

JAN 18 2013

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that governmental
2 procurement contracts for the services of engineers, architects,
3 surveyors, and landscape architects often require design
4 professionals to indemnify and defend governmental entities when
5 the design professional is not negligent or at fault.

6 The legislature further finds that such contract terms are
7 detrimental to the State in the long term, and negatively affect
8 procurement, project costs and quality, and innovation. Also,
9 such contract terms are uninsurable through professional
10 liability insurance required by governmental entities, limiting
11 the recovery available to the government.

12 The legislature further finds that, while some state
13 agencies recognize the negative implications and have removed
14 these terms, inconsistency between agencies and departments
15 slows the procurement process and creates a climate of
16 unreasonable risk and uncertainty for Hawaii's design
17 professionals.



1 The purpose of this Act is to prohibit indemnification
2 clauses in governmental procurement contracts that are
3 exclusively for the services of engineers, architects,
4 surveyors, or landscape architects, unless the liability arises
5 from the contractor's own negligence or fault.

6 SECTION 2. Chapter 103D-713, Hawaii Revised Statutes, is
7 amended to read as follows:

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

17 (b) Subsection (a) notwithstanding, the contract may
18 require the contractor providing the services to indemnify and
19 hold harmless the governmental body and its officers, employees,
20 and agents from and against any liability, damage, loss, cost,
21 and expense, including reasonable attorneys' fees, and all
22 claims, suits, and demands therefor arising out of or resulting



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

8 (c) No person licensed under chapter 464 that has agreed
9 in any contract to defend a governmental body, including those
10 contracts of less than \$1,000,000 entered into before or after
11 July 1, 2007, shall be required to defend the governmental body
12 in a lawsuit filed more than ten years beyond the substantial
13 completion of the project, except that this subsection shall not
14 apply to any lawsuit that has been filed prior to July 1, 2007.

15 (d) As used in this section, "person" means any person,
16 partnership, corporation, or other entity conducting business in
17 the State.

18 (e) As used in this section, "governmental body" means
19 this State and all agencies thereof, any public body corporate
20 within this State and all agencies thereof, and any non-
21 incorporated public body within this State of whatever nature
22 and all agencies thereof. "Governmental body" includes but is



1 not limited to cities, counties, school districts, authorities,
 2 universities and community colleges, and their employees and
 3 agents, including but not limited to other business entities
 4 retained by or contracting with the public entity to manage or
 5 administer the contract for the public entity."

6 SECTION 3. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.
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INTRODUCED BY:

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S.B. NO. 504

Report Title:

Procurement Contracts; Liability

Description:

Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

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