



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

March 25, 2008

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

Date: March 26, 2008

Time: 2:00 p.m.

Place: Conference Room 308, State Capitol

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

**Testimony in Support
of
S.B. 3087, HD1 - Relating to Contractor Suspension on Public Works Projects**

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 3087, HD1 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 (Notice of Violation), (which counts as one 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. SENATE BILL

S.B. 3087, HD1 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 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

SB3087, SD1, HD1 Relating to Contractor Suspension on Public Works Projects

To the Committee on Finance
Wednesday, March 26, 2008, 2:00 p.m.
Conference Room 308
State Capitol

Honorable Representative Marcus R. Oshiro, Chair; Representative Marilyn B. Lee, Vice Chair and Members of the Committee:

Various parties including 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, arrived at a consensus on SB3087. It was a collaborative effort. Nevertheless, contractor compliance and enforcement by the DLIR are still the keys to making HRS-104 work for everyone.

We extend our appreciation to all the parties that participated at long meetings to discuss a problem that has plagued the industry for years. We look forward to continuing joint discussions on challenges that affect the construction industry with the aim of keeping the industry strong, our workers employed and our economy healthy.

We strongly support this bill. Thank you for the opportunity to submit this testimony.

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

March 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 SB3087, SD1, HD1
RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS
Hearing: Wednesday, March 26, 2008, 2:00 p.m.

Dear Chair Oshiro, Vice Chair Lee and the House Committee on Finance:

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.

The Council SUPPORTS the passage of SB3087, SD1, HD1, which suspends contractors found to be in violation of the public works procurement law for falsification of records or delaying an investigation under the wage and hour law.

Thank you for the opportunity to submit this testimony in support of SB3087.

Sincerely,

William "Buzz" Hong

WBH/dg

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

March 26, 2008

House Committee on Finance

2:00 P.M..

Conference Room 308

TESTIMONY IN STRONG SUPPORT OF SB 3087, SD1, HD1 "RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS"

Chair Oshiro and Members of the House 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.

BIA-Hawaii strongly supports SB 3087, SD1, HD1 "Relating to Contractor Suspension on Public Works Projects"

The provisions of SB 3087 address the issue of prevailing wages that must be paid on all public works projects. SB 3087 was drafted by the Department of Labor & Industrial Relations (DLIR) 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 Unions) and construction contractor organizations. SB 3087, SD1, HD1 is the result of the consensus among all of the organizations (known as the Ad Hoc Committee) 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, 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 we should 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 SB 3087, SD1, HD1..

Thank you for the opportunity to share our views with you.

Karen I. Nakamura

The Senate
The Twenty-Fourth Legislature
Committee on Finance
March 26, 2008
2:00 p.m.
Conference Room 308

Statement of the Hawaii Carpenters Union on S.B. 2780, SD2, HD1
Relating to Public Works

The Hawaii Carpenters Union supports S.B. 2780, SD2 to address in the statute a limited part of what is currently in the Administrative Rules of Chapter 104, HRS, regarding construction utilizing State or County land. We are willing to support the HD1, which should result in deliberations by a conference committee, providing time for further work towards a final form.

Currently the administrative rules provide that prevailing wages are to be paid for construction undertaken through the use of "...land, or other resources of the State or any county...". Among the varied uses of State and county land for private activities, S.B. 2780 would clarify one category for administration and enforcement.

This Bill focuses on the use of State or county land to commercial, for-profit activity. We believe it would also make it clear that the law must be enforced in this area. This Senate Bill is similar to HB 3039, passed by the House. SD2 includes a minimum construction cost of \$500,000, which is acceptable if the currently uneven application, or ignoring, of the administrative rule can be overcome.

In the example of the Naniloa hotel in Hilo, the benefit of using State oceanfront land should not become a part of depressing area standard wages and benefits for construction work. Prevailing wages are not being required for construction work in that case, including for construction required by the State in the agreement for the use of the land.

Where prevailing wages are not required to "level the playing field", Hawaii contractors who contribute to skilled craft training are at a disadvantage. Hawaii contractors who lessen burdens on government and the community by providing family medical and dental insurance, and retirement income programs, not to mention decent wages, are at a disadvantage. State resources should not be used in this manner.

The fact that agreements are reached and documented prior to the use of the land and prior to any construction, provides the mechanism for the administration of the Chapter 104 provision.

Thank you for your consideration of our support for the passage of S.B. 2780, SD2, HD1.

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

SB3087 SD1 HD1
Wednesday, March 26, 2008
2:00 p.m.
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 SB3087 SD1 HD1 - Relating to Contractor Suspension on Public Works Projects 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.



To: The House Committee on Finance FINtestimony@Capitol.hawaii.gov

From: Audrey Hidano

Date: March 26, 2008

Subject: SB 3087, SD1, HD1 "Relating to Contractor Suspension on Public Works Projects"
Hearing: March 26, 2008 at 2:00 p.m., Room 308

Chair Oshiro and Committee Members
State Capitol Room 308
Honolulu, Hawaii 96813

Dear Chair Oshiro and Committee Members:

I am Audrey Hidano, Hidano Construction, Inc. testifying in SUPPORT of SB 3087, SD1, HD1 Relating to Contractor Suspension on Public Works Projects, which addresses the issue of prevailing wages and is modeled after a bill drafted by the Dept. of Labor & Industrial Relations after months of discussions between DLIR, the members of the Building Trades Council (BTC), the General Contractors Association (GCA) and the Building Industry Association (BIA). SB 3087, SD1, HD1 will address and assist DLIR with their delayed investigations when contractors falsify records or interfere in turning over records to DLIR.

Thank you for the opportunity to testify in SUPPORT of this proposed measure.



**Associated Builders and Contractors of Hawaii
80 Sand Island Access Road, M-119
Honolulu, Hawaii 96819**

March 25, 2008

TESTIMONY to be PRESENTED to the
HOUSE COMMITTEE ON FINANCE
For hearing on Wednesday, March 26, 2008, 2 P.M., Room 308

by

Karl F. Borgstrom, President
ASSOCIATED BUILDERS & CONTRACTORS OF HAWAII

IN SUPPORT OF

SB 3087, SD1, HD1

RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS

CHAIR AND MEMBERS OF THE FINANCE COMMITTEE:

The Associated Builders and Contractors is a professional trade association representing Merit Shop construction contractors, suppliers and service providers throughout the State of Hawaii.

The amendment proposed to Section 104-25, Hawaii Revised Statutes would authorize the director to immediately suspend a contractor for interference with or delay of an investigation or falsification of records, pursuant to section 104-25, for a mandatory three-year period. We have discussed with the Department of Labor the criteria by which falsification or delay would be determined and are assured that those criteria can be applied fairly and equitably.

We recognize the need for the Department of Labor and Industrial Relations to have at its disposal appropriate penalties in order to enforce wage rules and reporting on public works projects. Therefore, Associated Builders and Contractors of Hawaii strongly supports SB 3087.

Thank you for your consideration; should the need arise, ABC Hawaii will respond to any requests of the Committee for additional information regarding this matter.