



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/17/2021

Time: 10:00 AM

Location: 309 Via Videoconference

Committee: House Government Reform

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 1329, SD2 RELATING TO PROCUREMENT.

Purpose of Bill: Creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services. Takes effect 5/6/2137. (SD2)

Department's Position:

The Hawaii Department of Education (Department) supports the intent of the SB1329, SD2 and submits comments and revisions for the committee's consideration.

Addressing protests can at times be a lengthy and complex process. It often requires the identification of appropriate agency representatives and the coordination of discussions with protestors. In pursuing a mutual resolution, agencies must ensure that every issue raised in a protest is adequately addressed, particularly when the issue is complex and requires consultation with outside entities or other agencies for guidance.

The proposed language of section (c) of this measure, in part currently states: "The chief procurement officer or designee shall resolve any protest as expeditiously as possible." This language places a tremendous burden on agencies to address protests with haste and may have a chilling effect on its ability to thoroughly examine the processes and issues raised in protests.

Thus, the Department requests the committee's consideration in making the following changes:

- Deleting the language on page 2, line 8, ". . . shall not exceed an additional thirty calendar days."

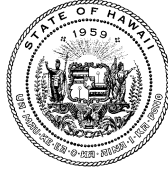
- On page 2, line 2, replacing the term “resolve” with “address.”
- Provide clarification on what happens to a protest if an agency is not able to meet the seventy-five calendar day time frame.

These requested revisions will provide agencies with sufficient flexibility to address the concerns raised in protests in a more thorough and effective manner, ultimately leading to increased efficiency in achieving mutual resolutions.

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

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.

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
COMMITTEE ON GOVERNMENT REFORM

WEDNESDAY, MARCH 17, 2021, 10:00 A.M.
CONFERENCE ROOM 309, STATE CAPITOL

S.B. 1329, S.D. 2

RELATING TO PROCUREMENT.

Chair McKelvey, Vice Chair Wildberger, and members of the Committees, thank you for the opportunity to submit testimony on S.B. 1329, S.D. 2. The Department of Accounting and General Services (DAGS) supports the current intent of the bill as stated on page 1, lines 12-14, namely to place a time limit on the resolution of protests for contracts resulting from the competitive sealed proposal and professional services procurement methods, appreciates the second committee report which acknowledges the need for additional discussion on this matter, and offers the following comments.

We remain concerned that the imposition of time limits on the resolution of protests may compromise fair and just resolutions in the best interest of the State. This is especially true for construction procurements.

Our primary concern is that the current wording of the bill does not confine the application of these time limits to the competitive sealed proposal and professional services methods of procurement.

Therefore, we suggest amending the wording on page 1, second sentence in lines 2 through 8, to align with the stated intent of this bill:

“If the protest is not resolved by mutual agreement for section 103D-303 or 103D-304 procurements, the chief procurement officer or a designee shall [~~promptly~~] issue a written decision [~~in writing~~] to uphold or deny the protest [-] within seventy-five calendar days of receipt of the protest; unless extenuating circumstances require additional time, which shall not exceed an additional thirty calendar days.”

The imposition of time limits on the first phase of the protest process for construction procurements may compromise a fair and just resolution depending on the circumstance. Based on research of DAGS’ own past protests, the current time limits proposed in this legislation may not be reasonable for construction procurements.

There are several factors which have an impact on the ability of an agency to handle a protest for a project which are not under the control of the State, as detailed in previous testimony. For example:

- The number and complexity of issues involved in a single protest.
- The complexity of the procurement. Protests involving construction projects may involve contractor licensing issues, issues of interpretation of the plans and specifications, etc.
- The number of protests received for a project.
- The current overall caseload of protests.

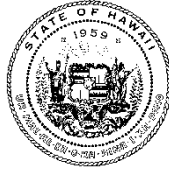
In addition, we note that Stand. Com. Rep. No. 554 took the forty-five-day deadline for the administrative hearings phase into consideration in establishing the deadline for the first

phase of the protest process contained in this legislation. We would like to point out that by the time a protest goes to administrative hearing, the Hearings Officer is presented with the end result of all of the research done during the first phase of the protest (i.e. in the development of the agency's response). This deadline may have been set to address issues of scheduling hearings and the attendant pre-hearing conferences, which is not the same as the need to perform the amount of research required to address the first phase of a protest.

