

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT 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>
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
Finance
February 22, 2017 3:00 PM

HOUSE BILL 1415 HD1
PROCUREMENT CODE; PERFORMANCE BONDS
RELATING TO PROCUREMENT

Chair Luke, Vice-Chair Cullen, and members of the committee, thank you for the opportunity to submit testimony on House Bill 1415 HD1.

The State Procurement Office opposes this bill based on meeting with representation from the Hawaii Captive Insurance Council, the Hawaii surety industry, with confirmation calls with the State Insurance Commissioner and a representative for construction subcontractors.

On review of the cause of this Bill, the metrics do not give enough reason to remove captive insurance completely. They are minimal and currently inconclusive. This matter is also being heard in court so the determination going forward should be based on the results of further research and any court decision (Ref HB1415 P2, Lines 1-8).

In addition, HB1415, Page 1 Line 13, is redundant and misplaced. A performance bond is not supposed to be for the protections of the subcontractors, this is to protect the Government and ensure continuation of performance - that is for the construction to be final and complete, and approved for the public. Payment for subcontractors is dealt with in the payment bond section.

The Insurance Commissioner will be meeting with the SPO and other parties as mentioned above, to discuss ways to improve the Captive Insurance statute and its respective administrative rules to more effectively address captive insurance in the area of sureties.

Thank you.

SAH - Subcontractors Association of Hawaii

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

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

February 22, 2017

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1415, HD 1 - RELATING TO PROCUREMENT

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we support the intent of this bill. The SAH represents the following nine 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 PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We will say at the outset that we are not experts in this area however we do know that a bond is what encourages, enables and otherwise protects our subcontractors as they bid on state and county projects. In the absence of integrity for those bonds, the long range effect will be to lessen competition as bidders are discouraged or completely stop bidding on jobs that are not secured.

Again, we are not experts in this area so we are certainly going to listen to any amendments of this bill that might make it easier, while at the same time insuring the integrity of those bonds including authority by the Insurance Commissioner.

Based on the above, we endorse the concept of this bill and leave it up to the experts as to whether the actual bill is needed or whether it can be accomplished via another means.

Thank you.

IRONWORKERS STABILIZATION FUND

February 21, 2017

Sylvia Luke, Chair
Committee on Finance
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Luke and Members of the Committee on Finance:

Re: Strong Support for HB 1415 – Relating to Procurement

We are in strong support of HB 1415, Relating to Procurement; that establishes additional bond requirements for surety companies.

The purpose of this bill strongly supports HRS Section 103D that the legislature has passed and the State of Hawaii has used to provide a fair and open process to bidding for public funded projects. This bill is used to ensure that an independent surety company is not connected in any way to the awarded prime contractor.

Additionally this bill will ensure that if the prime contractor cannot pay the subcontractor this bill will ensure that the subcontractor and their people get paid for work that was done. We do not want to see any of our working men and women not get paid for work they have done. This bill will ensure that everyone gets compensated properly and fairly.

Consequently, we have worked on language that has been agreed by the Captive Insurance market and ourselves relating to this bill. We are attaching a copy of the language for your consideration.

(4) No payment bond shall be released or have its obligations terminated by the purchasing agency until ninety days after the day on which the last labor was done or performed or material furnished or supplied, and all claims and liens for payment of the obligations for which the payment bond has been furnished have been adjudicated or settled.

We strongly support this measure for the working men and women of Hawaii. Thank you for your time and consideration.

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Wednesday, February 22, 2017
3:00 p.m.

HB 1415, HD1

Chair Luke, Vice Chair Cullen, and members of the Committee on Finance, my name is Michael Tanoue, counsel for the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** HB 1415, HD1.

This bill places additional requirements on surety companies who issue performance and payment bonds. The purported purpose of the bill is to address a situation where the state terminated a contractor and its bonds. Hawaii Insurers Council understands that, in that specific case, the state allowed the surety company (which was a captive insurer owned by the contractor) to walk away from its payment bond obligations.

