

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 LAWELAWE LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 'I 96810-0119

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

COMMITTEE ON JUDICIARY

MARCH 5, 2026, 10:01 A.M.
CONFERENCE ROOM 016 AND VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 3249, S.D. 1

RELATING TO PROCUREMENT PROTESTS

Chair Rhoads, Vice Chair Gabbard, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 3249, S.D. 1.

The Department of Accounting and General Services (DAGS) **opposes** S.B. 3249, S.D. 1, which requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

The S.D. 1 version of S.B. 3249 weakens the original measure and changes current law by reducing the penalties meant to discourage bad faith procurement protests. As noted in the department's testimony, the original bill created stronger consequences for filing meritless appeals, helping prevent delays and unnecessary

costs in the procurement process. The S.D. 1 changes soften these deterrents, making it easier for bidders to file weak or abusive protests without meaningful risk.

DAGS **supports** the original version of S.B. 3249. The S.D. 1 version, if passed, will have no positive impact and will not deter frivolous protests from occurring in the future which was the original intent of this measure.

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



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/05/2026

Time: 10:01 AM

Location: CR 016 & Videoconference

Committee: JDC

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB3249, SD1, RELATING TO PROCUREMENT PROTESTS.

Purpose of Bill: Requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith. Effective 1/1/2525. (SD1)

Department's Position:

The Hawaii State Department of Education (Department) appreciates the opportunity to provide comments in opposition to SB 3249, SD 1. SB 3249, SD 1 proposes to require forfeiture of one-half of the cash or protest bond in a procurement-related administrative proceeding when (1) the initiating party does not prevail, and (2) the Office of Administrative Hearings finds that the appeal was made in bad faith.

Under Hawaii Revised Statutes (HRS) § 302A-1128, the Department is responsible for operating and maintaining capital improvement, repair, and maintenance programs for the Department and school facilities statewide. The Department administers a significant volume of construction and professional services procurements necessary to maintain safe and operational learning environments for students across Hawaii.

The Department is concerned that reducing the forfeiture amount from full forfeiture to one-half of the bond weakens an important deterrent against bad-faith protests. Procurement protests can delay contract awards, suspend mobilization, and increase project costs through escalation, extended general conditions, and administrative overhead. On large capital improvement projects, even short delays can materially affect delivery schedules and total project costs.

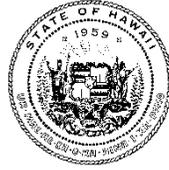
Recent legislative actions, including Act 224 Session Laws of Hawaii 2021, and Act 162 Session Laws of Hawaii 2024, strengthened deterrents against frivolous or bad-faith procurement protests by clarifying and reinforcing forfeiture provisions. These measures were intended to balance access to the protest process with the need to prevent abuse that disrupts public projects.

By reducing the forfeiture consequence, SB 3249, SD 1 may diminish the deterrent effect that the Legislature recently enacted. While the Department supports maintaining appropriate due-process safeguards by reinserting the “bad faith” standard in SD 1, it also believes that meaningful consequences are necessary to discourage protests filed for strategic delay rather than legitimate legal grounds.

Accordingly, the Department respectfully requests that the Legislature either restore stronger deterrent language or reconsider reducing the forfeiture amount for bad-faith protests.

The Department thanks the committee for its consideration of these comments offered in opposition to SB 3249, SD 1.

JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ADMINISTRATOR
DAYNA OMIYA
ASSISTANT ADMINISTRATOR

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
JUDICIARY

MARCH 5, 2026, 10:01 A.M.

SENATE BILL 3249, SD1
RELATING TO PROCUREMENT PROTESTS

Chair Rhoads, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 3249, SD1, which requires forfeiture of the cash or protest bond in procurement-related administrative proceedings if the initiating party does not prevail. The State Procurement Office (SPO) appreciates the amendment in SECTION 2, which incorporates SPO's recommendation to remove the "frivolous" language from Section 103D-709, Hawaii Revised Statutes (HRS). Elimination of the subjective determinations of "frivolous" reduces administrative burden on the Office of Administrative Hearing.

Additionally, SPO recommends revising the language in Section 2, page 2, lines 13-21, to read as follows:

"The cash or protest bond shall be returned to that party, minus administrative costs as determined by the office of administrative hearings of the department of commerce and consumer affairs; provided that [~~full~~] forfeiture of [~~half~~] **fifty per cent (50%)** of the cash or protest bond shall occur if the initiating party does not prevail in the administrative proceeding and the office of administrative hearings 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. "

Although both "half" and "fifty percent" are correct, "fifty percent" is preferred in data contexts, financial reports, or whenever precise language is required.

