



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 18, 2025
3:05 p.m.
State Capitol
Conference Room 225 & Videoconference

H.B. 1297 H.D. 1
RELATING TO PROCUREMENT

The Senate Committee on Government Operations

The Department of Transportation (DOT) **supports** this bill that sets a time limit of 24 hours prior to the date and time set for the receipt of offers when protesting on the content of the solicitation. Makes a 75-day limit for written decision on protests to apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount; and deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

The DOT has implemented the 75-day limit written decision response to all protests, since passage of the 75 days requirement and internally aspires to respond in 45 days, and therefore supports the application of the time deadline to apply to all protests.

The DOT supports the proposed statutory revision requiring at least 24 hours notice, prior to the receipt of offers for protests based on the contents of a solicitation. This change allows the DOT time to issue an addendum to amend the solicitation and if needed, provide the time to postpone the bid opening if more time is needed for the offeror to review the changes, ensuring that the State receives, and the bidder provides a complete and correct bid.

The DOT proposes the following changes to Section 2, page 3, lines 6-7: §103D-709 Administrative proceedings for review. (e) "...provided that the amount of the bond shall not exceed \$1,500,000." The DOT has experienced forty to sixty percent construction cost increases from 2021 to 2024, with the national average of the same period to be fifty-six percent increase in construction costs. Some DOT project estimates are in the \$170,000,000 to \$250,000,000 range and therefore, the \$1,500,000 protest bond would be an equitable cap considering construction cost increases.

Thank you for the opportunity to provide testimony.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE

COMMITTEE ON GOVERNMENT OPERATIONS

MARCH 18, 2025, 3:05 P.M.
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1297, H.D.1

RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 1297, H.D. 1.

The Department of Accounting and General Services (DAGS) **supports** this bill for the following reasons:

- It provides the State with at least 24 hours notice, prior to the receipt of offers, of protests based on the contents of a solicitation. This provides the State with a minimum of 24 hours to issue an addendum postponing the bid opening in accordance with the stay on procurement invoked by a protest and is in the best interest of both the State and its offerors.
- It also removes the requirement that the administrative hearing office must find that an appeal was frivolous or in bad faith before the protest bond is forfeited to

the State by initiating parties who do not prevail in the administrative proceeding.

- The existing requirement makes it very difficult, if not impossible, for the State to collect the protest bond from protestors who do not prevail in the administrative hearing and is contrary to the intent of the requirement for the filing of a protest bond.
- Removal of this requirement also works to ensure that protestors file appeals which are based on strong arguments that the agency erred in denying the protest.

Thank you for the opportunity to provide testimony on this measure.



STATE OF HAWAII | KA MOKU'ĀINA O HAWAII'

STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state_procurement_office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
MARCH 18, 2025, 3:05 P.M.

HOUSE BILL 1297, HD1
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1297, HD1. The State Procurement Office (SPO) supports the intent of this bill and provides the following comments and recommendations.

The SPO encourages procurement integrity while providing an outlet to question procurement practices, ensuring continuous improvement and accountability. Procurement challenges often result in project delays, lapsing funds, and project cost increases.

The SPO supports the language in Section 1, page 1, line 17, and page 2, lines 1-2, which requires protests to be submitted "at least twenty-four hours prior to the date and time set for the receipt of offers." This gives agencies time to respond to the protest and allows for corrective action before the solicitation closes.

The SPO recommends the following changes to Section 2, page 3, lines 6-7:

§103D-709 Administrative proceedings for review. (e) "...; provided that the amount of the bond shall not exceed \$1,500,000."

The SPO supports the deletion of language as noted in Section 2, page 3, lines 13-15:

"... provided that full forfeiture of the cash or protest bond shall occur if the initiating party does not prevail in the administrative proceeding and [~~the office of administrative hearing finds that the appeal was frivolous or made in bad faith, in which case~~] the cash or protest bond shall be deposited into the general fund."

Thank you for the opportunity to submit testimony on this measure.



KING & NEEL

March 18, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION TO H.B. 1297 HD1, RELATING TO PROCUREMENT.** Sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

HEARING

DATE: March 18, 2025
TIME: 3:05 p.m.
PLACE: Conference Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

King & Neel Pacific, Inc. is a local firm that has been actively involved in providing insurance and bonding services for the building industry since 1967.

