

STAND. COM. REP. NO. 2615

Honolulu, Hawaii

MAR 02 2012

RE: S.B. No. 2457  
S.D. 2

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 2457, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose and intent of this measure is to require a  
hearings officer, upon a request to review the decision of a  
procurement officer, to affirm the decision unless the decision is  
shown by clear and convincing evidence to be arbitrary,  
capricious, fraudulent, or clearly erroneous.

Your Committee received testimony in support of this measure  
from the Building Industry Association of Hawaii; S&M Sakamoto,  
Inc.; Royal Contracting Co., Ltd.; Ralph S. Inouye Co., Ltd.; and  
the General Contractors Association of Hawaii. Testimony in  
opposition to this measure was submitted by the Office of  
Administrative Hearings of the Department of Commerce and Consumer  
Affairs.

Your Committee finds that the intent of this measure is to  
simplify and expedite the procurement appeals process by  
recognizing the procuring agency's experience and expertise in the  
procurement process, while preserving the right of review of a  
procuring agency's decision to the Department of Commerce and  
Consumer Affairs. This measure retains a bid protester's right to  
a hearing before the Office of Administrative Hearings, but limits  
the hearing officer's review to evidence and issues raised in the  
proceedings before the procuring agency.

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Your Committee notes the concerns raised by the Office of Administrative Hearings. The Office stated that it did not believe that changing the existing de novo review process was warranted and that the hearing procedures proposed in this measure would lead to substantial delays at the agency level before a procurement protest is ever filed and inadequate time to review an agency's decision. The Office stated its support for the provisions under H.B. No. 1671, H.D. 1, Regular Session of 2011, which was proposed by the State Procurement Office after conducting a survey of a large group of stakeholders involved in procurement.

Your Committee has amended this measure by:

- (1) Adding language from H.B. No. 1671, H.D. 1, Regular Session of 2011, to:
  - (A) Require the State Procurement Office to keep statistics on protested solicitations and awards to improve procurement procedures;
  - (B) Impose time limits on rendering administrative and judicial review decisions;
  - (C) Limit protests to be heard by a hearings officer to those protests concerning matters of a certain threshold of estimated value to discourage minor complaints; and
  - (D) Require the posting of a protest bond, which shall be forfeited if the protesting party does not prevail;
- (2) Inserting an effective date of July 1, 2050, to ensure further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2457, S.D. 1, as amended herein, and recommends that it pass



Third Reading in the form attached hereto as S.B. No. 2457,  
S.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



