
A BILL FOR AN ACT

RELATING TO CONTRACTS.

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

1 SECTION 1. The legislature finds that this Act is
2 necessary to address a problem within the building industry.
3 Materialmen and subcontractors often are at the mercy of general
4 contractors when seeking payment due them upon completion of
5 their work or providing materials for a project. This problem
6 is particularly serious for materialmen and subcontractors who
7 are involved at the beginning of a project, where their work is
8 completed or materials are furnished long before final
9 completion of the project. In many instances, subcontractors
10 must wait many months, even years, before receiving full payment
11 for their completed work. Often, the subcontractors are small
12 family owned and run businesses that lack financial resources to
13 withstand a long delay in receiving payments owed to them for
14 work completed. The legislature finds that there is a need to
15 provide materialmen and subcontractors with the right to payment
16 upon furnishing of materials or completion of their work.

17 The purpose of this Act is to accelerate a subcontractor's
18 or materialman's right to payment upon completion of the



1 subcontract or the furnishing of materials by providing for
2 prompt payment to a subcontractor or materialman upon completion
3 of the subcontractor's or materialman's work.

4 PART I

5 PRIVATE CONTRACTS

6 SECTION 2. Chapter 507, Hawaii Revised Statutes, is
7 amended by adding three new sections to part II to be
8 appropriately designated and to read as follows:

9 **"§507-A Certificate of completion.** (a) On the written
10 request of a qualifying materialman or subcontractor who has
11 completed work required under a materials contract or
12 subcontract, the payment certifier, within thirty days after the
13 date of the request, shall determine whether the contract or
14 subcontract has been completed and, if the payment certifier
15 determines that it has been completed, the payment certifier
16 shall issue a certificate of completion stating:

- 17 (1) That the contract has been completed;
- 18 (2) The dollar amount of the materials contract or
19 subcontract; and
- 20 (3) The dollar amount of the materials contract or
21 subcontract that remains unpaid, which shall
22 constitute the "certified amount" to be paid.



1 (b) To be a qualifying materialman or subcontractor, the
2 subcontractor or materialman shall:

3 (1) Have a contract in writing for labor or materials and
4 services;

5 (2) Make a written request for a certificate of completion
6 not later than forty-five days after the date of
7 completion of that contract for labor or materials and
8 services; and

9 (3) Complete all obligations required under the materials
10 contract or subcontract, including where applicable,
11 providing lien releases from the subcontractor's
12 subcontractors or materialmen, proofs of insurance,
13 and compliance with applicable labor laws.

14 (c) A materialman or subcontractor is not required to seek
15 a certificate of completion under this section and may otherwise
16 assert a claim of lien and pursue that lien under section
17 507-43.

18 (d) If a certificate of completion is issued, the payment
19 certifier, within seven days after issuing the certificate of
20 completion, shall:

21 (1) Deliver a copy of the certificate to the owner and the
22 general contractor, if any;



1 (2) Deliver a copy of the certificate of completion to the
2 materialman or subcontractor who made the request for
3 the certificate of completion; and

4 (3) Post, in a prominent place on the project, a copy of
5 the certificate of completion.

6 (e) If the payment certifier fails or refuses to issue a
7 certificate of completion to the subcontractor or materialman as
8 provided in subsection (a), the materialman or the
9 subcontractor, within thirty days after the payment certifier is
10 required to issue a certificate of completion as set forth in
11 section 507-A(a), may apply to the circuit court of the circuit
12 in which the property is located for an order that the materials
13 contract or subcontract has been completed. If the court is
14 satisfied that the materials contract or the subcontract has
15 been completed, the court shall enter an order declaring that
16 the materials contract or the subcontract has been completed.
17 If the payment certifier issues a certificate of completion to
18 the subcontractor or materialman as provided in subsection (a),
19 the owner or general contractor, within thirty days after the
20 payment certifier is required to issue a certificate of
21 completion as set forth in section 507-A(a), may apply to the
22 circuit court of the circuit in which the property is located



1 for an order that the materials contract or subcontract has not
2 been completed. If the court is satisfied that the materials
3 contract or subcontract has not been completed, the court shall
4 enter an order declaring that the materials contract or
5 subcontract has not been completed.

6 (f) An order under subsection (e):

7 (1) May be made on terms and conditions as to costs or
8 other terms that the court considers just; and

9 (2) Where the order declares that the subcontract has been
10 completed, shall have the same effect as a certificate
11 of completion issued by a payment certifier.