We **OPPOSE H.B. 2070 HD1 Relating to Procurement**, which sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

We **OPPOSE** his measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

The Legislature inserted this safeguard language that other states who require cash or protest bonds without a cap use for appeals to prevent the chilling effect of deterring legitimate protests on large projects. This provision ensures a balance that deters frivolous appeals without the unintended consequence of also deterring legitimate appeals on large projects.

Prior to this language being adopted last year, a 2013 NASPO study found only seven (7) out of fifty states require a protest bond of some sort. This includes Hawaii. Of these seven

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King & Neel



KING & NEEL

states, Hawaii was the **ONLY** state that imposed immediate forfeiture of the bond to the State's general fund if a protestor loses an appeal. Every one of the other six states that imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous.

Research shows that in 2023 there was one administrative appeal decision and in 2024 there were three, with only one appeal after the passage of ACT 162 (2024). This is not a situation where the current law isn't working and appeals are constantly occurring.

Thank you for the opportunity to provide testimony opposing this measure.



March 18, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION TO H.B. 1297 HD1, RELATING TO PROCUREMENT.** Sets time limit for submitting bid protests. Makes 75 day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

HEARING

DATE: Tuesday, March 18, 2025
TIME: 3:05 p.m.
PLACE: Capitol Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA **Opposes** H.B. 1297 HD1, which sets time limit for submitting bid protests. Makes 75 day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

GCA opposes this measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

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Prior to this language being adopted last year, a 2013 NASPO study found only seven (7) out of fifty states require a protest bond of some sort. This includes Hawaii. Of these seven states,



**GENERAL
CONTRACTORS
ASSOCIATION
OF HAWAII**

Hawaii was the ONLY state that imposed immediate forfeiture of the bond to the State's general fund if a protestor loses an appeal. Every one of the other six states that imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous.

Research shows that in 2023 there was one administrative appeal decision and in 2024 there were three, with only one appeal after the passage of ACT 162 (2024). This is not a situation where the current law isn't working and appeals are constantly occurring.

Thank you for the opportunity to provide testimony opposing this measure.



**HAWAII STATE SENATE
COMMITTEE ON GOVERNMENT OPERATIONS
Conference Room 225
State Capitol
3:05 pm**

MARCH 18, 2025

Subject: HB 1297 - Relating to Procurement

Chair McKelvey, Vice Chair Gabbard, and members of the Committee:

My name is Roseann Freitas, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in opposition to HB 1297 HD1, Relating to Procurement. This bill sets a time limit for submitting bid protests, makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal, caps the protest bond amount, and deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

HB 1297 is unnecessary, as Act 162 has already been enacted and is effectively achieving its intended objective. Our understanding is that since its enactment, there has only been one appeal of an agency decision, and there is no need for additional legislative action. The construction sector is already facing complex regulatory burdens, and any unnecessary changes could increase costs, delay projects, and further impact the availability of affordable housing and infrastructure development in our state.

We appreciate the opportunity to provide our comments on this matter.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 18, 2025

Testimony To: Senate Committee on Government Operations
Senator Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1297, HD 1 – RELATING TO THE PROCUREMENT.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following ten separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS ASSOCIATION OF HAWAII

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

HAWAII ARCHITECTURAL GLASS AND METAL ASSOCIATION

We are in opposition to suggestions made by testimony in previous hearings that the amount of \$1,000,000.00 be inserted in Section 2, page 3, line 7.

Given the wide range of projects that are undertaken by the State and Counties, we find it extremely difficult to endorse a "one size fits all" approach when jobs range from a few hundred thousand dollars to many millions of dollars.

We believe that the State and the Counties should readily endorse the protest provisions inasmuch as it is, in fact, private industry doing the work of government to alert situations that may not be in compliance with the procurement laws.

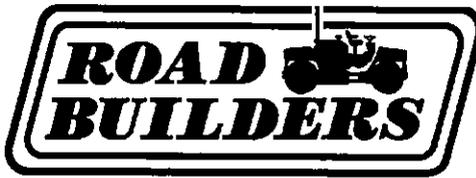
As to the amount, it should be noted that 1% of a \$500,000.00 job is \$5,000.00 but on a \$20,000,000.00 job, that rises to \$200,000.00. That is quite a gamble considering the intricacies and "in and outs" of administrative proceedings particularly in the case of where the initiating party does not prevail.

In summary, the only real opposition to this bill is the cap for the maximum bond which if placed too high puts a real disincentive on industry helping government to determine errors in the procurement procedure.

