

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT
February 2, 2017, 9:00 AM

HOUSE BILL 1415
PROCUREMENT CODE; PERFORMANCE BONDS
RELATING TO PROCUREMENT

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

The State Procurement Office is in support of this bill as this would remove the opportunity for firms to self-bond, ensuring separation of responsibilities.

Thank you.

((CONTINUATION OF TESTIMONY))

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IRONWORKERS STABILIZATION FUND

February 2, 2017

Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Johanson and Members of the Committee on Labor and Public Employment:

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 believe this bill will ensure and uphold the integrity of the process of compensating companies and individuals.

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



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter
1286 Kalani Street, Suite B-203
Honolulu, Hawai'i 96817
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January 31, 2017

To: House Labor & Public Employment Committee
Honorable Chairman Johanson & Vice Chairman Holt

From: Al Itamoto, Executive Director
Electrical Contractors Association of Hawaii
National Electrical Contractors Association, Hawaii Chapter

Subject: HB 1415 Relating to Procurement

Notice of Hearing

Date: Tuesday, February 2, 2017
Time: 9:00 AM
Place: Conference Room 309
State Capitol
415 South Beretania Street

Dear Chair Johanson and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH **strongly supports** the intent and purpose of HB 1155 establishing additional performance bond requirements for surety and bond under the companies Hawaii Public Procurement Code. Having these additional requirements ensures that the parties involved in the project will be protected with well-established and legitimate bond and surety companies. This ensures that the State and tax payers are properly protected.

Based on the above, ECAH **strongly Supports** the passage of HB 1415 and encourage this committee to move this bill forward.

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

SAH - Subcontractors Association of Hawaii

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

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

February 2, 2017

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1415 - RELATING TO PROCUREMENT

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we can support 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

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

Subcontractors need to be able to rely on bonds and the fact that the bond has financial integrity. The recent example cited to this Committee shows you that this has not been the case and points out quite directly the need for this bill.

Based on the above and in order to continue to encourage subcontractors to do business with the State, we highly recommend passage.

Thank you.

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

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GCA of
GENERAL CONTRACTORS

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Quality People. Quality Projects.

Uploaded via Capitol Website

February 2, 2017

TO: HONORABLE AARON JOHANSON, CHAIR, HONORABLE DANIEL HOLT,
VICE CHAIR, COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

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

HEARING

DATE: February 2, 2017
TIME: 9:00 AM
PLACE: Capitol Room 309

Dear Chair Johanson, Vice Chair Holt 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, 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 look forward to 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

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February 1, 2017

TO: House Committee on Labor & Public Employment
The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair

FR: Keali'i Lopez
Hawaii Captive Insurance Council

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

Dear Chair Aaron Ling Johanson:

On behalf of the Hawaii Captive Insurance Council (HCIC), I am writing to express HCIC's strong opposition to HB1415; 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 Hawaii. 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 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, and would unfairly penalize captive insurance companies that are well regulated and well capitalized.

Although HB1415 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 Labor & Public Employment to defer HB1415. Thank you for your consideration of our comments.

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Sent via email to LABtestimony@capitol.hawaii.gov
Fax to (808) 586-6189

FEBRUAR 1, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

SUBJECT: **OPPOSITION OF H.B. 1415, RELATING TO PROCUREMENT** Establishes additional performance bond requirements for surety companies and bond companies under the Hawaii Public Procurement Code.

HEARING

DATE: Thursday, February 2, 2017
TIME: 9:00 a.m.
PLACE: Conference Room 309

Dear Chair Johanson and Vice Chair Holt and Members of the Committee,

Risk Solution Partners, LLC is a Hawaii based Insurance and Surety Agency specializing in construction. Our three senior team members have more than 25 years' experience each in the placing of insurance and bonds for contractors both locally, regionally and internationally.

