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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
GOVERNMENT REFORM
FEBRUARY 5, 2021, 9:00 A.M.

HOUSE BILL 1325
RELATING TO THE PROCUREMENT CODE

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

HB1325 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 five 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.

This insurance requirement would be advantageous and provide protection to the State to cure construction defects discovered within five years after the completion of the contract.

However, requiring insurance to cover at least half of a project's construction costs to the State might stifle competition because it may be burdensome to some contractors, particularly small and new businesses. It may also result in increased costs to the state, with no guarantee of cost-savings in the long run.

Construction defects may also be addressed through extended warranties, latent defects provisions, and insurance requirements in the contract.

Thank you.

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
GOVERNMENT REFORM

FRIDAY, FEBRUARY 5, 2021, 9:00 A.M.
CONFERENCE ROOM 309, STATE CAPITOL

H.B. 1325

RELATING TO THE PROCUREMENT CODE

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

The Department of Accounting and General Services (DAGS) offers the following comments 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 five 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.

1. The bill incorporates provision for "curing construction defects discovered not later than five years after the completion of the contract" for construction. DAGS notes that the five-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. While 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 is the department's experience that the difference in those dates would very rarely approach five years. The five-year gap between the proposed bill's provision and that of section 657-8 may result in unintended impairment of the state's ability to realize recovery on damages due to construction defect, as it effectively halves the discovery period provided by section 657-8.

2. The bill's language on page 5, lines 1-2, provides that the state may institute an action if it discovers a construction defect "not later than five years after the completion of the contract." On the same page, the language on lines 15-17 provides that "the suit shall not be commenced after the expiration of five years after the day on which the last of the labor was performed or material was supplied for the work." It is common for the date of completion of a contract to occur later than the date of the last day of labor or material supply, and the difference in dates can be substantial. Thus, the language on lines 15-17 may sharply reduce the time the State is allowed to institute an action to recover its damages due to construction defect. The department suggests that the language of lines 15-17 be revised to provide that the suit shall not be commenced later than five years after the date of contract completion.

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

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LATE

GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 3, 2021

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

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 five 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: Friday, February 5, 2021
TIME: 9:00 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 is in **opposition** to H.B. 1325, 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 five 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 5 years will be 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.