

SB1280 SD1

Measure Title: RELATING TO PROCUREMENT.
Report Title: Procurement Code; Performance Bonds
Description: Establishes additional performance bond requirements for surety companies and bond companies under the Hawaii Public Procurement Code.
Companion: [HB1415](#)
Package: None
Current Referral: GVO, CPH
Introducer(s): K. RHOADS

DA ID Y I E
GOVERNOR



SA AH ALLEN
ADMINISTRATOR
MA A SMITH
ASSISTANT ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE
TO THE SENATE COMMITTEE
ON
COMMERCE, CONSUMER PROTECTION AND HEALTH
February 28, 2017, 10:30 a.m.

SB 1280 SD 1
PROCUREMENT CODE; PERFORMANCE BONDS
RELATING TO PROCUREMENT

Chair Baker, Vice-Chair Nishihara and members of the committee, thank you for the opportunity to submit testimony on SB1280 SD 1. The State Procurement Office (SPO) opposes this bill.

The current 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. The determination going forward should be based on the results of further research and any court decision.

The Insurance Commissioner, Gordon Ito has indicated willingness to improve the Captive Insurance statute and administrative rules to more effectively address captive insurance in the area of sureties.

We ask that this bill be deferred until further research and discussion can be completed.

Thank you.

SAH - Subcontractors Association of Hawaii

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

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February 28, 2017

Testimony To: Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1280, SD 1 - RELATING TO PROCUREMENT

Chair Baker 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 any integrity of 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.

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

Tuesday, February 28, 2017
10:30 a.m.

SB 1280, SD1

Chair Baker, Vice Chair Nishihara, and members of the Committee on Commerce, Consumer Protection, and Health, 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** SB 1280, SD1.

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.

IRONWORKERS STABILIZATION FUND

February 27, 2017

Rosalyn H. Baker, Chair
Commerce, Consumer Protection, and Health Committee
Room 230 - State Capitol
Honolulu, Hawaii 96813

Dear Chair Baker and Committee Members:

Re: Strong Support for SB 1280 – Relating to Procurement

We are in strong support of SB 1280, 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.



P.O. Box 2815
Honolulu, Hawaii 96803

February 28, 2017

TO: Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair

FR: Keali'i Lopez
Hawaii Captive Insurance Council

RE: SB1280, SD1 Relating to Procurement – **Strong Opposition**

Dear Chair Baker, Vice Chair Nishihara and Members of the Committee:

On behalf of the Hawaii Captive Insurance Council (HCIC), I am writing to express HCIC's strong opposition to SB1280, SD1; a bill aimed directly at the Hawaii 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, Hawaii 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 SB1280, SD1 could have on Hawaii'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 SB1280, SD1 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 Commerce, Consumer Protection, and Health to **defer SB1280, SD1**. Thank you for your consideration of our comments.