
A BILL FOR AN ACT

RELATING TO PERFORMANCE-BASED CONTRACTS.

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

1 SECTION 1. Two of the fastest-growing parts of the state
2 are leeward Oahu and Lahaina, Maui. The rapid population growth
3 in these areas has prompted tremendous residential development
4 by the private sector. Tens of thousands of housing units are
5 under construction and being planned. However, government has
6 been unable to keep up with the pace of such growth,
7 particularly with respect to essential infrastructural needs.

8 The purpose of this Act is to encourage the more rapid and
9 effective building of infrastructure by allowing the use of
10 performance-based contracts.

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

14 "§103D- Performance-based contracts. (a)
15 Notwithstanding any other provision of this chapter or chapter
16 36 to the contrary, any type of contract that will expedite the
17 design, planning, or construction of public infrastructure in



1 the Lahaina and Ewa districts as described under section
2 4-1(2)(D) and 4-1(4)(B), respectively, shall be subject to the
3 use of performance-based contracts.

4 (b) Performance-based contracts shall be used under this
5 section when the director of transportation or the
6 superintendent of education determines in writing that:

7 (1) Such contracts are likely to expedite the design,
8 planning, or construction of public infrastructure;

9 (2) Such contracts are likely to be less costly than any
10 other type of contract; or

11 (3) It is impracticable to obtain the goods, services, or
12 construction required except by means of such
13 contracts,

14 within their respective jurisdictions.

15 Performance-based contracts shall not be used if their use
16 would jeopardize the receipt of federal assistance moneys or
17 reduce the amount of such assistance under any applicable
18 federal statute or regulation.

19 (c) Every performance-based contract under this section
20 shall contain a provision with respect to the time by which all
21 of the work or any specified portion of the work contemplated
22 shall be completed and shall provide that for each day that



1 completion of the work is delayed beyond the specified time, the
2 contractor shall forfeit and pay to the State a specified sum of
3 money, to be deducted from any payments due or to become due to
4 the contractor. The sum so specified is valid as liquidated
5 damages.

6 (d) Every performance-based contract under this section
7 shall contain provisions:

8 (1) Prohibiting the contractor, in the completion of the
9 contractor's work, from adversely affecting the
10 general public to meet the requirements of subsection
11 (c); and

12 (2) Specifying that if the contractor adversely affects
13 the public in the completion of the contractor's work,
14 the contractor shall pay to the State a surcharge, to
15 be deducted from any payments due or to become due to
16 the contractor, to cover the costs of adversely
17 affecting the public.

18 (e) The director of transportation and superintendent of
19 education shall adopt rules pursuant to chapter 91 to implement
20 the provisions of this section within their respective
21 jurisdictions."



H.B. NO. 1918

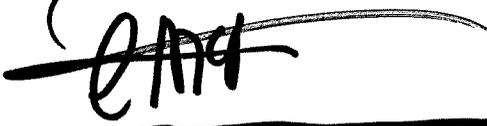
1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 4. New statutory material is underscored.

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

6

INTRODUCED BY:


JAN 24 2007



Report Title:

Performance-based contracts

Description:

Authorizes performance-based contracts.

