

JAN 17 2025

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# A BILL FOR AN ACT

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RELATING TO PROCUREMENT.

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

1       SECTION 1. Section 103D-501, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "**§103D-501 Contract clauses and their administration.** (a)  
4 The policy board shall adopt rules requiring the inclusion of  
5 contract clauses providing for adjustments in prices, time of  
6 performance, or other contract provisions, as appropriate, and  
7 covering the following subjects:

8       (1) The unilateral right of the governmental body to order  
9       in writing:

10       (A) Changes in the work within the scope of the  
11       contract; and

12       (B) Changes in the time of performance of the  
13       contract that do not alter the scope of the  
14       contract work;

15       (2) Variations occurring between estimated quantities of  
16       work in a contract and actual quantities;



(3) Suspension of work ordered by the governmental body;

and

(4) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses established by these rules need not be included in a contract:

(A) When the contract is negotiated;

(B) When the contractor provides the site or design;

or

(C) When the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Adjustments in price permitted by rules adopted under subsection (a) shall be computed in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

(2) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

(3) By the costs attributable to the events or situations under ~~such~~ the clauses with adjustment of profit or



1 fee, all as specified in the contract or subsequently  
2 agreed upon before commencement of the pertinent  
3 performance;

4 (4) In any other manner as the contracting parties may  
5 mutually agree upon before commencement of the  
6 pertinent performance; or

7 (5) In the absence of agreement by the parties:

8 (A) For change orders with value not exceeding fifty  
9 per cent of the total contract price and not  
10 exceeding \$50,000 by documented actual costs of  
11 the work, allowing for twenty per cent of the  
12 actual costs for overhead and profit on work done  
13 directly by the contractor and ten per cent on  
14 any subcontractor's billing to the contractor for  
15 the contractor's overhead and profit. There  
16 shall be no cap on the total cost of the work if  
17 this method is used. A change order shall be  
18 issued within fifteen days of submission by the  
19 contractor of proper documentation of completed  
20 force account work, whether periodic (conforming  
21 to the applicable billing cycle) or final. The



1 procurement officer shall return any  
2 documentation that is defective to the contractor  
3 within fifteen days after receipt, with a  
4 statement identifying the defect; or

5 (B) For change orders not exceeding fifty per cent of  
6 the total contract price, but with value  
7 exceeding \$50,000 by a unilateral determination  
8 by the governmental body of the costs  
9 attributable to the events or situations under  
10 clauses with adjustment of profit or fee, all as  
11 computed by the governmental body in accordance  
12 with applicable sections of the rules adopted  
13 under section 103D-601 and subject to the  
14 provisions of part VII. When a unilateral  
15 determination has been made, a unilateral change  
16 order shall be issued within ten days. Costs  
17 included in the unilateral change order shall  
18 allow for twenty per cent of the actual costs for  
19 overhead and profit on work done directly by the  
20 contractor and ten per cent on any  
21 subcontractor's billing to the contractor for the



1 contractor's overhead and profit. Upon receipt  
2 of the unilateral change order, if the contractor  
3 does not agree with any of the terms or  
4 conditions, or the adjustment or nonadjustment of  
5 the contract time or contract price, the  
6 contractor shall file a notice of intent to claim  
7 within thirty days after the receipt of the  
8 written unilateral change order. Failure to file  
9 a protest within the time specified shall  
10 constitute agreement on the part of the  
11 contractor with the terms, conditions, amounts,  
12 and adjustment or nonadjustment of the contract  
13 time or the contract price set forth in the  
14 unilateral change order.

15 A contractor shall be required to submit cost or pricing  
16 data if any adjustment in contract price is subject to the  
17 provisions of section 103D-312. A fully executed change order  
18 or other document permitting billing for the adjustment in price  
19 under any method listed in paragraphs (1) through (4) shall be  
20 issued within ten days after agreement on the method of  
21 adjustment.



1        (c) Any change order:

2        (1) That increases the cost of a contract by more than  
3        fifty per cent of the original contract cost;

4        (2) Having a cost increase that, when added to the cost  
5        changes of all prior change orders for that contract,  
6        increases the cost of a contract by more than fifty  
7        per cent of the original contract cost; or

8        (3) That substantially changes the scope of work for a  
9        contract,

10      shall be prohibited by rules adopted under subsection (a) and  
11      shall be considered a new procurement; provided that the head of  
12      a purchasing agency may approve a change order that is otherwise  
13      prohibited by this subsection if, in a written justification of  
14      the approval, the head of the purchasing agency determines that  
15      the approval is in the best interest of the State, taking into  
16      consideration the purpose and intent of this subsection.

17      ~~[(e)]~~ (d) The policy board shall adopt rules requiring the  
18      inclusion in contracts of clauses providing for appropriate  
19      remedies and covering the following subjects:

20      (1) Liquidated damages as appropriate;

21      (2) Specified excuses for delay or nonperformance;



(3) Termination of the contract for default; and

(4) Termination of the contract in whole or in part for the convenience of the governmental body.

~~[(d)]~~ (e) The chief procurement officer or the head of a purchasing agency may vary the clauses that may be required to be included in contracts under the rules adopted under subsections (a) and ~~[(e)]~~ (d); provided that:

(1) Any variations are supported by a written determination that states the circumstances justifying ~~[such]~~ the variations; and

(2) Notice of any ~~[such]~~ material variation be stated in the invitation for bids or request for proposals when the contract is awarded under section 103D-302 or 103D-303."

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

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



1 SECTION 4. This Act shall take effect on July 1, 2025.

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INTRODUCED BY:

Kurt Fessler





# S.B. NO. 615

**Report Title:**

Procurement; Change Order; Cost Increases; Scope of Work

**Description:**

Requires that any procurement change order that increases the contract cost by more than fifty per cent or substantially increases the scope of work be considered a new contract for procurement purposes.

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

