

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 25, 2008

To: The Honorable Marcus Oshiro, Chair  
and Members of the House Committee on Finance

Date: February 26, 2008

Time: 3:30 p.m.

Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director  
Department of Labor and Industrial Relations

**Testimony in Support  
of  
H.B. 2927 - Relating to Public Works**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 2927 requires the Director of the Department of Labor and Industrial Relations ("Department") to suspend contractors from bidding on public works who are penalized for interference or delay of an investigation as defined by section 104-22(b), Hawaii Revised Statutes ("HRS"). Section 104-22, HRS, penalizes contractors for filing of falsified certified payrolls or not producing records requested by the Department as part of their enforcement investigation under the Wages and Hours of Employees on Public Works, Chapter 104, HRS.

**II. CURRENT LAW**

Currently, the DLIR implements a progressive penalty structure when citing a contractor for infractions over multiple job sites. If the contractor has been found to violate any of Chapter 104's laws or related administrative rules the Department issues citations and a penalty for every infraction or offense. Although the contractor may be cited for multiple infractions, the Department will issue a single NOV (which counts as 1 strike against the contractor, even though the contractor committed multiple infractions on multiple job sites).

The first NOV results in a monetary penalty of 10% of back wages due or \$25 per offense, whichever is greater. A second NOV results in a monetary penalty equal to the amount of back wages due or \$100 for each offense, whichever is greater. A third

violation results in a monetary penalty of two times the amount of back wages due or \$200 for each offense, whichever is greater. A third NOV results in suspension from government contracting work for three years. A contractor may also be suspended for three years if he fails to make his employees whole for wages or overtime due and fails to pay an assessed penalty.

### III. HOUSE BILL

H.B. 2927 is a measure that was arrived at collaboratively with members of the administration, labor and management at the table. The Department supports this bill for the following reasons:

1. This measure addresses egregious violators of the Wages and Hours of Employees on Public Works Law (Chapter 104; HRS). Contractors who purposefully take action to deceive the State by filing falsified records should be suspended from public works supported by taxpayer dollars. Attaching suspension to the penalty provisions of section 104-22(b), HRS, will create a clear line for those who purposefully violate Chapter 104.
2. The preservation of the current, progressive, three-tiered penalty structure is important to those contractors who may accidentally or carelessly file incorrect certified payrolls or have other violations of this complicated and difficult law. This three-tiered structure is operating as it was intended -- to promote voluntary compliance. Statistics from 284 random inspections from January 2005 indicate a 2% instance of monetary violations with only 6 Notice of Violations cited. During the same time period, 56 complaint inspections generated 22 Notice of Violations or a 39% instance of monetary violations.
3. Of the 28 Notice of Violations issued from January 2005 to July 1, 2007, 7 or 25% were cited for a 104-22(b), HRS violation and would have been subject to suspension under this proposal. These were instances where contractors filed certified payrolls indicating one set of facts but their payroll records indicated a different set of facts.
4. Because the desire for mandatory penalties is clear, it is important not to make so broad a sweep so that law-abiding contractors and legitimate errors are not included with those attempting to defraud the system of bidding for public works. The type of penalty cited under section 104-22(b), HRS, that this measure proposes suspension, will not come into play with contractors who cooperate and comply with the law, even if there is an error, mistake or violation found.
5. Adding suspension to a pre-existing penalty structure also ensures that contractors who are suspended are allowed access to due process already in place in Chapter 104, HRS. Chapter 104, HRS, already provides for a Chapter 91, HRS, appeal process and ultimate judicial review at the Circuit Court level if needed, when any Notice of Violation is issued.

Testimony from Alfred C. Lardizabal  
Government and Community Relations Director  
Laborers' Union Local 368

In support of

HB2927 RELATING TO PUBLIC WORKS

To the Committee on Finance  
Tuesday, February 26, 2009, 3:30 p.m.  
Conference Room 306  
State Capitol

Honorable Representative Marcus Oshiro, Chair; Marilyn Lee, Vice Chair and Members of the Committee on Finance:

HB2927 is known as our "three strikes" bill. If a contractor intentionally violates the prevailing wage law of the state then, the offending contractor should be "out of the game" and let honest contractors perform the work and pay workers the wages they are entitled to under law.