Risk Solution Partners, LLC **opposes with comments**, H.B. 1415, Relating to Procurement, which would amend Section 103D-324 by adding performance bond requirements for surety companies and bond companies under the Hawaii Procurement Code. We believe that as the bill stands the language unintendedly changes the purpose of the performance bond by duplicating language in paragraph (1) that is already found in Section 103D-324 paragraph (2). The proposed bill also inserts performance bond requirements under paragraph (1) that should be applied to both performance bonds (paragraph 1) and payment bonds (paragraph 2). The bill also attempts to add qualifying language for performance and payment bonds related to the U.S. Treasury List and this should be done in a manner that is clear and concise so as not to create any ambiguity in the statute.

We understand that the changes being proposed to Section 103D-324 are being done to address a specific failure on the part of surety that was related to a contractor (paragraph 2.A), and that the procuring agency terminated the surety bonds eliminating the ability of the subcontractors to find payment protection under the surety payment bond (paragraph 2.B) and lastly to add a Treasury listing requirement for all surety companies which helps assure solvency of a surety company (paragraph 2.C).

We understand the intent of the proposed bill but, as written, it will have an unintended result of surety companies challenging the issuance of performance bonds and contractors being unable to obtain performance bonds from treasury listed surety companies due to the proposed

language in paragraph 1.C. which requires performance bonds to also guarantee the payment of labor and materials, an obligation that is already guaranteed by the payment bond requirement in paragraph (2).

We believe the appropriate way to address the desire to qualify a surety company for both performance bonds and payment bonds is to reject all the new language currently proposed in the bill and simply add a paragraph (4) that reads as follows:

(4) All surety bonds referenced in paragraphs (1), (2) & (3) above, must be issued by a surety company that is listed on the U.S. Department of the Treasury's Listing of Certified Companies (Circular 570) and be rated A- or higher by A.M. Best.

Adding this language as a 4th paragraph would eliminate the need to duplicate the labor and material language in the performance bond, paragraph (1) lines 13-15, that will cause problems with surety companies issuing bonds in Hawaii and subsequently cause problems for contractors needing to provide these bonds. It would also eliminate the need to state that a surety company needs to be independent from an awarded party (proposed paragraph 1.A) as the process of obtaining the Treasury List Certification and A.M. Best rating would eliminate any non-corporate sureties from issuing bonds under Section 103D-324.

Lastly, with respect to the proposed bill language found in paragraph 1.B, performance and payment bonds are continuous obligations and are valid until such time as the principal meets its obligations that are being guaranteed by the bonds. An owner protected by these bonds does not "revoke" or "dismiss" a surety company or a bond. The owner can release a surety company or bond of its obligations by confirming that the contract has been completed. Therefore, we do not believe this proposed language in paragraph 1.B should be a part of Section 103D-324.

For these reasons, we ask this Committee to either revise this measure accordingly or reject this measure to establish additional performance bond requirements for surety companies and bond companies under the Hawaii Public Procurement Code. Thank you for your consideration.

Risk Solution Partners, LLC.



Paul C. Kennedy
Account Executive



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WESTERN REGION

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February 2, 2017

To: Hon. Rep. Aaron Ling Johanson, Chair
Hon. Rep. Daniel Holt, Vice Chair
Members
House Committee on Labor and Employment

From: Katherine Pettibone, Vice President, Western Region

Subject: HB 1415- Relating to Procurement
Hearing Date: February 2, 2016

The American Insurance Association (AIA) has concerns with HB 1415. As currently drafted this measure would appear to import obligations already covered under a payment bond into obligations to be covered under a performance bond.

AIA is the leading property-casualty insurance trade organization, representing approximately 325 insurers that write more than \$127 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance. In Hawaii AIA member company property-casualty insurance market share is about 22 percent, with nearly \$500 million in premiums.

Under existing Hawaii law, both performance and payment bonds are required for public contracts over \$25,000 or when a chief purchasing officer approves them for the agency. Performance bonds the promise to perform the contract in accordance with its terms and conditions, at the agreed upon price, and within the time allowed while the Payment bond protects workers, material suppliers and subcontractors against nonpayment. Lines 13-15 appear to import the coverage provided by a payment bond into a performance bond which is unnecessary, duplicative and would change the nature of the performance bond. We respectfully as that provision be removed.

Thank you for the opportunity to comment.