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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION, 2008

MONDAY, MARCH 31, 2008
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 2896 S.D.2 H.D.1 – RELATING TO
CONTRACTORS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE TOMMY WATERS, CHAIR,
AND TO THE HONORABLE ANGUS L.K. MCKELVEY, VICE-CHAIR,
AND TO THE HONORABLE BLAKE K. OSHIRO, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to testify regarding Senate Bill No. 2896 S.D.2 H.D.1,
Relating to Contractors. My name is Jo Ann Uchida of the Department's Regulated
Industries Complaints Office ("RICO"). RICO opposes this bill for the following
reasons.

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1) Senate Bill No. 2896 S.D.2 H.D.1 adds the phrase "to so act or engage" on page 1, line 8. RICO requests that this phrase be deleted and substituted with the phrase "in good standing" on page 1, line 8 and on page 1, line 13.

The phrase "without having a license in good standing" is important because it addresses concerns raised in prior testimony about the use of citations against licensees in good standing who may have engaged in out-of-scope activity, and makes clear that citations would not be used for those purposes.

2) Senate Bill No. 2896 S.D.2 H.D.1, also amends the penalty provisions in subsection (j) and §444-23, HRS. Subsection (j) is amended so that the \$10,000 fine in the current law applies to persons cited who continue to engage in unlicensed activity in violation of a citation order. Section 444-23, HRS, is amended to increase the monetary fines against persons without a license in good standing who violate §444-9, HRS, from \$500 to \$10,000 per day for the first offense, from \$1,000 to \$5,000 per day for the second offense, and from \$5,000 to \$10,000 per day for any subsequent offense.

RICO is concerned that the amendments to subsection (j) and §444-23, HRS, proposed in this bill authorize fines that may be deemed excessive. For example, because of the mandatory language in the bill, the fine amount would have to apply to a situation where a licensed contractor had inadvertently allowed his or her license to lapse for a week. Because the fines would be assessed on a daily basis, the contractor's failure to timely renew for a week would cost him \$70,000. In addition, the proposed amendments establish duplicative fines, which

Testimony on Senate Bill No. 2896 S.D.2 H.D.1
March 31, 2008
Page 3

may result in confusion and uncertainty as to when either or both fines apply. As such, RICO does not support these amendments.

Thank you for this opportunity to testify on Senate Bill No. 2896 S.D.2 H.D.1. I will be happy to answer any questions that members of the Committees may have.

SAH - Subcontractors Association of Hawaii

820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 + Fax: (808) 533-2739

March 31, 2008

Testimony To: House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

House Committee on Judiciary
Representative Tommy Waters, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2896, SD 2, HD 1 - RELATING TO CONTRACTORS.

Chair Herkes, Chair Waters and Members of the Joint Committees:

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

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While we typically support almost any legislation that relates to a further "clamp down" of unlicensed activity, we are concerned that this version of the bill goes too far. 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.

The amendments made to this bill, in House Draft 2, addresses those concerns however, a \$10,000 a day fine is probably excessive and we see no logic with the proposed \$10,000/\$5000/\$10,000 per day fines (1st, 2nd, and 3rd offense). While we agree that the current \$500/\$1000/\$5000 is too low, something less than what is proposed is probably more fair.

Thank you.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

March 31, 2008
Committees on Consumer Protection and Commerce and Judiciary
2:00 p.m.
Conference Room 325
RE: SB 2896, SD2, HD1 "Relating to Contractors"

Chairs Herkes and Waters and Members of the Committees on Consumer Protection & Commerce and Judiciary:

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.

BIA-Hawaii opposes SB 2896, SD2, HD1 "Relating to Contractors"

SB 2896, SD2, HD1 "Relating To Contractors" amends HRS Section 444-10.5 on unlicensed activity to require that all work cease upon the issuance of a citation until a hearing is held on the citation by the Department of Commerce and Consumer Affairs ("DCCA"). While BIA-Hawaii has actively sought to tighten the laws that relate to contractor licensing, this bill has significant unintended consequences.

The requirement that all work cease upon the issuance of a citation may create numerous problems for contractors and subcontractors on a project other than the alleged violator, as well as on the project itself. For example, if a specialty subcontractor on a private project inadvertently failed to renew his license, the entire project may be shut down for a significant period of time if another specialty subcontractor could not be found. On a large private project, such as the Trump Towers project, this could create economic chaos. Similarly, if a specialty subcontractor on a public project is cited for unlicensed activity, the entire project could be shut down until another specialty subcontractor is found. It would be disastrous if something like this occurred on a public project, such as, for example, the proposed rail project.

A major problem is the amount of time it would take for the hearings to be conducted. Unfortunately, the DCCA does not have the resources to conduct the hearings in a speedy manner. Indeed, in another bill currently pending this session, the Legislature is looking to cut the positions of two DCCA investigators and one staff attorney. That will only create additional delays.

