



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
JANUARY 28, 2025; 3:00 PM**

**SENATE BILL 131
RELATING TO PROCUREMENT**

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 131. The State Procurement Office (SPO) appreciates the intent of the bill, which proposes to impose fines or provide for termination of a contract for default if a contractor fails to perform the contractor's duties or if there is a major delay in a deliverable. This bill proposes adding a new section to Part VII - Legal and Contractual Remedies, and creating a new section under 103D-501(c), which falls under Part V - Modification and Termination of Contracts, of the Hawaii Procurement Code (Chapter 103D, Hawaii Revised Statutes).

The SPO comments that the additional language is not necessary as it is already addressed in statute and the Hawaii Administrative Rules. Post award activities include monitoring and controlling project progress. Depending on the type of procurement, for example, an Information Technology (IT) modernization project may include quality audits and procurement system reviews. The contract may include a services level agreement (SLA) to ensure the project is performed to the agreed schedule. If a contractor fails to perform, there should be assurances such as a performance bond, liquidated damages, or penalties. In the case of incentives, there are different types of contracts that allow for incentives to complete a project ahead of time.

Part V of the Hawaii Procurement Code covers modifications and termination to a contract. Terms and conditions of each contract should be already addressed in each solicitation. The individual contract would describe when a penalty would be applied in a given circumstance. A list of deliverables and the need for schedule or timeline would be described in the solicitation and subsequent contract. It is the responsibility of the procurement officer, not the Procurement Policy Board (PPB), to determine actions on a contract. It would be very difficult for the PPB to create a schedule of fines to address the multitude of circumstances that may befall a contract.

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

January 28, 2025

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

SUBJECT: **COMMENTS ON S.B. 131, RELATING TO PROCUREMENT.** Requires the Procurement Policy Board to adopt rules requiring contracts to impose mandatory fines or provide for termination of a contract for default if a contractor fails to perform the contractor's duties or if there is a major delay in a deliverable. Requires each contract to establish a schedule of deliverables and to specify what constitutes a "major delay".

HEARING

DATE: Tuesday, January 28, 2025
TIME: 3:00 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 comments on S.B. 131, which requires the Procurement Policy Board to adopt rules requiring contracts to impose mandatory fines or provide for termination of a contract for default if a contractor fails to perform the contractor's duties or if there is a major delay in a deliverable. Requires each contract to establish a schedule of deliverables and to specify what constitutes a "major delay".

The GCA has concerns with this measure as there are already remedies to pursue for failure of duties and delay, including liquidated damages. If the purpose of this is to go after bad actors, then there are provisions that allow for debarment.

Further, deliverables can be complex and there are concerns with defining what constitutes a "major delay."

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