The state is the only entity where a captive insurer is permitted to insure the contractor. This is a built-in conflict of interest because a performance bond secures the contractor's promise to perform the contract, and a payment bond protects subcontractors, laborers, and material suppliers against nonpayment by the contractor. When a captive insurer is owned by the contractor itself, the performance and payment bonds, in essence, only means that the contractor is binding itself to perform and pay. This is untenable. We suggest that the bill make only one change to existing law which is to mandate that surety companies shall be included in the United States Department

of the Treasury's listing of approved sureties as found the Department Circular 570, of which specific language is below:

Section 103D-324(a) shall be amended to read as follows:

(a) Unless the policy board determines otherwise by rules, the following bonds or security shall be delivered to the purchasing agency and shall become binding on the parties upon the execution of the contract if the contract which is awarded exceeds \$25,000 and is for construction, or the purchasing agency secures the approval of the chief procurement officer:

(1) A performance bond in a form prescribed by the rules of the policy board, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the purchasing agency in an amount equal to one hundred per cent of the price specified in the contract;

(2) A payment bond in a form prescribed by the rules of the policy board, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the purchasing agency, for the protection of all persons supplying labor and material to the contractor for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred per cent of the price specified in the contract; or

(3) A performance and payment bond which satisfies all of the requirements of paragraphs (1) and (2).

For the purposes of this subsection, if the bond described in paragraphs (1), (2) or (3) above is executed by a surety company, the surety company must be included in the United States Department of the Treasury's Listing of Certified Companies as found in Department Circular 570.+

The bond market in Hawaii is robust where there are more than 100 companies who are writing this coverage and are all listed in the above mentioned federal circular. Part of the requirement to be listed is that a company cannot write business greater than ten percent of their surplus which protects the surety company's financial wherewithal. This bill if passed in its present form would shrink the bond market and would not prevent the situation it seeks to prevent from occurring again.

We ask that this bill be amended or held.

Thank you for the opportunity to testify.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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February 22, 2017

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY CULLEN, VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **COMMENTS REGARDING H.B. 1415, HD1 RELATING TO PROCUREMENT.** Establishes additional performance bond requirements for surety companies and bond companies under the Hawaii Public Procurement Code. (HB1415 HD1)

HEARING

DATE: February 22, 2017
TIME: 3:00 p.m.
PLACE: Capitol Room 309

Dear Chair Luke, Vice Chair Cullen and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

H.B. 1415, HD1, Relating to Procurement, proposes to amend Section 103D-324, HRS in an attempt to offer more protection for "all persons supplying labor and material to the contractor." Further, this measure proposes some restrictions on the surety or bond company with regard to their involvement in a public works project. GCA recognizes the necessity to ensure proper protections exist for all parties involved in a public works project particularly with regard to valid and binding performance and payment bonds. We appreciate the industry experts providing proper guidance on how to resolve the issues surrounding this situation.

Thank you for the opportunity to express our comments on this measure.



P.O. Box 2815
Honolulu, Hawaii 96803

LATE

February 21, 2017

TO: House Committee on Finance
The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair

FR: Keali'i Lopez
Hawaii Captive Insurance Council

RE: H.B. 1415, HD1 Relating to Procurement – **Strong Opposition**

Dear Chair Sylvia Luke:

On behalf of the Hawaii Captive Insurance Council (HCIC), I am writing to express HCIC's strong opposition to HB1415, HD1; a bill aimed directly at the Hawai'i-domiciled captive insurance companies that write surety coverage. As background, HCIC is a nonprofit corporation that is committed to promoting, developing, and maintaining a quality captive insurance industry in the State of Hawai'i. There are several captive insurance companies domiciled in the State that write such coverage for very good, fiscally sound parent companies. As of December 31, 2016, Hawai'i had 208 captive insurance companies domiciled in Hawai'i. The number of captives in Hawai'i has increased by 25 percent since 2010, up from 167 domiciled captives. The annual volume of premiums written by Hawai'i-domiciled captive insurance companies exceeds \$5.1 billion.

HCIC appreciates the author's intent to address concerns to ensure performance bonds are acquired and maintained in a way that protects companies and people working with the captive relying on their insurance. However, HCIC is very concerned about the unintended consequences HB1415, HD1 could have on Hawai'i's vibrant captive insurance industry. This bill could have a significant chilling effect on the future formation of captive insurance companies in Hawai'i, and would unfairly penalize captive insurance companies that are well regulated and well capitalized.

Although HB1415, HD1 is meant to alleviate concerns of the impact of failed construction projects, the broad approach of this bill is not the answer. HCIC respectfully asks the Committee on Finance to **defer HB1415, HD1**. Thank you for your consideration of our comments.