12 (g) If an order is made under subsection (e) declaring
13 that a contract or subcontract has been completed, the payment
14 certifier shall comply with subsection (d) as if the order were
15 a certificate of completion within seven days after receipt of
16 the order by the payment certifier.

17 (h) The certified amount set forth in a certificate of
18 completion or order issued under this section shall constitute a
19 lien against the property, and the materialman or subcontractor
20 to whom the certificate is issued may enforce that lien.

21 **§507-B Certificate of completion payment by owner.** (a)

22 An owner, upon receipt of either a certificate of completion



1 from a payment certifier or an order entered by a court pursuant
2 to section 507-A, shall make payment of the certified amount set
3 forth in that certificate or order to the materialman or
4 subcontractor within the time stipulated in the materials
5 contract or the subcontract.

6 (b) If an owner fails to make a payment as required in
7 subsection (a), the failure to make that payment shall
8 constitute a neglect to pay the sum upon demand, and the
9 materialman or subcontractor may then pursue foreclosure or
10 other remedies as provided in section 507-47 by filing an action
11 in the circuit court of the circuit in which the property is
12 situated.

13 **§507-C Impact of certificate of completion upon retention**
14 **of funds by owner.** (a) As an exception to section 507-48, if a
15 certificate of completion is issued on a subcontract or
16 materials contract or an order is entered by a court pursuant to
17 section 507-A, the owner shall be obligated to pay the entire
18 certified amount set forth in the certificate of completion or
19 in the order entered by the court to the materialman or
20 subcontractor, and the owner may not withhold any amounts under
21 section 507-48 or otherwise, unless specified in the materials
22 contract or the subcontract. The owner shall pay the certified



1 amount within the time stipulated in the materials contract or
2 the subcontract.

3 (b) Payment of the certified amount, including any
4 retention amounts, by an owner pursuant to subsection (a), shall
5 fully discharge the owner of the owner's obligation to pay
6 amounts on that subcontract or materials contract.

7 (c) When payment is made by an owner of a certified
8 amount, the materialman or subcontractor, upon the request of
9 the owner, shall execute a release of lien for that certified
10 amount."

11 SECTION 3. Section 507-41, Hawaii Revised Statutes, is
12 amended by adding four new definitions to be appropriately
13 inserted and to read as follows:

14 "Certificate of completion" means a certificate under
15 section 507-A stating that:

16 (1) A contract in which materials are provided by a
17 materialman; or

18 (2) A subcontract in which labor or labor and materials is
19 provided by a subcontractor;

20 has been completed. An order issued by the court under section
21 507-A shall also constitute a certificate of completion.



1 "Materialman" or "materialmen" means a person or persons
2 who are in the business of the furnishing of materials.

3 "Payment certifier" means:

4 (1) The architect, engineer, or other person identified in
5 the general contract as the person responsible for
6 issuing a payment certificate; or

7 (2) If there is no person as described in paragraph (1),
8 the owner acting alone or the owner's representative
9 which may be the architect, engineer project manager,
10 or other representative selected by the owner.

11 "Subcontractor" means a person who enters into a contract
12 with a general contractor to provide labor or labor and
13 materials to the owner for the improvement of real property."

14 SECTION 4. Section 507-47, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§507-47 Demand; enforcement; foreclosure; other**
17 **attachment.** After demand and refusal of the amount due or upon
18 neglect to pay the same upon demand, the lien or certificate of
19 completion may be enforced by action filed in the circuit court
20 of the circuit in which the property is situated. The demand
21 may be included in the Application and Notice, and when so
22 included, it shall not be necessary to make separate demand upon



1 any other person. The complaint, in addition to setting forth a
2 claim in the nature of assumpsit, may seek any remedies that the
3 party may otherwise have a right to under existing statutory or
4 common law. In addition, where a party has obtained a lien in
5 accordance with section 507-43, the party may pray for the
6 foreclosure of the lien as to which notice has been filed and
7 may pray for any incidental relief according to the usual
8 practice of courts of equity and according to this section in
9 enlargement thereof. The owner or the owner's assigns on whose
10 property the lien has attached may file a third-party action
11 against a licensed contractor whom the owner has paid for
12 improvements as provided for in section 444-28(g). All
13 proceedings concerning the same improvement shall, unless good
14 reason otherwise appears, be consolidated for trial and the
15 court may order publication of notice of the pendency of the
16 action. Any person having or claiming an interest in any such
17 proceeding or in the property, including other claimants,
18 lienors, encumbrancers, sureties, indemnitors, and the
19 contractors license board may be joined as parties, may be
20 interpleaded, or may be permitted to intervene, under such
21 orders as the court may enter. Interlocutory and final decrees
22 for the foreclosure of the liens, for deficiency judgments, and