It should be understood that placing this bond draws down on the contractors' operational credit when those dollars could be better used to secure additional jobs.

Based on the above we would respectfully request some moderation of the cap or maximum bond.

Thank you.



Contractor Lic. # AC 14126

March 18, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION TO H.B. 1297 HD1, RELATING TO PROCUREMENT.** Sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

HEARING

DATE: March 18, 2025
TIME: 3:05 p.m.
PLACE: Conference Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

Road Builders Corporation is a general contractor specializing in asphalt paving.

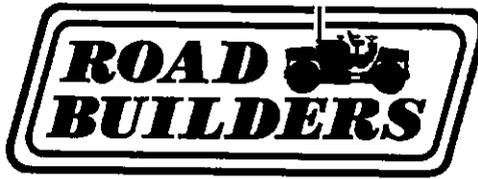
Road Builders Corporation OPPOSES H.B. 2070 HD1 Relating to Procurement, which sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

Road Builders Corporation opposes this measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

The Legislature inserted this safeguard language that other states who require cash or protest bonds without a cap use for appeals to prevent the chilling effect of deterring legitimate protests on large projects. This provision ensures a balance that deters frivolous appeals without the unintended consequence of also deterring legitimate appeals on large projects.

Prior to this language being adopted last year, a 2013 NASPO study found only seven (7) out of fifty states require a protest bond of some sort. This includes Hawaii. Of these seven states, Hawaii was the **ONLY** state that imposed immediate forfeiture of the bond to the State's general fund if a protestor loses an appeal. Every one of the other six states that imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

2836 Awaawaloa Street • Honolulu, Hawaii 96819 • Tel: (808) 833-5400 • Fax: (808) 833-1300

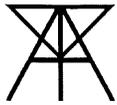


Contractor Lic. # AC 14126

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous.

Research shows that in 2023 there was one administrative appeal decision and in 2024 there were three, with only one appeal after the passage of ACT 162 (2024). This is not a situation where the current law isn't working and appeals are constantly occurring.

Thank you for the opportunity to provide testimony opposing this measure.



JAYAR CONSTRUCTION, INC.

1176 Sand Island Parkway ▼ Honolulu, Hawaii 96819

Tel (808) 843-0500 ▼ Fax (808) 843-0067

Contractor's License ABC-14156

March 17, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: OPPOSITION TO H.B. 1297 HD1, RELATING TO PROCUREMENT.

Sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

HEARING

DATE: March 18, 2025

TIME: 3:05 p.m.

PLACE: Conference Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

Jayar Construction, Inc., is a site work construction company that has been doing business in Hawaii for the past 38 years.

Jayar Construction, Inc. OPPOSES H.B. 2070 HD1 Relating to Procurement, which sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

Jayar Construction, Inc. opposes this measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

The Legislature inserted this safeguard language that other states who require cash or protest bonds without a cap use for appeals to prevent the chilling effect of deterring legitimate protests on large projects. This provision ensures a

balance that deters frivolous appeals without the unintended consequence of also deterring legitimate appeals on large projects.

Prior to this language being adopted last year, a 2013 NASPO study found only seven (7) out of fifty states require a protest bond of some sort. This includes Hawaii. Of these seven states, Hawaii was the ONLY state that imposed immediate forfeiture of the bond to the State's general fund if a protestor loses an appeal. Every one of the other six states that imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous. Research shows that in 2023 there was one administrative appeal decision and in 2024 there were three, with only one appeal after the passage of ACT 162 (2024). This is not a situation where the current law isn't working and appeals are constantly occurring.

Thank you for the opportunity to provide testimony opposing this measure.



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS BC-3641

March 18, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION TO H.B. 1297 HD1, RELATING TO PROCUREMENT.** Sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

HEARING

DATE: March 18, 2025
TIME: 3:05 p.m.
PLACE: Conference Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

S & M Sakamoto, Inc. is a general contracting company that has been in the construction industry in Hawaii since 1940.

S & M Sakamoto, Inc. OPPOSES H.B. 2070 HD1 Relating to Procurement, which sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

S & M Sakamoto, Inc. opposes this measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

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to the State's general fund if a protestor loses an appeal. Every one of the other six states that imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous.

Research shows that in 2023 there was one administrative appeal decision and in 2024 there were three, with only one appeal after the passage of ACT 162 (2024). This is not a situation where the current law isn't working and appeals are constantly occurring.

Thank you for the opportunity to provide testimony opposing this measure.

