

---

---

# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The purpose of this Act is to prohibit  
2 provisions in certain governmental procurement contracts that  
3 require contractors to defend the governmental body, and to  
4 allow the contracts to require an individual licensed pursuant  
5 to chapter 464, Hawaii Revised Statutes, to indemnify and hold  
6 harmless the governmental body.

7           SECTION 2. Chapter 103D, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10           "§103D-        Defense of a governmental body. (a) Any  
11 contract entered into on or after July 1, 2007, for an amount  
12 less than \$5,000,000, between a governmental body and a person  
13 licensed under chapter 464, for professional services to be  
14 performed by one or more professionals, shall not require the  
15 person to defend the governmental body, its officers, employees,  
16 or agents against any liability, damage, or loss, in any claim,



1 action, or proceeding relating to the professional services  
2 performed.

3 (b) Notwithstanding subsection (a), the contract may  
4 require the person who provides design professional services to  
5 indemnify and hold harmless the governmental body and its  
6 officers and employees from and against any liability, damage,  
7 loss, cost, and expense, including reasonable attorneys' fees,  
8 and all claims, suits, and demands therefor arising out of or  
9 resulting from the negligent acts, errors, or omissions of the  
10 person, the person's employees, officers, or subcontractors in  
11 the performance of the person's professional services.

12 (c) With regard to contracts meeting the requirements of  
13 subsection (a), and entered into prior to July 1, 2007, the  
14 person licensed under chapter 464 shall not be required to  
15 defend the governmental body, its officers, agents, or employees  
16 in any liability, damage, or loss in any claim, action, or  
17 proceeding commenced more than ten years after the execution of  
18 the contract."

19 SECTION 3. Except as provided in subsection (c) of the new  
20 section added to chapter 103D, Hawaii Revised Statutes, under  
21 section 2 of this Act, this Act does not affect rights and



1 duties that matured, penalties that were incurred, and  
2 proceedings that were begun, before its effective date.

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

Procurement; Contracts; Defense of a Governmental Body

**Description:**

Contracts less than \$5,000,000 between a governmental body and professional architects, landscape architects, engineers, and surveyors, shall not require defense of a governmental body. Contracts may require indemnification and holding harmless of the governmental body. (SB17 HD1)