1 relief against the parties liable therefor, and fixing the
2 priority of liens between the mechanics and materialmen as a
3 group and other parties having liens against or interests in the
4 property shall be made and entered as near as may be in
5 accordance with the practice on foreclosure of mortgages. If
6 the property or proceeds realized upon the foreclosure sale are
7 insufficient to satisfy all mechanic's and materialmen's liens
8 filed against the same, the property or proceeds shall, after
9 satisfaction of liens for wages for labor entitled to priority
10 under section 507-46, be divided pro rata among the liens
11 according to the principal amounts of the liens, without regard
12 to the order or priority in which the respective Applications
13 and Notices have been filed or the respective actions or
14 interventions commenced.

15 The court having jurisdiction of the action to foreclose
16 the lien shall have all of the powers pertaining to courts of
17 equity, and in addition may direct the issuance of a writ of
18 attachment or execution upon the motion of any party against the
19 property of any other party, in the same manner as is provided
20 in chapter 651; provided that the writ shall only issue where
21 the claim upon which the motion therefor is based is upon a
22 contract, express or implied, between the parties. In addition



1 to costs of the action, the court may allow any fee or fees for
2 legal services rendered by the attorneys for any of the parties,
3 and apportion the same as costs for payment by and between the
4 parties or any of them, all as to the court seems equitable in
5 the light of the services performed and the benefits derived
6 therefrom by the parties respectively."

7 SECTION 5. Section 507-48, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§507-48 Owner may retain amount due.** Whenever the work
10 or material for which a lien is filed is furnished to any
11 contractor for use as set forth in section 507-42, the owner may
12 retain from the amount payable to the contractor an amount
13 sufficient to cover the amount due or to become due to the
14 person or persons who filed the lien[-], except as provided in
15 section 507-C."

16 SECTION 6. Section 507-49, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Anything contained in this chapter to the contrary
19 notwithstanding, no general contractor as defined in this
20 chapter or [~~his~~] the subcontractor or the subcontractor's
21 subcontractor who is required to be licensed pursuant to chapter
22 444, shall have lien rights or have the right to seek a



1 certificate of completion under section 507-A, unless [such] the
2 contractor was licensed pursuant to chapter 444 when the
3 improvements to the real property were made or performed, and no
4 subcontractor or subcontractor's subcontractor so licensed shall
5 have lien rights or the right to seek a certificate of
6 completion under section 507-A if [his] the work was
7 subcontracted to [him] the subcontractor by a general contractor
8 as defined in this chapter or [his] the contractor's
9 subcontractor who was required to be licensed but was not
10 licensed pursuant to chapter 444."

11 PART II

12 PUBLIC CONTRACTS

13 SECTION 7. Chapter 103, Hawaii Revised Statutes, is
14 amended by adding two new sections to part I to be appropriately
15 designated and to read as follows:

16 "**§103-A Certificate of completion.** (a) On the written
17 request of a qualifying materialman or subcontractor who has
18 completed work required under a materials contract or
19 subcontract, the payment certifier, within thirty days after the
20 date of the request, shall determine whether the contract or
21 subcontract has been completed and, if the payment certifier



1 determines that it has been completed, the payment certifier
2 shall issue a certificate of completion stating:

3 (1) That the contract has been completed;

4 (2) The dollar amount of the materials contract or
5 subcontract; and

6 (3) The dollar amount of the materials contract or
7 subcontract that remains unpaid which shall constitute
8 the "certified amount" to be paid.

9 (b) To be a qualifying materialman or subcontractor, the
10 materialman or subcontractor shall:

11 (1) Have a contract in writing for labor or materials and
12 services;

13 (2) Make a written request for a certificate of completion
14 not later than forty-five days after the date of
15 completion of that contract for materials or
16 subcontract; and

17 (3) Complete all obligations required under the materials
18 contract or subcontract, including where applicable,
19 providing lien releases from the subcontractor's
20 subcontractors or materialmen, proofs of insurance,
21 and compliance with applicable labor laws.



1 (c) A materialman or subcontractor is not required to seek
2 a certificate of completion under this section and may otherwise
3 assert its rights as set forth in this chapter.

4 (d) If a certificate of completion is issued, the payment
5 certifier shall, within seven days after issuing the certificate
6 of completion:

7 (1) Deliver a copy of the certificate to the paying
8 agency, the general contractor, and surety, if any;

9 (2) Deliver a copy of the certificate of completion to the
10 materialman or subcontractor who made the request for
11 certificate of completion; and

12 (3) Post, in a prominent place on the improvement, a copy
13 of the certificate of completion.