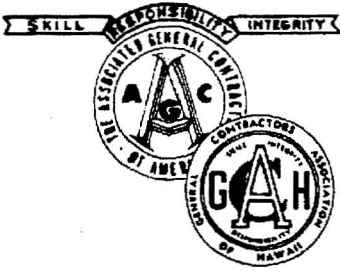
We call it "our" three strikes bill because for about a year, we, the various parties from the Department of Labor and Industrial Relations, the Building Trades Council including the Laborers' Union Local 368 and other trade unions, the General Contractors' Association and the Building Industry Association, negotiated in good faith, the language contained in HB2927. It was a collaborative effort. It is not a perfect bill for any one side but it is language that we agreed to and would like to include in the law this session. Contractor compliance and enforcement by the DLIR is the key to making HRS-104 work for everyone.

It should be stated at the outset that our intent is to seek out those contractors that intentionally violate the law and delay and or falsify records. It is not our intent to penalize those contractors that have minor or diminimus errors in their payroll and corrects them quickly, not unless these errors continue after being warned.

We extend our congratulations to all the parties and individuals that participated at long meetings over the past year to discuss a problem that has plagued the industry for years. This bill alone will not solve the problem entirely, but it is a step in the right direction.

We look forward to continuing joint discussions on problems that affect the construction industry with the aim of keeping the industry strong, our workers employed and our economy healthy.

We ask the Committee's favorable support of this bill. Thank you for the opportunity to submit supporting testimony on HB2927.



## GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1085 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: [gca@gcahawaii.org](mailto:gca@gcahawaii.org) • WEBSITE: [www.gcahawaii.org](http://www.gcahawaii.org)

February 25, 2008

TO: THE HONORABLE MARCUS R. OSHIRO, CHAIR AND  
MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: H. B. 2927 - RELATING TO PUBLIC WORKS.

DATE: TUESDAY, February 26, 2008  
TIME: 3:30 P.M.  
PLACE: Conference Room 308

Dear Chair Oshiro and members of the Committee,

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, supports the passage of H.B. 2927.

The GCA agrees that the prevailing wage should always be paid when applicable and no contractor should be allowed to skirt the law. The proposed amendment addresses the issue of intentional violations and long delays from the time of the report of an alleged violation and conclusion of the investigation. It has been reported by the Department of Labor and Industrial Relations (DLIR) that one of the main causes for unduly lengthy investigations is the failure of some contractors to provide requested documents and intentional delaying of the department's investigation. H.B. 2927, adds an additional provision to Chapter 104, HRS, to suspend a contractor for three (3) years for interference with or delay of an investigation or falsification of records. This change will permit the DLIR to facilitate its investigation.

The proposed amendment embodies the interim work of contractor associations, organized labor organizations and affected state agencies that met to resolve this issue.

The GCA supports additional staffing and funding, if necessary, for the Department of Labor and Industrial Relations to speed up investigations and perhaps some form of notification and "cease and desist" orders that take effect immediately pending completion of the investigation.

The GCA strongly **supports** the passage of H.B. 2927 and requests that this bill be passed.

Thank you for considering our concerns on the above bill.

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO  
Gentry Pacific Design Center, Suite 215A  
560 N. Nimitz Highway, #50  
Honolulu, Hawaii 96817  
(808) 524-2249 - FAX (808) 524-6893

February 25, 2008

Honorable Representative Marcus R. Oshiro, Chair  
Honorable Representative Marilyn B. Lee, Vice Chair  
Members of the House Committee on Finance  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

RE: IN SUPPORT OF HB 2927  
RELATING TO PUBLIC WORKS  
Hearing: Tuesday, February 26, 2008, 3:30 p.m.

Dear Chair Sonson, Vice Chair Nakasone and the House Committee on Labor & Public Employment:

For the Record my name is Buzz Hong the Executive Director for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

This bill is the result of a joint effort with the Department of Labor and Industrial Relations, General Contractors' Association, Building Industry Association, and this Council in addition to the Laborers Union Local 368 and other trade unions. This Council supports the passage of HB2927, which amends public works law to require 3-year suspension for any government contractor that delays an investigation or falsifies records.

Thank you for the opportunity to submit this testimony in support of HB2927.

