
A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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

1 SECTION 1. Section 103D-324, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§103D-324 Contract performance [and], payment, and post-
4 performance bonds. (a) Unless the policy board determines
5 otherwise by rules, the following bonds or security shall be
6 delivered to the purchasing agency and shall become binding on
7 the parties upon the execution of the contract if the contract
8 [~~which is~~] awarded exceeds \$25,000 and is for construction, or
9 the purchasing agency secures the approval of the chief
10 procurement officer:

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



1 (2) A payment bond in a form prescribed by the rules of
2 the policy board, executed by a surety company
3 authorized to do business in this State or otherwise
4 secured in a manner satisfactory to the purchasing
5 agency, for the protection of all persons supplying
6 labor and material to the contractor for the
7 performance of the work provided for in the contract.
8 The bond shall be in an amount equal to one hundred
9 per cent of the price specified in the contract; ~~[or]~~
10 and

11 (3) A post-performance bond in a form prescribed by the
12 rules of the policy board, executed by a surety
13 company authorized to do business in this State or
14 otherwise secured in a manner satisfactory to the
15 purchasing agency, for the costs to the State of
16 curing construction defects discovered not later than
17 ten years after the completion of the contract;
18 provided that the bond shall not be used to cover the
19 costs of repairs due solely to normal wear and tear.
20 The bond shall be in an amount equal to one hundred
21 per cent of the price specified in the contract, and



1 prior to the completion of the contract, the
2 contractor shall provide proof satisfactory to the
3 purchasing agency that the bond is paid in full for
4 the ten years following the completion of the
5 contract; or

6 ~~[(3)]~~ (4) A performance ~~[and]~~, payment, and post-
7 performance bond ~~[which]~~ that satisfies all of the
8 requirements of paragraphs (1) ~~[and]~~, (2) ~~[+]~~, and (3).

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



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

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

20 The written notice shall be served by registered or
21 certified mailing of the notice, to the contractor and surety,



1 at any place they maintain an office or conduct their business,
2 or in any manner authorized by law to serve summons.

3 (e) If the State discovers a construction defect not later
4 than ten years after the completion of the contract, the State
5 may institute an action for the costs of curing the construction
6 defect against the contractor and its sureties, on the post-
7 performance bond, and have their rights and claims adjudicated
8 in the action, and judgment rendered thereon.

9 [~~e~~] (f) Every suit instituted under subsection (d) shall
10 be brought in the circuit court of the circuit in which the
11 project is located, but no such suit shall be commenced after
12 the expiration of one year after the day on which the last of
13 the labor was performed or material was supplied for the work
14 provided in the contract. The obligee named in the bond need
15 not be joined as a party in any such suit.

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

18 (g) Every suit instituted under subsection (e) shall be
19 brought in the circuit court of the circuit in which the project
20 is located; provided that the suit shall not be commenced after
21 the expiration of ten years after the day on which the last of



1 the labor was performed or material was supplied for the work
 2 provided in the contract; provided further that the obligee
 3 named in the bond need not be joined as a party in the suit."

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

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

9 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

<u>Del Hlt</u>	<u>[Signature]</u>
<u>Bud Kolch</u>	<u>[Signature]</u>
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H.B. NO. 2019

Report Title:

Procurement Code; Bonds; Prepayment

Description:

Requires public contractors to post a post-performance bond to cover the State's costs of curing construction defects discovered within 10 years after the completion of the contract. Requires the contractor to fully pay for the bond prior to the completion of the contract.

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