

STAND. COM. REP. NO. 976-22

Honolulu, Hawaii

MAR 04 , 2022

RE: H.B. No. 2007
H.D. 2

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 2007, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this measure is to amend the cash or protest bond amount for parties initiating administrative proceedings for review of certain procurement protest decisions.

Your Committee received testimony in support of this measure from the General Contractors Association of Hawaii. Your Committee received testimony in opposition to this measure from the Department of Transportation and Airlines Committee of Hawaii. Your Committee received comments on this measure from the State Procurement Office.

Your Committee finds that Act 224, Session Laws of Hawaii 2021, increased the necessary cash or protest bond amount for parties initiating an administrative proceeding for review of certain procurement protest decisions to one percent of the estimated value of the contract, with the intent to prevent the filing of frivolous appeals. However, according to testimony received by your Committee from the State Procurement Office, this one percent cash or protest bond amount did not deter vendors from filing protests with the Office of Administrative Hearings;

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rather, the number of protest filings increased. Your Committee further finds that other states that require cash or protest bonds without a cap have certain safeguard language used for appeals to prevent the chilling effect of deterring legitimate protests on large projects.

Your Committee has heard the concerns raised in testimony and acknowledges that this measure remains a work in progress. Your Committee is interested in finding the right balance between discouraging frivolous protests while also ensuring that legitimate appeal rights are protected.

Your Committee has amended this measure by:

- (1) Reinstating the statutory one percent cash or protest bond amount, rather than changing the required cash or protest bond amount to an unspecified dollar amount based on the estimated value of the contract; and
- (2) Requiring that the cash or protest bond be returned to the initiating party, minus any administrative costs, except in cases where the Office of Administrative Hearings determines the appeal to be frivolous or in bad faith.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2007, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2007, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



AARON LING JOHANSON, Chair



