# STAND. COM. REP. NO. 072

Honolulu, Hawaii Menh 20 , 2009

RE: S.B. No. 687 S.D. 2 H.D. 1

Honorable Calvin K.Y. Say Speaker, House of Representatives Twenty-Fifth State Legislature Regular Session of 2009 State of Hawaii

Sir:

Your Committee on Economic Revitalization, Business, & Military Affairs, to which was referred S.B. No. 687, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this bill is to provide for a timely review of procurement code decisions by requiring:

- A final administrative decision to be issued within 30 days of receipt of the request for hearing; and
- (2) A judicial decision within 30 days of filing of the application for judicial review.

In addition, if the 30-day limit is not met, the administrative body or court loses jurisdiction, and the procurement award may not be disturbed.

The Laborers' International Union of North America, Local 368 and Hawaii Building and Construction Trades Council, AFL-CIO supported this bill. The State Procurement Office and the Department of Accounting and General Services supported the intent of this measure. A concerned individual opposed this bill, and the Department of Commerce and Consumer Affairs offered comments.

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Your Committee believes that bills similar to this, intended to streamline and reduce delays in the procurement process, are essential to making state projects "shovel-ready" for federal economic stimulus moneys. In addition, our ability to expend moneys from the American Recovery and Reinvestment Act of 2009 for economic stimulus projects in Hawaii will affect our receipt of federal stimulus funds in the future.

However, your Committee also has concerns that this expedited procedure might not provide sufficient time to resolve protests that are highly technical, or that for some other good reason require more time to decide. Accordingly, your Committee respectfully requests the Committee on Judiciary, to which this bill is next referred, to consider whether establishing a waiver for these kinds of protests is warranted.

Your Committee has amended this bill by inserting the provisions of H.B. No. 638, H.D. 1 into this bill to expedite the awarding of public contracts by discouraging frivolous or badfaith protests. More specifically, this amendment:

- Requires the dismissal of a protest of an award or contract if the protest is based on an inadvertent error in a bid that is less than one percent of the protester's bid amount;
- (2) Allows an administrative review of a protest decision if:
  - (A) The protest concerns a matter that is equal to no less than ten percent of the total estimated value of the contract; and
  - (B) The initiating party pays a cash or protest bond in an amount equal to one percent of the total estimated value of the contract for contracts of \$1,000,000 or more;

#### and

(3) Provides that if the initiating party does not prevail, the cash or protest bond is forfeited.

To encourage further discussion, the effective date has been changed to July 1, 2112. Technical, nonsubstantive amendments were also made for consistency.

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As affirmed by the record of votes of the members of your Committee on Economic Revitalization, Business, & Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 687, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 687, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

> Respectfully submitted on behalf of the members of the Committee on Economic Revitalization, Business, & Military Affairs,

ANGUS L.K. MCKELVEY, Chair

### State of Hawaii House of Representatives The Twenty-fifth Legislature

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## Record of Votes of the Committee on Economic Revitalization, Business, & Military Affairs

Bill/Resolution No.: SB 687 SD2 E	tee Referral: BM, JMD,	FIN	ate: 3/17/8	9
The committee is reconsidering its previous decision on the measure.				
The recommendation is to: Image: Pass, unamended (as is) Image: Pass, with amendments (HD) Image: Hold   Image: Pass short form bill with HD to recommit for future public hearing (recommit)				
EBM Members	Ayes	Ayes (WR)	Nays	Excused
1. McKELVEY, Angus L.K. (C)				
2. CHOY, Isaac W. (VC)				
3. BERG, Lyla B.				X
A DYANG CL-L				
4. EVANS, Cindy				
5. MANAHAN, Joey			A Distance of the second s	
J. MARIARAN, Joey				and the second second
46. TAKAI, K. Mark				
7. TOKIOKA, James Kunane				
	and the second			
8. TSUJI, Clift				
	1./			
9. WAKAI, Glenn				
10 WOOLEY Leaster				
10. WOOLEY, Jessica				
11. WARD, Gene	V			
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TOTAL (11)	9			/
The recommendation is: Adopted I Not Adopted did not support recommendation.				
Vice Chair's or designee's signature:				
Distribution:   Original (White) – Committee   Duplicate (Yellow) – Chief Clerk's Office   Duplicate (Pink) – HMSO				