

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 GOVERNMENT OPERATIONS

FEBRUARY 10, 2026, 3:10 P.M.
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 3249

RELATING TO PROCUREMENT PROTESTS

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

The Department of Accounting and General Services (DAGS) offers its testimony in **support** of S.B. 3249 requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement related disputes if the initiating party does not prevail.

We believe that the revisions to the language of Section 103D-709, Hawai'i Revised Statutes, that S.B. 3249 proposes strengthens the disincentives to bidders on construction projects from filing bid protests which may be spurious and without merit.

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

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



BONNIE KAHAKUI
ADMINISTRATOR

DAYNA OMIYA
ASSISTANT ADMINISTRATOR

STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
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
February 10, 2026, 3:10 p.m.

SENATE BILL 3249
RELATING TO PROCUREMENT PROTESTS

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 3249, 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) supports the amendment in SECTION 2, which removes the “frivolous” language from Section 103D-709, Hawaii Revised Statutes (HRS) and provides comments.

The statute’s purpose is to ensure efficient procurement and discourage unnecessary delays. This bill increases accountability, reducing prolonged disputes and accelerating construction timelines, which are critical to rising costs.

Additionally, eliminating subjective determinations of “frivolous” reduces administrative burden on the Office of Administrative Hearing.

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

SAH - Subcontractors Association of Hawaii

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

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

February 10, 2026

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

Presented By: Tim Lyons, Legislative Chair

Subject: S.B. 3249 – RELATING TO PROCUREMENT PROTESTS

Chair McKelvey and Members of the Committee:

I am Tim Lyons, Legislative Chair 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 believe that the State and the Counties should readily endorse 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. And now this bill will allow the State to keep the bond merely because of a technicality. That does not seem to be honest and fair. Stealing the bond when the protest could be based on a routine reading of a contractor license classification is not prudent action.

As noted, the Legislature has already increased the cost of a bond (one-half percent to one percent) and has already limited the refund provision to real and honest protests instead of frivolous protests. The placement of this bond draws down on the contractors’ operational credit. So, if we want to cut down on protests, we need better job specs and a pre-administrative hearing to opine on the likelihood of the protest outcome.

Based on the above, we would respectfully request other reforms of the protest provisions.

Thank you.



February 10, 2026

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

SUBJECT: **OPPOSITION TO S.B. 3249, RELATING TO PROCUREMENT PROTESTS.** Requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement-related disputes if the initiating party does not prevail.

HEARING

DATE: Tuesday, February 10, 2026
TIME: 3:10 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** S.B. 3249, which requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement-related disputes if the initiating party does not prevail.

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.

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,



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). 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.

QUALITY PEOPLE. QUALITY PROJECTS

February 10, 2026

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

SUBJECT: **OPPOSITION TO S.B. 3249, RELATING TO PROCUREMENT PROTESTS.**
Requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement-related disputes if the initiating party does not prevail.

HEARING

DATE: February 10, 2026
TIME: 3:10 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 S.B. 3249 Relating to Procurement Protests**, which requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement-related disputes if the initiating party does not prevail.

RSI opposes this measure because it repeals 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 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 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.

RICHARD HELTZEL
1108 AUHAI STREET APT 305
HONOLULU, HAWAII 96814

LATE

February 10, 2026

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

SUBJECT: **OPPOSITION TO S.B. 3249, RELATING TO PROCUREMENT PROTESTS.**
Requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement-related disputes if the initiating party does not prevail.

HEARING

DATE: February 10, 2026
TIME: 3:10 p.m.
PLACE: Conference Room 225

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

I've been an executive and employee of local general contractor and subcontractor Healy Tibbitts Builders, Inc. for 46 years and am providing this personal written testimony **OPPOSING S.B. 3249 Relating to Procurement Protests**, which requires the forfeiture of cash or protest bond in an administrative proceeding for review of procurement-related disputes if the initiating party does not prevail.

I oppose this measure because it repeals 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 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.

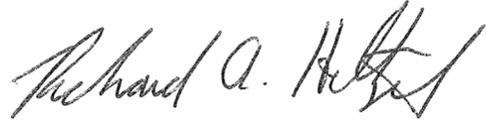
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appeals. This is not a situation where the current law isn't working and appeals are constantly occurring.

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

Sincerely,

A handwritten signature in black ink that reads "Richard A. Heltzel". The signature is written in a cursive style with a large, stylized initial "R".

Richard A. Heltzel