

**ACT 222**

S.B. NO. 2987

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. The legislature finds that for construction projects, the State often retains a percentage of the amount paid to prime contractors. The contractors, in turn, often retain a higher rate from subcontractors to protect themselves, in case the subcontractors fail to complete their work, and from other contingencies. The higher retention rates imposed upon subcontractors often cause cash flow problems for these companies.

The legislature also finds that earlier legislative action on the issue resulted in divisive conflict between construction industry groups. To avoid further rancor, representatives from various construction industry organizations established an informal task force to reconcile differences. After many months of open, sometimes

heated debate, the members of the task force acquired a new respect for the unique problems facing their counterparts and managed to craft a partial solution to the thorny problem of retention. The proposal provides that the retention rate imposed upon subcontractors shall be equal to the retention rate imposed upon their prime contractor by the State, provided the subcontractor possesses a performance and payment bond. This addresses the subcontractors' concern for equal retention rates, and the prime contractors' concern regarding liability for work completion.

The purpose of this part is to require equal retention rates on state projects for subcontractors who possess a valid performance and payment bond or another mutually agreeable form of collateral.

SECTION 2. Section 103-32.1, Hawaii Revised Statutes, is amended to read as follows:

**“§103-32.1 Contract provision for retainage.; subcontractors. (a)** Any public contract may include a provision for the retainage of a portion of the amount due under the contract to the contractor to insure the proper performance of the contract; provided that:

- (1) The sum withheld by the procurement officer from the contractor shall not exceed five per cent of the total amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the contracting officer may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor; and
- (2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

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

- (1) A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;**
- (2) Any other bond acceptable to the contractor; or**
- (3) Any other form of collateral acceptable to the contractor;**

**the retention amount withheld by the contractor from its subcontractor shall be the same percentage of retainage as that of the contractor. This subsection shall also apply to the subcontractors who subcontract work to other subcontractors.’’**

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2000, and shall apply to all public works contracts entered into after June 30, 2000.

(Approved June 14, 2000.)