Sincerely,

William "Buzz" Hong  
Executive Director

WBH/dg

The Pacific Resource  
**PARTNERSHIP**



Testimony of C. Mike Kido  
External Affairs  
The Pacific Resource Partnership

Committee on Finance  
Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair

HB 2927  
Monday, February 25, 2008  
3:30pm  
Conference Room 308

Chair Oshiro and members of the Committee on Finance:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor management organization representing the Hawaii Carpenters Union and more than 220 signatory contractors.

The Pacific Resource Partnership strongly support the passage of HB2927 - Relating to Public Works as a pro-active legislative measure to provide protection for Hawaii's working men and women, as well as provide the Department of Labor and Industrial Relations (DLIR) clearer powers to actively pursue contractors that are knowingly trying to evade the law by withholding wage and hour information that is being requested.

As you may recall in the 2007 legislative session, a heated debate surrounded HB853. This legislation before you is an earnest attempt to foster better communication and a working relationship between State government and the private sector construction industry representatives.

PRP respectfully ask for your favorable consideration in passing the bill as to further foster the cooperative endeavor that was undertaken during the 2007 interim months.

Thank you very much for your attention in helping Hawaii's construction industry by addressing a nagging problem in Hawaii.

February 25, 2008

To: Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair  
Members of House Finance Committee

Via fax (808) 586-6001

From: David Easa, MD, Professor, John A. Burns School of Medicine (JABSOM),  
University of Hawaii at Manoa

Re: In support of House Bill 2881 RELATING TO PERINATAL CARE.  
Makes the perinatal clinic first established by Act 248, Session Laws of Hawaii 2006,  
permanent.

As a full professor in the Department of Pediatrics and the Department of Obstetrics and Gynecology at the University of Hawaii, I played a pivotal role in creating the Neonatal Intensive Care Unit at the Kapi'olani Medical Center for Women and Children (KMCWC) and served as its director for 23 years. Act 248 was passed by the 2006 legislative session providing funding to establish the clinic, the first of its kind in Hawaii. House Bill 2881 allows the funding to continue. Being involved with perinatal care in the state over the last 30 years, I see the importance of this clinic; therefore I am writing to urge support for the passage of House Bill 2881.

The clinic was established by members of the John A. Burns School of Medicine (JABSOM) faculty in collaboration with the Salvation Army Family Treatment Center, the only residential treatment center on Oahu, which specifically treats pregnant and parenting women. The clinic is currently providing prenatal, postpartum, pediatric care, and substance abuse counseling for the women of Oahu with a history of substance abuse. It has provided services for over 60 women and 16 healthy infants who have been delivered so far.

This additional funding will allow the clinic to run indefinitely. The funding is to be allocated to the Department of Human Services, which will then contract the work to the University Clinical Education and Research Associates, the clinical arm of JABSOM. The clinic will serve a vital function to the Department of Human Services in providing a means for these women, who may otherwise be overloading the Child Welfare Services System, to obtain care for their substance abuse problems, as well as develop appropriate interventions for their children. The collaboration between obstetrics, family practice, and psychiatry as well as state agencies is a novel approach to care for this vulnerable population. It has proven itself extremely valuable to the community, allowing women who have few other options, a safe place to obtain care and begin a new life.

For these reasons, we thank you for your support in the past legislative sessions, and urge you to continue support for this vital service.

The views expressed above represent my personal opinions and in no way should reflect upon the John A. Burns School of Medicine or the University of Hawaii.



# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

February 26, 2008  
Committee on Finance  
3:30 P.M..  
Room 308

## **TESTIMONY SUPPORTING HB 2927 “RELATING TO PUBLIC WORKS”**

Chair Oshiro and Members of the Committee on Finance:

I am Karen Nakamura, Chief Executive Officer 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. Thank you for the opportunity to express our support for HB 2927.

### **BIA- Hawaii strongly SUPPORTS HB 2927 “Relating to Public Works”.**

The provisions of HB 2927 address the issue of prevailing wages that must be paid on all public works projects. HB 2927 is modeled after a bill drafted by the Department of Labor & Industrial Relations after months of discussions between the DLIR, the unions of the Building Trades Council (including the Laborers, the Plumbers, the Operating Engineers, and the Ironworkers Union), and construction contractor organizations. HB 2927 is the result of the consensus among all of the organizations and will assist the DLIR with overcoming the delays in their investigations because of falsification of records or interference in turning over records to them. We request that this bill be passed.

