

Honolulu, Hawaii

APR 05 2024

RE: H.B. No. 2070  
H.D. 1  
S.D. 2

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-Second State Legislature  
Regular Session of 2024  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 2070, H.D. 1, 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 cash or protest bonds paid or filed by parties initiating an administrative appeal for protests of solicitations or award of contracts under the Hawaii Public Procurement Code to be returned to the initiating parties, minus administrative costs as determined by the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs, except in cases where the party does not prevail and the Office of Administrative Hearings finds that the appeal was frivolous or made in bad faith.

Your Committee received testimony in support of this measure from the Hawaii Operating Engineers Industry Stabilization Fund Political Action Committee; General Contractors Association of Hawaii; Ralph S. Inouye Co., Ltd.; Koga Engineering & Construction, Inc.; S & M Sakamoto, Inc.; Jas. W. Glover, Ltd.; Healy Tibbitts Builders, Inc.; Moss & Associates, LLC; and Albert C. Kobayashi, Inc.

Your Committee finds that the primary purpose of the Hawaii Public Procurement Code is to ensure fair and ethical procurement



while maximizing the use of public funds, and provides a bid protestor with a reasonable opportunity to appeal. Your Committee also finds that under the existing Code, a party initiating an administrative appeal to protest certain solicitations or awards of contracts is required to pay a cash or protest bond in the amount of one percent of the estimated value of the contract to deter frivolous appeals. If the appealing party prevails, the cash or protest bond is returned to the initiating party; however, if the appealing party loses, the bond is forfeited in its entirety to the State's general fund. Your Committee finds that these requirements have a chilling effect, not just on frivolous appeals, but on all appeals, as the high cost and time-involvement of the appeals process coupled with the uncertainty of prevailing make it no longer fiscally prudent for many to initiate the process. Therefore, this measure addresses this issue while allowing the Office of Administrative Appeals to recover its administrative costs and continuing to deter frivolous appeals.

Your Committee has amended this measure by inserting an effective date of July 1, 2040, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2070, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2070, H.D. 1, S.D. 2.

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



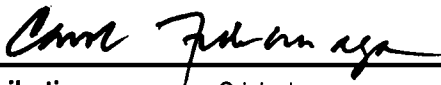
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JARRETT KEOHOKALOLE, Chair



The Senate  
 Thirty-Second Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB2070 HDI SDI	GVO, CPN	4/2/24		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEOHOKALOLE, Jarrett (C)	✓			
FUKUNAGA, Carol (VC)	✓			
MCKELVEY, Angus L.K.	✓			
RICHARDS, III, Herbert M. "Tim"	✓			
AWA, Brenton				✓
<b>TOTAL</b>	<b>4</b>			<b>1</b>
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

\*Only one measure per Record of Votes