We also suggest that consideration be given to increasing the initial time period and the number of extensions allowed based on a study of the information collected by the State Procurement Office and State agencies on the protest process to ensure fair and just consideration of protests. DAGS has already begun gathering information from other State agencies to add to our own protest tracking information in an effort to help guide this legislation.

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

DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING 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>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON

GOVERNMENT REFORM

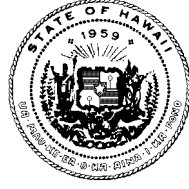
March 17, 2021, 10:00 AM

SENATE BILL 1329. SD2
RELATING TO PROCUREMENT

Chair McKelvey and Vice-Chair Wildberger, and members of the committee, thank you for the opportunity to submit testimony on SB1329 SD2. The State Procurement Office (SPO) supports the intent of the bill.

Thank you.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

March 16, 2021

TO: The Honorable Representative Angus L.K. McKelvey, Chair
House Committee on Government Reform

FROM: Cathy Betts, Director

SUBJECT: **SB1329 SD 2 – RELATING TO PROCUREMENT.**

Hearing: March 17, 2021, 10:00 a.m.
Via videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) understands the intent of the measure, provides comments, and requests clarification.

The Senate Committee on Government Operations amended the measure by:

- (1) Removing language that would have set internal deadlines for the purchasing agency and any reviewing department or agency to complete the review of a protest concerning the solicitation or award of a contract;
- (2) Inserting language that requires the resolution of the bid protest within seventy-five calendar days of receipt of the protest;
- (3) Allowing for an extension of the seventy-five day resolution period under certain circumstances; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The Senate Committees on the Judiciary and Ways and Means further amended the measure by defecting the effective date and making additional technical amendments.

PURPOSE: The purposes of the bill creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services. Takes effect 5/6/2137. (SD2)

DHS provides the following comments that imposing these time frames, may not result in overall cost savings.

It is unclear whether there is a drafting error in the proposed measure and whether the Legislature intends to completely remove the parties' ability to mutually resolve a protest.

Currently, section 103D-701(c) reads as follows:

(c) **If the protest is not resolved by mutual agreement**, the chief procurement officer or a designee shall promptly issue a decision in writing to uphold or deny the protest. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestor of the protestor's right to an administrative proceeding as provided in this part, if applicable.

The highlighted phrase is absent from the proposal.¹ If the Legislature intends to remove resolutions of protests by mutual agreement, the language should be [~~stricken~~]. However, removing the ability to resolve protests by mutual agreement will likely further delay final decisions and increase the costs of procurement.

Further, depending upon the breadth and complexity of the procurement, or if more than one protest is received, the proposed set time frames of 75 or 105 days, with extenuating circumstances, still may not be enough time for the chief procurement officer or the designee to sufficiently review and respond to the protest. In the event that the decision of the chief procurement officer or designee is forced or rushed to decide within the mandated time frame, the decision may likely result in a fair hearing request as provided by sections 103D-701(e) and 103D-709, Hawaii Revised Statutes (HRS).

We also consider that section 103D-701(e), HRS, provides,

" In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the protestor shall be entitled to the actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs but not attorney's fees."

¹ Caveat: Due to the pandemic, this drafter teleworking and is unable to access the hard cover volume of the HRS to verify the current language of the section and is relying upon the HRS version, session archives, and session laws available on the capitol website.

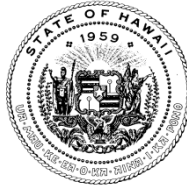
March 16, 2021

Page 2

The right to administrative review in section 103D-701(c), HRS, and the available remedy in section 103D-701(e), HRS, are the most likely reasons why certain decisions take as long as they do in protests that were not resolved by mutual agreement.

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

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 17, 2021
10:00 A.M.
State Capitol
Conference Room 309
VIA VIDEOCONFERENCE

S.B. 1329, S.D. 2
RELATING TO PROCUREMENT

House Committee on Government Reform

The Department of Transportation (DOT) **supports the intent** of the bill which creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services; and takes effect 5/6/2137.

Protests can be lengthy, assessed on a case by case basis with consideration to the specific nature of the protest and scope of the project, and may considerably impact project timelines in varying degrees. However, in order to diligently address the respective protest issues to properly defend the State's position, there needs to be realistic time guidelines in place to allow for an appropriate response, especially given the case by case scenario.

