

February 4, 2020

House Labor and Public Employment Committee
Hawaii State Capitol
415 S. Beretania Street
Conference Room 309
Honolulu, Hawaii 96813

Delivered via email to: repjohanson@Capitol.hawaii.gov, repeli@Capitol.hawaii.gov

Re: Concerns with HB. 2019, introduced by Representative Scot Matayoshi

Dear Chair Johanson and Vice Chair Eli,

My name is John Bustard, I am Senior Vice President at King & Neel, LLC, a Hawaii based insurance and bonding agency representing numerous general contractors and subcontractors participating on state public and private construction contracts over the past 53 years. I am also the current president of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes firms specializing in surety bonds for construction projects by arranging bid, performance, and payment bonds in Hawaii and throughout the U.S.

I am contacting you regarding concerns with House Bill 2019 introduced by Representative Scot Matayoshi. As introduced, HB 2019 would amend Hawaii's Little Miller Act (HRS §103D-324) to add the term "post-performance bond" requiring general contractors to provide a post-performance bond to cover the state's costs of curing construction defects discovered within 10 years after the contract's completion. The bond would be in the amount of 100% of the contract price, and prior to the contract's completion, the contractor would be required to provide proof satisfactory to the purchasing agency that the bond is paid in full for the 10 years following the contract's completion.

As introduced, HB2019 contemplates a bond product that does not exist in the current surety marketplace. A "post performance bond" appears to be similar to a warranty bond, but with an overly lengthy 10-year commitment by the surety. Lengthy warranty periods exceeding one or two years are problematic. Lengthy warranty periods have the effect of preventing the availability for bonds, thus blocking open competition, something that would be unfavorable for publicly funded projects in Hawaii.

I am available to meet with you to discuss HB 2019 in person.

Thank you for your consideration of these concerns.

Sincerely,

John Bustard
Senior Vice President
King & Neel