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

March 5, 2026

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 3249 SD1, RELATING TO PROCUREMENT PROTESTS.** Requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

HEARING

DATE: March 5, 2026
TIME: 10:01 a.m.
PLACE: Conference Room 016

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

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor for over 60 years, **OPPOSES S.B. 3249 SD1 Relating to Procurement Protests**, which requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

RSI opposes this measure because it amends language that inserted ethical safeguards within the procurement code that other states use that the legislature passed 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, 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 after the passage of ACT 162 (2024). Last year there were only three appeals. 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 5, 2026

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 3249 SD1, RELATING TO PROCUREMENT PROTESTS.** Requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

HEARING

DATE: March 5, 2026
TIME: 10:01 a.m.
PLACE: Capitol Room 016

Dear Chair Rhoads, 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** S.B. 3249 SD1, which requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

GCA opposes this measure because it amends language that inserted 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). In 2025 there were only three appeals. 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.

Leonard K.P. Leong
President

March 5, 2026

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD,
VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 3249 SD1, RELATING TO PROCUREMENT PROTESTS.** Requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.



HEARING

DATE: March 5, 2026
TIME: 10:01 a.m.
PLACE: Conference Room 016

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

ROYAL CONTRACTING CO., LTD

ROYAL CONTRACTING CO. LTD OPPOSES S.B. 3249 SD1 Relating to Procurement Protests, which requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

ROYAL CONTRACTING CO. LTD opposes this measure because it amends language that inserted ethical safeguards within the procurement code that other states use that the legislature passed 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, 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.

"An Equal Employment Opportunity Employer"

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 after the passage of ACT 162 (2024). Last year there were only three appeals. 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,


Leonard K.P. Leong
President



JAS. W. GLOVER, LTD.

GENERAL CONTRACTORS

License No. ABC-3

March 5, 2026

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 3249 SD1, RELATING TO PROCUREMENT PROTESTS.** Requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

HEARING

DATE: March 5, 2026
TIME: 10:01 a.m.
PLACE: Conference Room 016

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

Jas. W. Glover, Ltd. (License No. 003) is a native Hawaiian owned construction company that has been in business since 1935.

Jas. W. Glover, Ltd. **OPPOSES S.B. 3249 SD1 Relating to Procurement Protests**, which requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

Jas. W. Glover, Ltd opposes this measure because it amends language that inserted ethical safeguards within the procurement code that other states use that the legislature passed 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.

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Honolulu

Hilo

Kona

Lihue

P.O. Box 579 • Honolulu, HI 96809

tel (808) 591-8977 • fax: (808) 591-9174

tel: (808) 935-0871 • fax: (808) 961-9237

tel: (808) 329-4113 • fax: (808) 326-6017

tel: (808) 245-3609 • fax: (808) 246-6209

An Equal Opportunity Employer

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

Jas. W. Glover, Ltd.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that tapers to the right.

John Romanowski
Vice President

March 3, 2026

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 3249 SD1, RELATING TO PROCUREMENT PROTESTS.** Requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

HEARING

DATE: March 5, 2026
TIME: 10:01 a.m.
PLACE: Conference Room 016

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

My name is John N. Bustard. I am a lifelong resident of Hawaii and have been actively serving the surety bond needs for Hawaii based businesses in the construction industry since my bonding career started in 1976.

I OPPOSE S.B. 3249 SD1 Relating to Procurement Protests, which requires the forfeiture of half of the cash or protest bond for review of procurement-related disputes if the initiating party does not prevail in an administrative proceeding and the Office of Administrative Hearings finds that the appeal was made in bad faith.

I OPPOSE this measure because it amends language that inserted ethical safeguards within the procurement code that other states use that the legislature passed 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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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 after the passage of ACT 162 (2024). Last year there were only three appeals. This is a situation where the current law is working, so amendments are unnecessary.

Thank you for the opportunity to provide testimony **OPPOSING** this measure.

Sincerely,

A handwritten signature in blue ink, appearing to read "John N. Bustard". The signature is fluid and cursive, with the first name "John" being the most prominent.

John N. Bustard