Finally, it is unclear that the amendments are necessary. Once a contractor has been cited for unlicensed activity, they rarely take the risk of continuing to work due to severe consequences. If the alleged violator continues to work, it is extremely unlikely that the alleged violator will ever get his or her contractor's license. Accordingly, these amendments are probably unnecessary.

BIA-Hawaii is **opposed** to the passage of SB 2896, SD2, HD1 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this important matter.

Karen I. Nakamura



RALPH S. INOUE CO LTD
GENERAL CONTRACTOR

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Honolulu, Hawaii 96819

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F: 808.833.5971

License No. ABC-457
Founded in 1962

March 31, 2008

The Honorable Representatives Robert N. Herkes and Tommy Waters, Chairs
And Members of the Committees on Consumer Protection & Commerce and Judiciary

RE: S. B. 2896, SD2, HD1 Relating to Contractors

NOTICE OF HEARING

March 31, 2008

Committees on Consumer Protection & Commerce and Judiciary

2:00 p.m.

Conference Room 325

Dear Chairs Herkes and Waters and Members of the Committees:

Ralph S. Inouye Co., Ltd. (RSI), General Contractor, and a member of the General Contractors Association of Hawaii, opposes SB 2896, SD2, HD1 "Relating to Contractors"

S. B. 2896, SD2, HD1 "Relating To Contractors" amends HRS Section 444-10.5 on unlicensed activity to require that all work cease upon the issuance of a citation until a hearing is held on the citation by the Department of Commerce and Consumer Affairs ("DCCA"). This bill has significant unintended consequences.

The requirement that all work cease upon the issuance of a citation may create numerous problems for contractors and subcontractors on a project other than the alleged violator, as well as on the project itself. For example, if a specialty subcontractor on a private project inadvertently failed to renew his license, the entire project may be shut down for a significant period of time if another specialty subcontract could not be found. On a large private project, such as the Trump Towers project, this could create economic chaos. Similarly, if a specialty subcontractor on a public project is cited for unlicensed activity, the entire project could be shut down until another specialty subcontractor is found. It would be disastrous if something like this occurred on a public project, such as, for example, the proposed rail project.

A major problem is the amount of time it would take for the hearings to be conducted. Unfortunately, the DCCA does not have the resources to conduct the hearings in a speedy manner. Indeed, in another bill currently pending this session, the Legislature is looking to deny positions of two DCCA investigators and one staff attorney. That will only create additional delays.

RSI is **opposed** to the passage of S. B. 2896, SD2, HD1 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this matter.

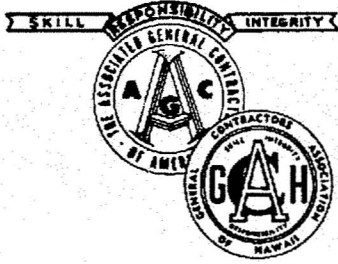
Very Truly Yours,

RALPH S. INOUE CO., LTD.

Lance M. Inouye
President

LMI:ma

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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 • WEBSITE: www.gcahawaii.org

March 28, 2008

TO: THE HONORABLE REPRESENTATIVE ROBERT N. HERKES AND TOMMY WATERS, CHAIRS AND MEMBERS OF THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE AND JUDICIARY

SUBJECT: S. B. 2896, SD2 HD1 RELATING TO CONTRACTORS

DATE: Monday, March 31, 2008

TIME: 2:00 pm

PLACE: Conference Room 325

Dear Chairs Herkes and Waters and members of the Committee:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, opposes SB 2896, SD2, HD1 "Relating to Contractors" SB 2896, SD2, HD1 "Relating To Contractors" amends HRS Section 444-10.5 on unlicensed activity to require that all work cease upon the issuance of a citation until a hearing is held on the citation by the Department of Commerce and Consumer Affairs ("DCCA"). While GCA has actively sought to tighten the laws that relate to contractor licensing, this bill has significant unintended consequences.

The requirement that all work cease upon the issuance of a citation may create numerous problems for contractors and subcontractors on a project other than the alleged violator, as well as on the project itself. For example, if a specialty subcontractor on a private project inadvertently failed to renew his license, the entire project may be shut down for a significant period of time if another specialty subcontract could not be found. On a large private project, such as the Trump Towers project, this could create economic chaos. Similarly, if a specialty subcontractor on a public project is cited for unlicensed activity, the entire project could be shut down until another specialty subcontractor is found. It would be disastrous if something like this occurred on a public project, such as, for example, the proposed rail project.

A major problem is the amount of time it would take for the hearings to be conducted. Unfortunately, the DCCA does not have the resources to conduct the hearings in a speedy manner. Indeed, in another bill currently pending this session, the Legislature is looking to cut the positions of two DCCA investigators and one staff attorney. That will only create additional delays.

Finally, it is unclear that the amendments are necessary. Once a contractor has been cited for unlicensed activity, they rarely take the risk of continuing to work due to severe consequences. If the alleged violator continues to work, it is extremely unlikely that the alleged violator will ever get his or her contractor's license. Accordingly, these amendments are probably unnecessary.

The GCA is opposed to the passage of SB 2896, SD2, HD1 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this important matter.

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