



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM
February 16, 2021, 2:00 p.m.

HOUSE BILL 1325, HD1
RELATING TO THE PROCUREMENT CODE

Chair Johanson, Vice Chair Kitagawa, and members of the committee, thank you for the opportunity to submit testimony on HB1325 HD1. The State Procurement Office (SPO) offers the following comments:

HB1325,HD1, requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State, to provide funds for curing construction defects discovered within ten years after the completion of the contract. It also authorizes the State to institute an action against the contractor for the total costs of curing those defects.

While this insurance requirement is advantageous and provides protection to the State to cure construction defects discovered within ten years after the completion of the contract, the SPO has some concerns that it might stifle competition because it may be burdensome to some contractors, particularly small and new businesses, to obtain insurance to cover at least half of a project's construction costs.

This insurance requirement for contractors may result in increased costs to the state, with no guarantee of cost savings in the long run.

Construction defects could be addressed through extended warranties, latent defects provisions, and insurance requirements in contracts instead of amending the procurement code.

Thank you.

HB-1325-HD-1

Submitted on: 2/16/2021 10:10:57 AM

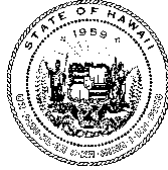
Testimony for CPC on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Wood	DAGS Public Works	Comments	No

Comments:

I am available for comments.

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TUESDAY, FEBRUARY 16, 2021, 2:00 P.M.
VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 1325 H.D.1

RELATING TO THE PROCUREMENT CODE

Chair Johanson, Vice Chair Kitagawa, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1325 HD1.

The Department of Accounting and General Services (DAGS) offers the following comment on the proposed legislation to require public contractors to obtain insurance to cover at least half of a project's construction costs to the State, to provide funds for curing construction defects discovered within ten years after the completion of the contract, and to authorize the State to institute an action against the contractor for the total costs of curing those defects.

The bill incorporates provision for "curing construction defects discovered not later than ten years after the completion of the contract" for construction. DAGS notes that the ten-year provision may present a conflict with the related provisions of section 657-8, Hawaii Revised Statutes, Limitation of action for damages based on construction to improve real property. That section provides that a claim for construction defect may be commenced no more than 10 years after the date of completion of the improvement. As there is a difference between the date on which construction of an improvement is completed and the date on which the contract for that

construction is deemed to be complete, it would provide administrative consistency to revise the language of the proposed bill's provision to match that of section 657-8.

Thank you for the opportunity to submit comments on this matter.



To: The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair

From: Mark Sektnan, Vice President

Re: **HB 1325 HD1 – Relating to the Procurement Code**
APCIA Position: OPPOSE

Date: Tuesday, February 16, 2021
2:00 p.m., Conference Room 329

Aloha Chair Johanson, Vice Chair Kitagawa and Members of the Committee:

The American Property Casualty Insurance Association of America (APCIA) is **opposed to HB 1325 HD1** which imposes difficult, if not impossible, insurance requirements on contracts involved with public projects. Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

HB 1325 HD1 would effectively mandate ten years of construction defect insurance — which is effectively a ten-year “warranty bond.” This type of “insurance” or bond is not commonly available in the market. If it can be found, the cost would be extremely high which would significantly increase the cost of the public works project. The effect of this bill would be to limit competition on public jobs to only the largest, most financially strong contractors in the state.

Construction bonds are designed to guarantee the construction phase of public works projects and the payment of subcontractors and suppliers on these types of projects through completion. Construction bonds are not designed to guarantee work (or provide warranties) longer than one or two years after completion of the construction phase of these projects. Risks to the building or other type of public works that extend beyond that period cannot be underwritten for various reasons, including unknowns related to a contractor’s future financial viability (will the company be in business in three, five or ten years), and therefore, surety companies are generally not willing to take on these risks. In addition, general liability insurance for “construction defects” is not currently commercially available now and is unlikely to be readily available soon.

For this reason, the type of insurance product contemplated by HB 1325 HD1 does not commonly exist in the market.

With less competition in the market from smaller construction businesses having lower cost structures and with the increased costs necessary to cover these risks, we believe the costs of all public projects subject to the law in Hawaii will increase materially.

For these reasons, APCIA asks the committee to hold this bill in committee.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 15, 2021

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE LISA KITAGAWA, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **OPPOSITION TO H.B. 1325, RELATING TO THE PROCUREMENT CODE.** Requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State, to provide funds for curing construction defects discovered within ten years after the completion of the contract. Authorizes the State to institute an action against the contractor for the total costs of curing those defects.

HEARING

DATE: Tuesday, February 16, 2021
TIME: 2:00 p.m.
PLACE: Capitol Room 329

Dear Chair Johanson, Vice Chair Kitagawa 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 is in **opposition** to H.B. 1325 HD1, which requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State, to provide funds for curing construction defects discovered within ten years after the completion of the contract. The measure also authorizes the State to institute an action against the contractor for the total costs of curing those defects.

The COVID-19 Pandemic has decimated our local economy. The construction industry has been the lone bright spot and this measure would not only increase the cost of construction, but also slow the industry down at a time when we can't afford to do so.

GCA has two concerns. First, general liability insurance for "construction defects" is not currently commercially available now and is unlikely to be readily available soon. Second, the cost to have project specific general liability coverage with limits at 50% of project value that has a "completed operations" coverage period of 10 years will be extremely expensive. This will have the effect of raising the cost of construction, especially for the State and taxpayers.

For these reasons we ask that the Committee defer this measure.

Thank you for this opportunity to testify in opposition of this measure.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
State Capitol, Via Videoconference
415 South Beretania Street
2:00 PM

February 16, 2021

RE: HB 1325 HD1, RELATING TO THE PROCUREMENT CODE.

Chair Johanson, Vice Chair Kitagawa, and members of the committee:

My name is Beau Nobmann, 2021 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in opposition to HB 1325 HD1, which would require public contractors to obtain insurance to cover at least half of a project's construction costs to the state to provide funds for curing construction defects discovered within ten years after the completion of the contract, and authorizes the state to institute an action against the contractor for the total costs of curing those defects.

Bills like this stand to further raise the cost of housing in Hawaii, which is already astronomically high, even as our economy has crumbled. This type of insurance coverage would be expensive and cumbersome to contractors, and will preclude small and new contractors from bidding on public works projects. The state of Hawaii is in a dire housing crisis which has been further exacerbated by the ongoing pandemic situation. The building industry is one of the very few economic drivers in the state throughout the COVID pandemic, and giving them more opportunity to provide our residents with affordable housing would have a positive impact on our community.

We appreciate the opportunity to express our views on HB 1325 HD1.