14 (e) If the payment certifier fails or refuses to issue a
15 certificate of completion as provided in subsection (a), the
16 materialman or the subcontractor, within thirty days after the
17 payment certifier is required to issue a certificate of
18 completion as set forth in section 103-A(a), may apply to the
19 circuit court of the circuit in which the property is located
20 for an order that the materials contract or subcontract has been
21 completed. If the court is satisfied that the materials
22 contract or the subcontract has been completed, the court shall



1 enter an order declaring that the materials contract or the
2 subcontract has been completed. If the payment certifier issues
3 a certificate of completion to the subcontractor or materialman
4 as provided in subsection (a), the paying agency or general
5 contractor, within thirty days after the payment certifier is
6 required to issue a certificate of completion as set forth in
7 section 103-A(a), may apply to the circuit court of the circuit
8 in which the property is located for an order that the materials
9 contract or subcontract has not been completed. If the court is
10 satisfied that the materials contract or subcontract has not
11 been completed, the court shall enter an order declaring that
12 the materials contract or subcontract has not been completed.

13 (f) An order, under subsection (e):

14 (1) May be made on terms and conditions as to costs or
15 other terms that the court considers just; and

16 (2) Where such order declares that the subcontract has
17 been completed, shall have the same effect as a
18 certificate of completion issued by a payment
19 certifier.

20 (g) If an order is made under subsection (e) declaring
21 that a subcontract has been completed, the payment certifier
22 shall comply with subsection (d) as if the order were a



1 certificate of completion within seven days after receipt of the
2 order by the payment certifier.

3 **§103-B Certificate of completion by paying agency.** (a) A
4 paying agency, upon receipt of either a certificate of
5 completion from a payment certifier or an order entered by a
6 court pursuant to section 103-A, within the time stipulated in
7 the subcontract or materials contract, shall make payment of the
8 certified amount set forth in that certificate or order to the
9 materialman or subcontractor.

10 (b) If a paying agency fails to make a payment as required
11 in subsection (a), the failure to make that payment shall
12 constitute a neglect to pay the sum upon demand, and the
13 materialman or subcontractor may then pursue any remedies as
14 provided for in this chapter or section 103D-324 by filing an
15 action in the circuit court of the circuit in which the property
16 is situated. Presentation of the certificate of completion to
17 the paying agency shall constitute written notice for the
18 purposes of section 103D-124."

19 SECTION 8. Section 103D-104, Hawaii Revised Statutes, is
20 amended by adding two new definitions to be appropriately
21 inserted and to read as follows:



1 "Paying agency" means the purchasing agency or such other
2 agency that is responsible for payment of a contract as
3 described in section 103-10.

4 "Payment certifier" means:

5 (1) The architect, engineer, or other person identified in
6 the general contract as the person responsible for
7 issuing a payment certificate; or

8 (2) If there is no person as described in paragraph (1),
9 the paying agency acting alone or the paying agency's
10 representative, which may be the architect, engineer
11 project manager, or other representative selected by
12 the paying agency."

13 SECTION 9. Section 103-1.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§~~**§103-1.5**~~§~~ **Definitions.** The definitions of chapter
16 103D and chapter 507 shall apply to this chapter unless the
17 context clearly requires otherwise."

18 SECTION 10. Section 103-32.1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§103-32.1 Contract provision for retainage;**

21 **subcontractors.** (a) Any public contract may include a
22 provision for the retainage of a portion of the amount due under



1 the contract to the contractor to insure the proper performance
2 of the contract; provided that:

3 (1) The sum withheld by the procurement officer from the
4 contractor shall not exceed five per cent of the total
5 amount due the contractor and that after fifty per
6 cent of the contract is completed and progress is
7 satisfactory, no additional sum shall be withheld;
8 provided further that if progress is not satisfactory,
9 the contracting officer may continue to withhold as
10 retainage, sums not exceeding five per cent of the
11 amount due the contractor; and

12 (2) The retainage shall not include sums deducted as
13 liquidated damages from moneys due or that may become
14 due the contractor under the contract.

15 (b) Where a subcontractor has provided evidence to the
16 contractor of:

17 (1) A valid performance and a payment bond for the project
18 that is acceptable to the contractor and executed by a
19 surety company authorized to do business in this
20 State;

21 (2) Any other bond acceptable to the contractor; or



1 (3) Any other form of collateral acceptable to the
2 contractor;
3 the retention amount withheld by the contractor from its
4 subcontractor shall be the same percentage of retainage as that
5 of the contractor. This subsection shall also apply to the
6 subcontractors who subcontract work to other subcontractors.

