

Honolulu, Hawaii

APR - 7 2006

RE: H.B. No. 3036  
H.D. 1  
S.D. 2

Honorable Robert Bunda  
President of the Senate  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Ways and Means, to which was referred H.B. No. 3036, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONTRACTS,"

begs leave to report as follows:

The purpose of this measure is to accelerate a subcontractor's or materialman's right to payment upon completion of the subcontract work or supplying of materials in public works contracts.

Specifically, this measure would:

- (1) Require the payment of any sums retained or withheld to a subcontractor upon submission of a properly documented payment request and the posting of performance and payment bond or valid union trust fund contribution bond;
- (2) In the event that a subcontractor cannot post a performance and payment bond or other bond or collateral acceptable to the contractor, allow contractors and subcontractors to negotiate and include in subcontracts provisions of retainages of up to ten per cent; provided that the government procurement officer and not the contractor can retain or withhold the portion of the amount owed to the subcontractor; and



- (3) Allow a governmental agency, in the absence of agreement with a contractor, to modify an existing contract by making adjustments in prices unilaterally and provide for an adjusted interim price.

Your Committee finds that this measure will provide subcontractors with a process to request the release of final payments to subcontractors before the completion of the entire construction project. The measure specifies that the amounts withheld or retained will be held by the procurement officer of the contracting or purchasing agency. The measure also amends the current procedures for approval of change orders and force account work to expedite the process and ensure prompt resolution of change orders requested by the contracting or purchasing agency.

Your Committee is cognizant that the contracting or purchasing agencies enter contracts with the prime contractor and not the numerous subcontractors. Therefore, this measure also addresses concerns over the protection of the contracting or purchasing agency and its prime contractors, while providing a process for the release of final payments to subcontractors before the final completion of a project.

Your Committee has amended this measure by:

- (1) Requiring the payment of any sums retained or withheld to a subcontractor upon the submission of a properly documented payment request and the provision of a release of retainage bond or other mutually acceptable bond or collateral;
- (2) Requiring that the retainage of any sums due a subcontractor in any public works project be held by the procurement officer;
- (3) Allowing contract price adjustments, if there is no agreement between the parties and:
  - (A) If the change order is in an amount less than \$50,000, by the actual documented cost of the work, plus twenty per cent of the actual costs for overhead and profit; or
  - (B) If the amount is in excess of \$50,000, by unilateral determination by the governmental

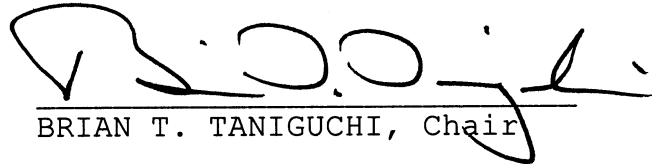


agency, subject to a filing of a notice of intent to file a claim by the contractor;

- (4) Changing the effective date of this measure to July 1, 2060, to allow further discussion on this measure; and
- (5) Making technical nonsubstantive changes for purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 3036, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 3036, H.D. 1, S.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Ways and Means,

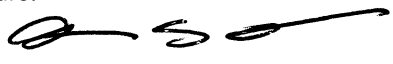


BRIAN T. TANIGUCHI, Chair



The Senate  
Twenty-Third Legislature  
State of Hawaii

Record of Votes of the  
Committee on Ways and Means  
(Bills and Resolutions)

Measure:*	Committee Referral:	Date:		
HB 3036 HD1 SD1	CPH, WAM	04/06/06		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to:				
<input type="checkbox"/> Pass, unamended (2312) <input checked="" type="checkbox"/> Pass, with amendments (2311) <input type="checkbox"/> Hold (2310) <input type="checkbox"/> Recommit (2313)				
Members	Ayes	Ayes(WR)	Nays	Excused
TANIGUCHI, Brian T. (C)	/			
TSUTSUI, Shan S. (VC)	/			
ENGLISH, J. Kalani	/			
ESPERO, Will				/
FUKUNAGA, Carol	/			
HOOSER, Gary L.	/			
INOUE, Lorraine R.	/			
KANNO, Brian				/
KIM, Donna Mercado	/			
KOKUBUN, Russell S.	/			
NISHIHARA, Clarence K.	/			
SAKAMOTO, Norman	/			
HEMMINGS, Fred				/
SLOM, Sam	/			
TRIMBLE, Gordon	/			
TOTAL	12	0	0	3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

\*Do not list more than one measure per Record of Votes.