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# 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 no  
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~~  
16 ~~respect of~~] for which a payment bond or a performance and  
17 payment bond is furnished under this section, and who has not  
18 been paid amounts due [~~therefor~~] before the expiration of a  
19 period of ninety days after the day on which the last of the  
20 labor was done or performed or material was furnished or  
21 supplied, for which [~~such a~~] the claim is made, may institute an



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

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

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



1        (e) If the State discovers a construction defect no 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."



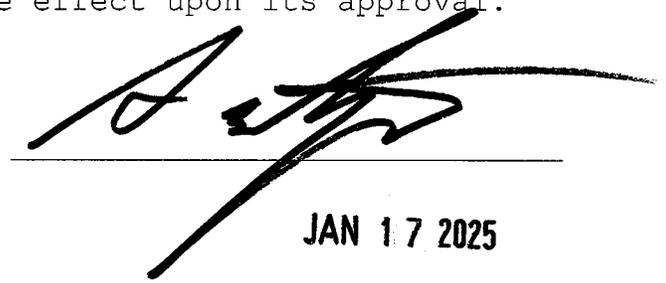
1 SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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 upon its approval.

7

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the bill's sponsor.

JAN 17 2025



# H.B. NO. 808

**Report Title:**

Procurement Code; Construction; Insurance; Construction 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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

