

**ACT 246**

**S.B. NO. 17**

**A Bill for an Act Relating to Procurement.**

***Be It Enacted by the Legislature of the State of Hawaii:***

**SECTION 1.** The purpose of this Act is to:

- (1)** Prohibit certain types of provisions in governmental procurement contracts entered into on or after July 1, 2007, that require contractors to defend the governmental body;
- (2)** Allow the contracts to require an individual licensed pursuant to chapter 464, Hawaii Revised Statutes, indemnify and hold harmless the governmental body; and
- (3)** Bar enforcement of certain provisions of existing contracts.

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

**“§103D- Defense of a governmental body.** (a) No contract of less than \$1,000,000 that is entered into on or after July 1, 2007, by any governmental body, and is exclusively for services that may only lawfully be provided by a person licensed under chapter 464, may require the contractor to defend the governmental body, or its officers, employees, or agents, from any liability, damage, loss, or claim, action, or proceeding arising out of the contractor’s performance under the contract.

(b) Subsection (a) notwithstanding, the contract may require the contractor providing the services to indemnify and hold harmless the governmental body and its officers, employees, and agents from and against any liability, damage, loss, cost, and expense, including reasonable attorneys’ fees, and all claims, suits, and demands therefor arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the contractor, the contractor’s employees, officers, agents, or subcontractors in the performance of the contract or the contractor’s professional services, and the provisions may remain in full force and effect notwithstanding the expiration or early termination of the contract.

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

(d) As used in this section, “person” means any person, partnership, corporation, or other entity conducting business in the State.”

SECTION 3. Except as provided in subsection (c) of the new section added to chapter 103D, Hawaii Revised Statutes, under section 2 of this Act, this Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. In the event any provision in this Act is held illegal or unconstitutional, including as violative of article I, section 5 of the Hawaii Constitution, such provision shall be void and of no effect, but under no circumstances shall such provision, by operation of law, be deemed to extend protections to any other class or group of persons.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved July 3, 2007.)

#### Note

1. Edited pursuant to HRS §23G-16.5.