
A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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

1 SECTION 1. Section 103D-324, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§103D-324 Contract performance [and], payment bonds[-],~~
4 and insurance. (a) Unless the policy board determines
5 otherwise by rules, the following bonds [~~or~~], security, and
6 proof of insurance shall be delivered to the purchasing agency
7 and shall become binding on the parties upon the execution of
8 the contract if the contract [~~which is~~] awarded exceeds \$25,000
9 and is for construction, or the purchasing agency secures the
10 approval of the chief procurement officer:

11 (1) A [~~performance~~]:

12 (A) Performance bond in a form prescribed by the
13 rules of the policy board, executed by a surety
14 company authorized to do business in this State
15 or otherwise secured in a manner satisfactory to
16 the purchasing agency, in an amount equal to one



1 hundred per cent of the price specified in the
2 contract;
3 ~~[-(2) A payment]~~
4 (B) Payment bond in a form prescribed by the rules of
5 the policy board, executed by a surety company
6 authorized to do business in this State or
7 otherwise secured in a manner satisfactory to the
8 purchasing agency, for the protection of all
9 persons supplying labor and material to the
10 contractor for the performance of the work
11 provided for in the contract. The bond shall be
12 in an amount equal to one hundred per cent of the
13 price specified in the contract; or
14 ~~[-(3) A performance]~~
15 (C) Performance and payment bond ~~[which]~~ that
16 satisfies all of the requirements of ~~[paragraphs~~
17 ~~-(1)]~~ subparagraphs (A) and ~~[-(2)-] (B); and~~
18 (2) Proof of insurance that meets the requirements of the
19 policy board, through a company authorized to do
20 business in this State, for at least half of the
21 project's construction costs to the State to provide



1 funds for curing construction defects discovered not
2 later than ten years after the completion of the
3 contract; provided that insurance shall not be
4 required to cover the costs of repairs due solely to
5 normal wear and tear.

6 (b) The policy board may adopt rules that authorize the
7 head of a purchasing agency to reduce the amount of performance
8 and payment bonds[+] and insurance required by subsection (a).

9 (c) Nothing in this section shall be construed to limit
10 the authority of the chief procurement officer to require a
11 performance bond or other security in addition to those bonds,
12 or additional insurance, or in circumstances other than
13 specified in subsection (a).

14 (d) Every person who has furnished labor or material to
15 the contractor for the work provided in the contract, in respect
16 of which a payment bond or a performance and payment bond is
17 furnished under this section, and who has not been paid amounts
18 due therefor before the expiration of a period of ninety days
19 after the day on which the last of the labor was done or
20 performed or material was furnished or supplied, for which [~~such~~
21 a] the claim is made, may institute an action for the amount, or



1 balance thereof, unpaid at the time of the institution of the
2 action against the contractor and its sureties, on the payment
3 bond or the performance and payment bond, and have their rights
4 and claims adjudicated in the action, and judgment rendered
5 thereon; subject to the State's priority on the bonds. If the
6 full amount of the liability of the sureties on the payment bond
7 is insufficient to pay the full amount of the claims, then,
8 after paying the full amount due the State, the remainder shall
9 be distributed pro rata among the claimants.

10 As a condition precedent to any such suit, written notice
11 shall be given to contractor and surety, within ninety days from
12 the date on which the person did or performed the last labor or
13 furnished or supplied the last of the material for which claim
14 is made, stating with substantial accuracy the amount claimed
15 and the name of the party to whom the material was furnished or
16 supplied or for whom the labor was done or performed.

17 The written notice shall be served by registered or
18 certified mailing of the notice, to the contractor and surety,
19 at any place they maintain an office or conduct their business,
20 or in any manner authorized by law to serve summons.



1 (e) If the State discovers a construction defect not later
2 than ten years after the completion of the contract, the State
3 may institute an action against the contractor for the costs of
4 curing the construction defect, have its rights and claims
5 adjudicated in the action, and have judgment rendered thereon.

6 ~~(e)~~ (f) Every suit instituted under subsection (d) shall
7 be brought in the circuit court of the circuit in which the
8 project is located, but no such suit shall be commenced after
9 the expiration of one year after the day on which the last of
10 the labor was performed or material was supplied for the work
11 provided in the contract. The obligee named in the bond need
12 not be joined as a party in any such suit.

13 (g) Every suit instituted under subsection (e) shall be
14 brought in the circuit court of the circuit in which the project
15 is located; provided that the suit shall be commenced no later
16 than ten years after the date of contract completion.

17 (h) The terms "labor" and "material" have the same
18 meanings in this section as the terms are used in
19 section 507-41."



1 SECTION 2. 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 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2112.



H.B. NO. 1325 H.D. 1

Report Title:

Procurement Code; Construction; Insurance; Defects

Description:

Requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State to provide funds for curing construction defects discovered within ten years after the completion of the contract. Authorizes the State to institute an action against the contractor for the total costs of curing those defects. Effective 7/1/2112. (HD1)

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