Sincerely,

A handwritten signature in cursive script that reads "Francis Sakamoto Jr.".

Francis Sakamoto Jr., Vice President

March 17, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

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HEARING

DATE: March 18, 2025

TIME: 3:05 p.m.

PLACE: Conference Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor for over 60 years, **OPPOSES H.B. 2070 HD1 Relating to Procurement**, which sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

RSI opposes this measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

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Thank you for the opportunity to provide testimony opposing this measure.



March 18, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

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HEARING

DATE: March 18, 2025
TIME: 3:05 p.m.
PLACE: Conference Room 225

Dear Chair McKelvey, Vice Chair Gabbard and Members of the Committee,

Koga Engineering & Construction, Inc. is a General Contractor that specializes in Earthwork & Underground Utility construction. Koga Engineering just celebrated its 50th Anniversary and employs approximately 70 salaried and hourly workers throughout the State of Hawaii.

Koga Engineering & Construction, Inc. OPPOSES H.B. 2070 HD1 Relating to Procurement, which sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.

O'ahu, Big Island & Maui County

MAIN OFFICE

1162 Mikole Street

Sand Island Industrial Park

Honolulu, Hawai'i 96819-4320

MAIL

P.O. Box 31289

Honolulu, Hawai'i 96820-1289

Phone: 808-845-7829

Fax: 808-845-3742

Kaua'i

OFFICE

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Puhi Industrial Park

Lihu'e, Hawai'i 96766-9065

MAIL

P.O. Box 3537

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Koga Engineering & Construction opposes this measure because it repeals ethical safeguards within the procurement code that other states use that the legislature passed last year through ACT 162 (2024). The legislature passed the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party last year in an effort to strengthen procurement ethics.

The Legislature inserted this safeguard language that other states who require cash or protest bonds without a cap use for appeals to prevent the chilling effect of deterring legitimate protests on large projects. This provision ensures a balance that deters frivolous appeals without the unintended consequence of also deterring legitimate appeals on large projects.

Prior to this language being adopted last year, a 2013 NASPO study found only seven (7) out of fifty states require a protest bond of some sort. This includes Hawaii. Of these seven states, Hawaii was the **ONLY** state that imposed immediate forfeiture of the bond to the State's general fund if a protestor loses an appeal. Every one of the other six states that imposed a bond requirement, only required either partial forfeiture to pay for costs, or forfeiture under certain conditions, most often a frivolous or bad faith protest.

The Hawaii Revised Statutes and Hawaii Rule of Civil Procedure outline what constitutes a frivolous lawsuit. Similarly, California has precedent on determining frivolousness in protest appeals. Typically, an appeal that lacks legal merit, is based on clearly unfounded facts, or is brought primarily to harass another party is considered frivolous.

Research shows that in 2023 there was one administrative appeal decision and in 2024 there were three, with only one appeal after the passage of ACT 162 (2024). This is not a situation where the current law isn't working and appeals are constantly occurring.

Thank you for the opportunity to provide testimony opposing this measure.

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March 17, 2025

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Re: TESTIMONY OF ANNA H. OSHIRO
Regarding HB1297 RELATING TO PROCUREMENT
Hearing: Tuesday, March 18, 2025 at 3:05 pm

Dear Mr. Chair, Mr. Vice Chair, and Committee Members,

I write in opposition to the measure because of the chilling effect it has on the ability of the public to ensure full and fair and open public procurement and use of funds. When the immediate forfeiture requirement of the bond was in place, the number of appeals of procurement actions dropped to basically a handful. The bond requirement is extreme, it is unnecessary, and it prevents the public from exercising the limited due process afforded by the procurement code.

One issue that must be highlighted to the legislature is that bid protests are not always about challenges to the low bidder. Often they are challenges to State action to ignore or reject the low bidder – even though such action may cost the taxpayers millions of dollars in additional project costs. Losing the ability to appeal such decision because the risk presented by exorbitant bond requirements that punish appellants for seeking a day in court, deprives bidders and through them the public, the ability to challenge decisions that otherwise would never be reviewed and over time would almost certainly lead to favoritism. The entire purpose of the procurement code's bid protest and relief process is to afford bidders the right to seek timely relief. If the legislature acts to roll back this protection, it will be putting expenditure of taxpayer dollars outside the realm of review for compliance with the procurement law. There is no justification in law, logic or fairness for such action.

Respectfully submitted,



Anna H. Oshiro

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