmental body. (a) No
4 contract of less than \$1,000,000 that is entered into on or
5 after July 1, 2007, by any governmental body, and is exclusively
6 for services that may only lawfully be provided by a person
7 licensed under chapter 464, may require the contractor to defend
8 the governmental body, or its officers, employees, or agents,
9 from any liability, damage, loss, or claim, action, or
10 proceeding arising out of the contractor's performance under the
11 contract.

12 (b) Subsection (a) notwithstanding, the contract may
13 require the contractor providing the services to indemnify and
14 hold harmless the governmental body and its officers, employees,
15 and agents from and against any liability, damage, loss, cost,
16 and expense, including reasonable attorneys' fees, and all
17 claims, suits, and demands therefor arising out of or resulting
18 from the negligent, reckless, intentional, or wrongful acts,



1 errors, or omissions of the contractor, the contractor's
2 employees, officers, agents, or subcontractors in the
3 performance of the contract or the contractor's professional
4 services, and the provisions may remain in full force and effect
5 notwithstanding the expiration or early termination of the
6 contract.

7 (c) No person licensed under chapter 464 that has agreed
8 in any contract to defend a governmental body, including those
9 contracts entered into before or after July 1, 2007, shall be
10 required to defend the governmental body in a lawsuit filed more
11 than ten years beyond the substantial completion of the project,
12 except that this subsection shall not apply to any lawsuit that
13 has been filed prior to July 1, 2007.

14 (d) Public works contracts entered into by any
15 governmental body may require the contractor to indemnify the
16 State or its officers, employees, or agents, from any liability,
17 damage, or loss arising from any claim, action, or proceeding
18 regarding the contractor's performance under the public works
19 contract; provided that the contractor shall only be required to
20 indemnify the State to the extent the contractor is found liable
21 by a court of law. Indemnification provisions in any public
22 works contracts may not require that the contractor indemnify



1 the State for damages to persons or property caused in whole or
2 in part by any act, omission, or default of a party other than:

3 (1) The contractor;

4 (2) Any of the contractor's subcontractors,
5 sub-subcontractors, material suppliers, or agents of
6 any tier or their respective employees; or

7 (3) The contractor's officers, directors, agents, or
8 employees;

9 provided that indemnification under this subsection shall not
10 include claims of, or damages resulting from, gross negligence
11 or wilful, wanton, or intentional misconduct of the contractor
12 or its officers, directors, agents, or employees, or for
13 statutory violation or punitive damages except and to the extent
14 the statutory violation or punitive damages are caused by or
15 result from the acts or omissions of the contractor or any of
16 the contractor's subcontractors, sub-subcontractors, material
17 suppliers, or agents of any tier or their respective employees.

18 In no event shall the contractor be required to defend the
19 State or its officers, employees, or agents against any claim,
20 action, or proceeding relating to the public works contract in
21 which the State is named as a defendant. This subsection shall



1 not be waived or modified by contractual agreement, act, or
2 omission of the parties.

3 [~~d~~] (e) As used in this section [~~,"person"~~]:

4 "Person" means any person, partnership, corporation, or
5 other entity conducting business in the State.

6 "Public works contract" means any contract for the
7 development, construction, renovation, maintenance, or
8 refurbishment of any property, where the funds or resources
9 required to undertake the project are to any extent derived,
10 either directly or indirectly, from public revenues of the State
11 or any county, or from the sale of securities or bonds whose
12 interest or dividends are exempt from state or federal taxes."

13 SECTION 2. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19

INTRODUCED BY: Clara K. Schieber



Report Title:

Public Works Contract; Indemnification

Description:

Limits the State's ability to impose indemnification responsibilities on public works contractors in excess of the contractors' liability as determined by a court of law.

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