

DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING ADMINISTRATOR

**STATE OF 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, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES
ON
WAYS AND MEANS
AND
JUDICIARY

March 3, 2021, 9:45AM

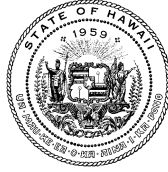
SENATE BILL 1329, SD1
RELATING TO PROCUREMENT

Chair Dela Cruz, Chair Rhoads, Vice Chair Keith-Agaran, Vice Chair Keohokalole, and members of the committees, thank you for the opportunity to submit testimony on SB1329 SD 1.

The State Procurement Office (SPO) appreciates the intent of the bill and the amendments made in SD1.

Thank you.

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE

COMMITTEES ON
JUDICIARY/ WAYS AND MEANS

WEDNESDAY, MARCH 3, 2021, 9:45 A.M.
CONFERENCE ROOM 211, STATE CAPITOL

S.B. 1329, S.D. 1

RELATING TO PROCUREMENT.

Chairs Rhoads and Dela Cruz, Vice Chairs Keohokalole and Keith-Agaran, and members of the Committees, thank you for the opportunity to submit testimony on S.B. 1329, S.D. 1. The Department of Accounting and General Services (DAGS) supports the intent of the bill, appreciates the revisions made in S.B. 1329, S.D. 1, and offers the following comments:

We maintain our concern similarly offered by the State Procurement Office and State Department of Transportation on the original version of S.B. 1329 that the imposition of time limits on the first phase of the protest process may compromise a fair and just resolution in our more complex protests. There are several factors which have an impact on the ability of an agency to effectively evaluate protests which are not under the control of the State. For example:

- The number and complexity of issues involved in a single protest.
- The complexity of the procurement. Protests involving construction projects may involve contractor licensing issues, issues of interpretation of the plans and specifications, etc.,

that require agencies to obtain outside expertise for interpretation. In such cases, the evaluation process is affected by the schedules of the specialty experts. For example, Contractor licensing issues may require agencies to obtain the guidance of the Contractors License Board (CLB), which must place the request on the agenda of the next CLB meeting for consideration and feedback.

- The number of protests received for a project.
- The current overall caseload of protests.

In addition, we note that Standing Committee Report No. 554 took the forty-five day deadline for the administrative hearings phase into consideration to establish the deadline for the first phase of the protest process contained in this legislation. However, this time frame is not comparable to what is necessary to fully vet an initial protest. By the time a protest goes to an administrative hearing, the Hearings Officer is presented with the end result of all of the research already completed during the first phase of the protest (i.e. in the development of the agency's response). Instead, this deadline addresses issues of scheduling hearings and the attendant pre-hearing conferences, which is not the same as the need to perform the amount of research required to address the first phase of a protest.

We suggest that the consideration be given to increasing the initial time period based on a study of the information collected by the State Procurement Office and State agencies on the protest process to ensure fair and just consideration of protests, and that the number of extensions due to extenuating circumstances not be limited to a single thirty-day extension.

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



Malcolm Barcarse, Jr.
A&B Electric Co., Inc.
Chairman

Kathryn Mashima
Mashima Electric
Chairman Elect

Ross Kawano
ECA, LLP
Treasurer/Secretary

Jarrett Walters
Hawaiian Building
Maintenance

Canaan Shon
Hawaii Geophysical Services

Ralph Sakauye
Bora, Inc.

Kevin Schmid
Oceanic Companies, Inc.



Geoffrey Chu
Oceanic Companies, Inc.
Chairman

Kimo Pierce
Hawaii Plumbing Group, LLC
Chairman Elect

David Tsuda
First Hawaiian Bank
Treasurer

Ross Kawano
ECA, LLP
Secretary

Scott Massner
Helix Electric

Maurice Torigoe
M. Torigoe Plumbing, Inc.

Michelle Taketa
StarCom Builders, Inc.

Christine Lanning
Integrated Security
Technologies, Inc.

**2021 CEF ETTF Board of
Trustees**

Joe Ferrara
Consolidated Painting LLC

Leonard Tanaka
T&T Electric, Inc.

Thiel Harryman
Nova Group

March 3, 2021

To: Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

From: Malcolm Barcarse, Jr. ABC Hawaii Board Chair.

Associated Builders and Contractors Hawaii Chapter testimony **In Support** of SB 1329.

Chairs Rhoads and Dela Cruz, Vice Chairs Keohokalole and Keith-Agaran and members of the Committee:

Thank you for the opportunity to testify, my name is Malcolm Barcarse, Jr. I am currently the Chair of Associated Builders and Contractors, Hawaii Chapter which represents over 170 member companies in the Construction Industry. We also have a State Approved Trade Apprenticeship Program in the trades of Carpentry, Electrical, Painting, Plumbing and Roofing.

Our membership regularly submits bids on public works projects for State and County agencies. We have also seen over the years how the laws regarding bid protests have evolved where strict deadlines have been placed on the Office of Administrative Hearings and the Circuit Court to dispose of cases, along with the requirement of contractors to put up protest bonds before initiating an appeal to the Office of Administrative Hearings. These provisions appear to have done a good job of filtering out cases that get appealed to OAH unnecessarily.

Despite these efforts the one missing piece to the bid protest puzzle is the unlimited time that the agencies have to make a decision on whether to sustain or deny a protest. Therefore, we believe that SB 1329 is a step in the right direction and supports this bill to set deadlines on the agencies to move these protests along in a timely manner. If the goal is to prevent delays in public works projects, moving the process along in this way will have a substantial impact in achieving that goal. ABC Hawaii looks forward to working with the Legislature and the relevant stakeholders to improve the public works procurement system.

Thank you for the opportunity to testify

Nan Inc

LATE

Hon
Telephone: (808) 842-4929
Facsimile: (808) 841-8281

March 3, 2021

Testimony to: Senate Committee on Ways and Means
Chair Donovan M. Dela Cruz

Presented By: Nan Chul Shin, Director

Subject: S.B. 1329 S.D. 1 – RELATING TO PROCUREMENT

Chair Dela Cruz and Members of the Committee:

Nan, Inc. (“Nan”) supports S.B. 1329 S.D. 1 and the new time limitations under which the chief procurement officer shall issue a decision within seventy-five days. Nan has seen over the years how the laws regarding bid protests have evolved where strict deadlines have been placed on the Office of Administrative Hearings and the Circuit Court to dispose of cases, along with the requirement of contractors to put up protest bonds before initiating an appeal to the Office of Administrative Hearings.

Despite these efforts the one missing piece to the bid protest puzzle is the unlimited time that the agencies have to decide on whether to sustain or deny a protest. Therefore, Nan believes that S.B. 1329 S.D. 1 appropriately sets deadlines on agencies to move these protests along in a timely manner. If the goal is to prevent delays in public works projects moving the process along in this way will have an immediate impact on this process and ensure that bid protests do not go on forever without resolution. Timely resolution benefits both the State as well as the public.

Thank you for the opportunity to provide testimony.