

Honolulu, Hawaii

March 3, 2006

RE: H.B. No. 3036
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which
was referred H.B. No. 3036 entitled:

"A BILL FOR AN ACT RELATING TO CONTRACTS,"

begs leave to report as follows:

The purpose of this bill is to provide for prompt payment of
a subcontractor or materialman once they complete their work under
their contract, by establishing a certificate of completion
procedure. The procedure applies to private contracts and
contracts of state and county government agencies and:

- (1) Allows a subcontractor or materialman who has completed
their contractual obligations to apply for a certificate
of completion from the "payment certifier" (PC), the
person designated under the general contract as
responsible for issuing the payment certificate;
- (2) Requires the PC within 30 days to issue a certificate
upon determining that the subcontract or materials
contract (contract) has been completed;
- (3) Requires the certificate to state that the contract has
been completed, the contract dollar amount, and the
amount that remains to be paid, or "certified amount";



- (4) Requires the PC to deliver copies of the certificate, within seven days of issuance, to the owner and general contractor, or for public contracts, the paying agency, general contractor, and surety, if any;
- (5) Mandates that payment in full be made within 30 days of delivery of the certificate, and that no retainage may be withheld;
- (6) Authorizes the subcontractor or materialman, if the PC refuses to issue the certificate, to apply to the Circuit Court for an order finding the contract has been completed;
- (7) Allows the owner, general contractor, or paying agency upon issuance of a certificate, to apply for a court order that the contract has not been completed;
- (8) Provides that a court order finding completion functions as the issuance of a certificate of completion; and
- (9) Provides that in private contracts, the certificate operates as a lien, enforceable upon failure to make payment, and in public contracts, allows an action to collect the unpaid amount against the general contractor and on the payment bond, if any.

The Ironworkers Local Union 625, Steel Fabricators and Erectors of Hawaii, South Pacific Steel Corp, V & C Drywall Contractors, Inc., S and M Welding Co., Ltd., Mutual Welding Company, Ltd., and Electrical Contractor Association of Hawaii supported this bill. The Subcontractors Association of Hawaii and an individual supported the intent of this bill.

The Department of Accounting and General Services, General Contractors Association of Hawaii, Associated Builders and Contractors, CC Engineering & Construction, Inc., Hidano Construction, Inc., Aylward Enterprises, Incorporated, Building Industry Association of Hawaii, Access Lifts of Hawaii, Walter Y. Arakaki General Contractor, Inc., HIS Mechanical, Inc., Hawaii Surety Association, Ralph S. Inouye Co., Ltd., Koga Engineering & Construction, Inc., Kokea Construction and Consultants, Inc., Hawaii Laborers-Employers Cooperation Education Trust, Miller/Watts Constructors, Inc., Mouse Builders, Inc., Nordic Construction, Ltd., Pacific Resource Partnership, S & M Sakamoto, Inc., T. Iida Contracting, Ltd., Thurston-Pacific, Inc., Universal



Construction, Inc., Willocks Construction Corporation, BCP Construction of Hawaii, Inc., King & Neel, Inc., and several concerned individuals opposed this bill.

Your Committee recognizes that a significant delay in payments will hurt any business. Both those in favor and opposed to this bill admitted that there are problems in the industry with the unfair withholding of retainage, and with the failure to bring projects to timely final completion so that full payment may be made. However, your Committee also acknowledges that retention is the primary protection for general contractors and owners in situations where work or material is discovered to be defective, or where subcontractors have failed in their own payment obligations.

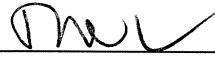
Your Committee wishes to bring some relief for subcontractors and materialmen while being fair to all parties, and has amended this bill to allow continued discussion of the issues by:

- (1) Removing the requirement that payment be made within 30 days, and instead requiring that payment be made within the time stipulated in the materials contract or subcontract;
- (2) Providing that if allowed under the terms of a private contract, a retainage may be withheld from the payment; and
- (3) Changing the effective date to July 1, 2050, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 3036, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 3036, H.D. 1.



Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