The quality and thoroughness of the State's response should adequately and sufficiently address the protest issues to the extent, and with the committed intent, of resolution at the response stage. Further escalation of the protest means additional layers of delays to the project. The respective stakeholders, at a minimum, ensures the response to the protest includes quality vetting of the issues against the procurement criteria of the competitive sealed proposal or professional services procurement and remains mindful that by expediting the resolution, there should be no compromise to a fair and just decision. By resolving protests timely, there are benefits to both the State as well as the public, however, care must be taken to ensure appropriate diligence in executing the process to final resolution.

Thank you for the opportunity to provide testimony.



Malcolm Barcarse, Jr.
A&B Electric Co., Inc.
Chairman

Kathryn Mashima
Mashima Electric
Chairman Elect

Ross Kawano
ECA, LLP
Treasurer/Secretary

Jarrett Walters
Hawaiian Building
Maintenance

Canaan Shon
Hawaii Geophysical Services

Ralph Sakauye
Bora, Inc.

Kevin Schmid
Oceanic Companies, Inc.



Geoffrey Chu
Oceanic Companies, Inc.
Chairman

Kimo Pierce
Hawaii Plumbing Group, LLC
Chairman Elect

David Tsuda
First Hawaiian Bank
Treasurer

Ross Kawano
ECA, LLP
Secretary

Scott Massner
Helix Electric

Maurice Torigoe
M. Torigoe Plumbing, Inc.

Michelle Taketa
StarCom Builders, Inc.

Christine Lanning
Integrated Security
Technologies, Inc.

2021 CEF ETTF Board of Trustees

Joe Ferrara
Consolidated Painting LLC

Leonard Tanaka
T&T Electric, Inc.

Thiel Harryman
Nova Group

March 17, 2021

To: Committee on Government Reform
Rep. Angus L.K. McKelvey, Chair
Rep. Tina Wildberger, Vice Chair

From: Malcolm Barcarse, Jr. ABC Hawaii Board Chair.

Associated Builders and Contractors Hawaii Chapter testimony **In Support** of SB 1329.

Chair McKelvey, Vice Chair Wildberger and members of the Committee:

Thank you for the opportunity to testify, my name is Malcolm Barcarse, Jr. I am currently the Chair of Associated Builders and Contractors, Hawaii Chapter which represents over 170 member companies in the Construction Industry. We also have a State Approved Trade Apprenticeship Program in the trades of Carpentry, Electrical, Painting, Plumbing and Roofing.

Our membership regularly submits bids on public works projects for State and County agencies. We have also seen over the years how the laws regarding bid protests have evolved where strict deadlines have been placed on the Office of Administrative Hearings and the Circuit Court to dispose of cases, along with the requirement of contractors to put up protest bonds before initiating an appeal to the Office of Administrative Hearings. These provisions appear to have done a good job of filtering out cases that get appealed to OAH unnecessarily.

Despite these efforts the one missing piece to the bid protest puzzle is the unlimited time that the agencies have to make a decision on whether to sustain or deny a protest. Therefore, we believe that SB 1329 is a step in the right direction and supports this bill to set deadlines on the agencies to move these protests along in a timely manner. If the goal is to prevent delays in public works projects, moving the process along in this way will have a substantial impact in achieving that goal. ABC Hawaii looks forward to working with the Legislature and the relevant stakeholders to improve the public works procurement system.

Thank you for the opportunity to testify

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 16, 2021

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE TINA WILDBERGER, VICE CHAIR, COMMITTEE ON GOVERNMENT REFORM

SUBJECT: **SUPPORTING THE INTENT OF S.B. 1329 S.D.2, RELATING TO PROCUREMENT.** Creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services.

HEARING

DATE: Wednesday, March 17, 2021
TIME: 10:00 a.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Wildberger 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 Supports the Intent of S.B. 1329 S.D.2, which creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services.

GCA has concerns that not all projects are the same and that some protests are more complex than others. That being said, we appreciate the intent of attempting to limit the delay of bid protests at the agency level. GCA takes no position on the number of days under which the chief procurement officer shall issue a decision by and leaves that up to the Legislature to determine.

Thank you for this opportunity to testify in support of the intent of this measure.