7 (c) Subsection (b) notwithstanding, where a subcontractor
8 or materialman presents to the paying agency a certificate of
9 completion, as set forth in section 103-10, the paying agency
10 shall be obligated to pay to the subcontractor or materialman
11 the entire certified amount set forth in the certificate of
12 completion no later than the time stipulated in the subcontract
13 or materials contract and the paying agency may not withhold any
14 amounts as retainage.

15 (d) Payment of the certified amount, including any
16 retained amounts by a paying agency pursuant to this section,
17 shall fully discharge the paying agency and the State or county
18 from any further obligation to pay amounts on that subcontract
19 or materials contract.

20 (e) For purposes of calculating the amount of retainage
21 that may be withheld by the procurement officer from a general
22 contractor pursuant to section 103-32-1(1), the procurement



1 officer shall take into consideration amounts paid to
2 subcontractors on certificates of completion and shall adjust
3 the retainage it withholds from the general contractor
4 accordingly."

5 SECTION 11. Section 103D-324, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§103D-324 Contract performance and payment bonds.** (a)

8 Unless the policy board determines otherwise by rules, the
9 following bonds or security shall be delivered to the purchasing
10 agency and shall become binding on the parties upon the
11 execution of the contract if the contract which is awarded
12 exceeds \$25,000 and is for construction, or the purchasing
13 agency secures the approval of the chief procurement officer:

14 (1) A performance bond in a form prescribed by the rules
15 of the policy board, executed by a surety company
16 authorized to do business in this State or otherwise
17 secured in a manner satisfactory to the purchasing
18 agency, in an amount equal to one hundred per cent of
19 the price specified in the contract;

20 (2) A payment bond in a form prescribed by the rules of
21 the policy board, executed by a surety company
22 authorized to do business in this State or otherwise



1 secured in a manner satisfactory to the purchasing
2 agency, for the protection of all persons supplying
3 labor and material to the contractor for the
4 performance of the work provided for in the contract.

5 The bond shall be in an amount equal to one hundred
6 per cent of the price specified in the contract; or

7 (3) A performance and payment bond which satisfies all of
8 the requirements of paragraphs (1) and (2).

9 (b) The policy board may adopt rules that authorize the
10 head of a purchasing agency to reduce the amount of performance
11 and payment bonds.

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

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



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

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

19 The written notice shall be served by registered or
20 certified mailing of the notice, to the paying agency,
21 contractor, and surety, at any place they maintain an office or



1 conduct their business, or in any manner authorized by law to
2 serve summons.

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

10 The terms "labor" and "material" have the same meanings in
11 this section as the terms are used in section 507-41.

12 (f) A subcontractor or materialman may also seek a
13 certificate of completion from the paying agency by following
14 the procedures set forth in sections 103-A and 103-B.

15 (g) In the event that a subcontractor or materialman
16 obtains a certificate of completion as described in section
17 103-A, the subcontractor or materialman may present the
18 certificate of completion to the paying agency for payment.

19 (h) A paying agency presented with a certificate of
20 completion shall make payment of the certified amount no later
21 than the time stipulated in the subcontract or materials
22 contract.



1 (i) In the event that a paying agency presented with a
2 certificate of completion fails to make payment as provided in
3 subsection (h), the subcontractor or materialman who has not
4 been paid the certified amount may institute an action for the
5 amount or balance thereof, unpaid at the time of the institution
6 of the action against the general contractor and, if a payment
7 bond or performance bond is issued for the project, on those
8 bonds, and may have all rights and claims adjudicated in the
9 action and judgment rendered, subject to the State's priority on
10 any bonds. Presentation of the certificate of completion to the
11 paying agency, general contractor, and surety, if any, shall
12 constitute written notice as set forth in section 103D-324(d)."

13 SECTION 12. In codifying the new sections added by
14 sections 2 and 7 of this Act, the revisor of statutes shall
15 substitute appropriate section numbers for the letters used in
16 designating the new sections in this Act.

17 SECTION 13. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 14. This Act shall take effect on January 1, 2050.



HB 3036
HD1

Report Title:

Contracts; Liens; Certificate of Completion; Prompt Payment

Description:

Provides for prompt payment to subcontractor or materialman upon completion of the work or provision of the materials required under the contract. Permits subcontractor or materialman to obtain a certificate of completion which functions as a lien on the property. Upon issuance of certificate, requires payment in full within time stipulated in the subcontract or material contract. (HB3036 HD1)