During the interim, this group, known as the Ad Hoc Committee, met to discuss the issues and concerns revolving around HB 853, a bill that would have treated inadvertent errors in classification, payment, and record keeping by a contractor in the same manner as willful violation of the law. The Ad Hoc Committee determined that the so-called “three-strikes” bill (HB 853) would have done nothing to help the DLIR to resolve the delays in investigation of Chapter 104 violations. The Ad Hoc Committee agreed that the route of HB 853 was not the way to go, but rather to help the DLIR with their backlog of cases and to also give the DLIR even more reasons to go after the bad contractors with the language that is in HB 2927.

BIA-Hawaii strongly supports passage of HB 2927. Thank you for the opportunity to express our views.





**POSITION STATEMENT OF THE BUILDING INDUSTRY ASSOCIATION (BIA-Hawaii) AND THE GENERAL CONTRACTORS ASSOCIATION (GCA) ON CHAPTER 104 PREVAILING WAGES (PUBLIC WORKS PROJECTS) BILLS**

Dear Representatives:

The Building Industry Association of Hawaii (BIA-Hawaii) and the General Contractors Association (GCA) are **opposed** to HB 2975, "Relating to Public Works Projects" and **support** HB 2927 "Relating to Public Works" and HB 3165 "Relating to Contractor Suspension on Public Works Projects" for the following reasons:

HB 2975 appears to be the mirror image of HB 853, a bill that was passed and vetoed by the Governor in the 2007 Legislative Session. Under HB 853 and HB 2975, any contractor could be automatically and immediately suspended and subsequently debarred from further public works projects for three years for any three violations no matter how minor or diverse, without any prior notice or opportunity to correct the error.

HB 853 would have amended HRS §104-24(d) such that the same inadvertent error discovered on three projects in a single investigation would have required DLIR to suspend and DAGS to debar the contractor. Because of the strict liability nature of HRS §104-25, the DLIR would have had no discretion on suspension and reporting to DAGS even if the violation was minor and/or an inadvertent clerical error.

An Ad Hoc Committee comprised of the Department of Labor and Industrial Relations, Department of Accounting and General Services, Department of Business and Economic Development and Tourism, the Department of Commerce and Consumer Affairs, the Building Trades Council (including the Laborers, the Plumbers, the Operating Engineers, and the Ironworkers), General Contractors Association, and the Building Industry Association of Hawaii met over the interim and has determined that one of the major roadblocks to enforcement is the delays during the investigation process.

All parties agreed that if there is a violation, the back wages and fines should be paid. The requirement for automatic debarment would only divert more effort and resources of the Department of Labor from reducing the backlog of violations and the payment to workers. All parties agreed that a primary goal for all was to get the workers the prevailing wages to which they are entitled.

## Position Statement of BIA-Hawaii and GCA on Prevailing Wages Bills—Page 2

The parties realized that a bill (HB 853/HB 2975) that would debar good contractors was not a reasonable solution. Good contractors and good people make mistakes. It was not the intent to harm the good contractors and good people due to the Department of Labor's problems in investigating alleged violations in a timely manner.

Clearing the backlog of alleged violations requires shortening the investigation period from the current average of over 200 days. The Ad Hoc Committee consensus was to craft legislation to give DLIR greater powers to sanction contractors who sought to delay and/or interfere with the investigation and prevent the timely processing of notices of violation.

The consensus draft was introduced as HB 2927, "Relating to Public Works Projects". After subsequent review by the Administration, HB 3165 "Relating to Contractor Suspension on Public Works Projects" was introduced. Both bills essentially promote the prompt investigation and enforcement of Chapter 104 violations. We support both HB 2927 and HB 3165 as they allow DLIR to immediately go after the violators that delay the DLIR's investigation or falsify records to sidetrack the DLIR's investigation.

For reasons described above, BIA-Hawaii and GCA **strongly oppose HB 2975** and respectfully request your passage of HB 2927 and HB 3165 instead. The corresponding bill in the Senate to HB 3165 is SB 3087.



Karen T. Nakamura  
Chief Executive Officer  
Executive Vice President  
BIA-Hawaii



Lance Inouye, Chair  
Legislative Committee  
GCA



**RALPH S. INOUE CO LTD**  
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Founded in 1962

February 25, 2008

The Honorable Marcus Oshiro, Chair and Members of the House Committee on Finance

SUBJECT: H.B. 2927 "Relating to Public Works"

Dear Chair Oshiro and Members of the Committee:

Ralph S. Inouye Co., Ltd. (RSI), general contractor, strongly supports H.B. 2927 "Relating to Public Works".

