

ACT 260

S.B. NO. 2412

A Bill for an Act Relating to Contracts.

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

SECTION 1. Act 291, Session Laws of Hawaii 2006, addressed the problem of delayed payments to subcontractors and materialmen on government projects by providing for the prompt payment of subcontractors and materialmen upon the completion of their work or furnishing of materials on government projects. However, the legislature finds that some subcontractors and materialmen are still experiencing delays in payment and that further action is needed to ensure that subcontractors and materialmen obtain timely payment upon the completion of their work on projects in the private sector.

To address some of the concerns raised by subcontractors and materialmen in private-sector projects, this Act requires subcontractors to be paid within ten days of the contractor’s receiving payment from the owner in private-sector projects, if the subcontractor’s work is found to be complete in accordance with the terms of the subcontract and in the absence of a bona fide dispute between the subcontractor and the contractor concerning the goods or services contracted for.

The purpose of this Act is to address some of the concerns regarding the payment of subcontractors and materialmen on nongovernment projects.

SECTION 2. Section 444-25, Hawaii Revised Statutes, is amended to read as follows:

“§444-25 Payment for goods and services. A contractor shall pay the contractor’s subcontractor for any goods and services rendered within ~~[sixty]~~ ten days after receipt of ~~[a proper statement]~~ an invoice by the subcontractor that ~~[the goods have been delivered or services have been performed.]~~ includes any supporting documents as required by the terms of the subcontract and after receipt by the contractor of payment from the owner for the subcontractor’s work, whichever occurs later. The subcontractor shall be entitled to receive interest on the unpaid ~~[principal]~~ amount at the rate of one and one-half per cent per month ~~[commencing on the sixtieth day following receipt of the statement by the contractor.]~~ from the date payment is due; provided that this section shall not apply if the delay in payment is due to a bona fide dispute between the contractor and the subcontractor concerning the goods and services contracted for. ~~[If there is no bona fide dispute between the subcontractor and the contractor concerning the goods or services contracted for, the subcontractor shall be entitled to payment for goods and services under this section.]~~

If payment is contingent upon receipt of funds held in escrow or trust, the contractor shall clearly state this fact in the contractor’s solicitation of bids. If the solicitation for bids contains the statement that the time of payment is contingent upon the receipt of funds held in escrow or trust and a contract is

awarded in response to the solicitation, interest ~~[will]~~ shall not begin to accrue upon any unpaid balance until after the [sixtieth] tenth day following receipt by the contractor of [the subcontractor's statement or the thirtieth day following] an invoice by the subcontractor that includes any supporting documents as required by the terms of the subcontract and receipt of the escrow or trust funds, whichever occurs later[-]; provided that this section shall not apply if the delay in payment is due to a bona fide dispute between the subcontractor and the contractor concerning the goods and services contracted for.

This section shall not apply to chapter 103 or any section affecting public contracts."

SECTION 3. This Act shall not apply to the payment terms of previously binding written private contracts entered into, construction bids opened, or request for proposals solicited prior to July 1, 2012.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)