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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION, 2008

JANUARY 31, 2008
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 2896 – RELATING TO CONTRACTORS

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,
AND TO THE HONORABLE DAVID Y. IGE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding Senate Bill No. 2896, Relating to Contractors. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO takes no position on the bill, but offers the following comments.

Senate Bill No. 2896 amends §444-10.5, Hawaii Revised Statutes ("HRS"), to specify that, once a citation for unlicensed contracting activity is issued, the person cited shall immediately stop all work until such time that a hearing is held

and the person's license thereafter is deemed in good standing. The bill also adds a monetary sanction of \$10,000 for each day a person operates without a contracting license.

Citations issued pursuant to §444-10.5, HRS, direct the violator to cease and desist with unlicensed activity immediately. The citation instructs the person cited that he or she has an opportunity to contest the citation and request a hearing. If the person does not request a hearing within twenty days from receipt of the citation, the citation is deemed a final order of the director. If the person requests a hearing within the twenty day period, the citation is either affirmed or dismissed at hearing, depending upon the outcome of the hearing.

The bill at page 2 lines 4-6 references when a person who is cited can engage in activity that requires a license. Rather than focus on the hearings process, the Department suggests that in lieu of the language set forth on lines 4-6, the bill state as follows:

“ . . . shall not resume unless the person cited holds the licenses required under this chapter to perform the work.”

With regard to the proposed amendment on page 4 lines 14-17 that would provide for a \$10,000 fine for any citation in addition to the fines set forth in §444-23(c), HRS, the Department notes that the \$10,000 fine amount in the current law applies to situations in which a person who has been cited continues to engage in unlicensed activity in violation of the citation order. The Department is concerned that the amendment in subsection (j) proposed in this bill: (1) authorizes

finer that may be deemed excessive, in light of the fines set forth in §444-23(c), HRS; and (2) establishes duplicative fines, which may result in confusion and uncertainty as to when either or both fines apply. In addition, to the extent this Committee may find the current fine amount set forth in §444-23(c), HRS, insufficient, the Department notes that there is an administration measure, Senate Bill No. 3032, that proposes an increase of the fine amount to \$2500 or 40% of the contract price for the first offense; \$3500 or 40% of the contract price for the second offense, and \$5000 or 40% of the contract price for any subsequent offense. As such, the Department does not support the amendments proposed on page 4 of the bill.

Thank you for this opportunity to testify on Senate Bill No. 2896. I will be happy to answer any questions that the members of the Committee may have.

January, 31, 2008

Testimony To: Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Senator Russell S. Kokubun, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2896 - RELATING TO CONTRACTORS.

Chair Kokubun and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The Subcontractors Association of Hawaii represents the following nine associations:

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

PACIFIC ELECTRICAL CONTRACTORS ASSOCIATION

Typically we support almost any legislation that relates to a further "clamp down" of unlicensed activity. This is because the unlicensed underground affects our legitimate licensed contractors to a significant degree and they oftentimes seem to be able to operate without restraint and, in many cases, to the harm of the unknowing consumer.

Often times it is the consumer that becomes a very important person in going after unlicensed contracting. It is our feeling that if the work must cease immediately, that a homeowner will be very reluctant to cooperate or participate in "shutting down" an unlicensed contractor because they want their job completed.

Additionally, and perhaps of more concern, is that licensed contractors who do work outside of their scope of their license are charged with unlicensed activity. As we read this bill, it means that all "out of scope" work would then be subject to a fine of not less than \$10,000. Although the statutes provide for only three (3) licenses (A, B and C), the Administrative Rules provide for over seventy (70) different sub-classifications. It is difficult in many cases to determine which license is required in order to do the work legally. In fact, so much so, that the Contractors License Board maintains a "Scope of Activity" Committee in order to provide guidance in these types of situations. Sometimes, it is not so clear as to which license that particular work falls, or when it crosses into another license category. For instance, it is okay for a C-42 licensed Roofing Contractor to change some termite eaten roof deck wood, but it is not okay for them to fix the wooden stairs while they are there.

As we read this bill, there is little latitude in the assessment of the penalty and it would appear that a \$10,000 minimum fine would be prescribed in every case. We think that this is probably not

appropriate due to the complexity of not only the construction industry but also the Contractors License Law and its sub-classifications.

Lastly, we would point out that the Contractors License Board and the construction community has been wrestling with various terms in the Contractors License Law as it relates to "incidental and supplemental" work. Until there is are more clear, concise and definite boundaries assigned to each and every one of the seventy (70) plus classifications, we cannot support this bill.

Based on the above, we recommend that this bill be researched for further clarity.

Thank you.

2896

IRON WORKERS STABILIZATION FUND

FAX No. - 586-6689

S.B. 2896. RELATING TO CONTRACTORS

To: The Honorable Russell S. Kukubun, Chair & Members
Committee on Commerce, Consumer Protection
And Affordable Housing

As Section 444-10.5, Citation for unlicensed activity presently reads, an unlicensed contractor can continue to operate until the lengthy hearing and appeal process is exhausted.

It should stand to reason that the Contractors Licensing Board under the Department of Commerce and Consumer Affairs should know *immediately* whether or not a person is licensed by simply checking its records. If the board's records show that the person is NOT licensed, common sense should dictate that the department's order for the person to **Cease and Desist** should also take effect *immediately*. If the suspension does not take effect immediately, the potential damage that said person could cause to the unsuspecting homeowner and the general public will only become greater.

Only after the proper license is obtained should said person be able to commence work.

We respectfully urge this committee to pass this measure that will afford greater protection to the public.

Sincerely,



T. George Paris
Managing Director