Ralph S. Inouye Co., Ltd. (RSI), general contractor, supports the passage of H.B. 2927.

RSI agrees that the prevailing wage should always be paid when applicable and no contractor should be allowed to skirt the law. The proposed amendment addresses the issue of intentional violations and long delays from the time of the report of an alleged violation and conclusion of the investigation. It has been reported by the Department of Labor and Industrial Relations (DLIR) that one of the main causes for unduly lengthy investigations is the failure of some contractors to provide requested documents and intentional delaying of the department's investigation. H.B. 2927, adds an additional provision to Chapter 104, HRS, to suspend a contractor for three (3) years for interference with or delay of an investigation or falsification of records. This change will permit the DLIR to facilitate its investigation.

The proposed amendment embodies the interim work of contractor associations, organized labor organizations and affected state agencies that met to resolve this issue.

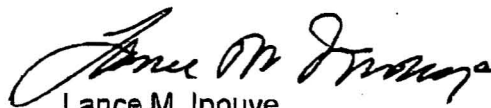
A more comprehensive analysis of our position is embodied in the attached joint BIA-Hawaii/GCA position statement.

RSI strongly supports passage of H.B. 2927.

Thank you for the opportunity to express our concerns on this bill.

Sincerely,

RALPH S. INOUE CO., LTD.

  
Lance M. Inouye  
President

LMI:ma

Attach

**FINtestimony**

**From:** Fred Moore [discover@hsimechanical.com]  
**Sent:** Saturday, February 23, 2008 7:32 PM  
**To:** FINtestimony  
**Subject:** HB 2927 . . .

February 26, 2008  
 Committee on Finance  
 3:30 P.M..  
 Room 308

**TESTIMONY SUPPORTING HB 2927 "RELATING TO PUBLIC WORKS"**

Chair Oshiro and Members of the Committee on Finance:

Aloha . . . my name is Fred Moore, President - HSI Mechanical, Inc. a Hawai'i Small Business since 1979 . . . I had the honor to be the President of the Building Industry Association of Hawai'i in 2005 and served as the Chair of the State of Hawai'i Apprenticeship Advisory Council from 1981 to 1998 . . . HSI Mechanical, Inc. has 42 associates, of which 30 are members of the Sheet Metal Workers Union and the Plumber & Pipefitters United Association Union . . . we have a close working relationship with these unions and the Building Trades Council of Hawai'i . . .

**HSI Mechanical, Inc. strongly SUPPORTS HB 2927 "Relating to Public Works".**

The provisions of HB 2927 address the issue of prevailing wages that must be paid on all public works projects. HB 2927 is modeled after a bill drafted by the Department of Labor & Industrial Relations after months of discussions between the DLIR, the unions of the Building Trades Council (including the Laborers, the Plumbers, the Operating Engineers, and the Ironworkers Union), and construction contractor organizations. HB 2927 is the result of the consensus among all of the organizations and will assist the DLIR with overcoming the delays in their investigations because of falsification of records or interference in turning over records to them. We request that this bill be passed.

During the interim, this group, known as the Ad Hoc Committee, met to discuss the issues and concerns revolving around HB 853, a bill that would have treated inadvertent errors in classification, payment, and record keeping by a contractor in the same manner as willful violation of the law. The Ad Hoc Committee determined that the so-called "three-strikes" bill (HB 853) would have done nothing to help the DLIR to resolve the delays in investigation of Chapter 104 violations. The Ad Hoc Committee agreed that the route of HB 853 was not the way to go, but rather to help the DLIR with their backlog of cases and to also give the DLIR even more reasons to go after the bad contractors with the language that is in HB 2927.

HSI Mechanical, Inc. strongly supports passage of HB 2927.

Thank you for the opportunity to express our views.

With Aloha,

Fred Moore

2/23/2008

President / Principal RME  
HSI Mechanical, Inc.  
227 Puuhale Road  
Honolulu, HI 96819  
Cell: 808-478-8482

"For every minute you  
are angry, you lose sixty  
seconds of happiness."  
Ralph Waldo Emerson