

testimony

From: Lance Inouye [lance@rsinouye.com]
Sent: Saturday, February 23, 2008 11:40 AM
To: testimony
Cc: Karen Iwamoto; Gladys@GCAHawaii.Org; gnohara@kogaeng.com; johnny@gcahawaii.org; kktakenaka@aol.com; leonard@royalcontracting.com; rwilki94@aol.com; Audrey Hidano; Mike Kido
Subject: SB 3087 SD1-RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS.

The Honorable Senator Brian T. Taniguchi, Chair and Members of the Committee on Judiciary and Labor,

Ralph S. Inouye Co., Ltd., General Contractor and Member of the General Contractors Association of Hawaii (GCA), strongly supports SB 3087 SD1-RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS.

Thank you for the opportunity to present our views on the subject bill.

Lance M. Inouye, Pres. & CEO
Ralph S. Inouye Co., Ltd.
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**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 24, 2008

To: The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: February 25, 2008

Time: 10:00 a.m.

Place: Conference Room 016, State Capitol

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

**Testimony in Support
of
S.B. 3087, SD1 - Relating to Contractor Suspension on Public Works Projects**

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 3087, SD1 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

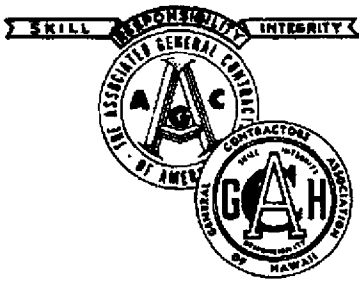
Currently, the DLIR implements a progressive penalty structure when citing a contractor for infractions over multiple job sites. If the contractor has been found to violate any of Chapter 104's laws or related administrative rules the Department issues citations and a penalty for every infraction or 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. SENATE BILL

S.B. 3087, SD1 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.



LATE

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

TO: THE HONORABLE SENATOR BRIAN T. TANIGUCHI, CHAIR AND MEMBERS OF THE
COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: SB 3087 SD1-RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS
PROJECTS

DATE: Monday, February 25, 2008
TIME: 10:00 a.m.
PLACE: Conference Room 016

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly supports** SB 3087 SD1-RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS.

LATE

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 Senator Brian T. Taniguchi, Chair
Honorable Senator Clayton Hee, Vice Chair
Members of the Senate Committee on Judiciary and Labor
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF SB3087
RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS
PROJECTS.
Decision Hearing: Monday, February 25, 2008, 10:00 a.m.

Dear Chair Taniguchi, Vice Chair Hee and the Senate Committee on Judiciary and Labor:

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 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
Executive Director

WBH/dg

LATE

testimony

From: Karen Iwamoto [khi@biahawaii.org]
Sent: Saturday, February 23, 2008 2:04 PM
To: testimony
Subject: Testimony in support of SB 3087, SD1 " Relating to Contractor Suspension on Public Works Projects"

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Committee on Judiciary and Labor Decision Making on February 25, 2008, 10 a.m. Room 016

Chair Taniguchi and Members of the Committee on Judiciary and Labor:

BIA-Hawaii strongly supports the passage of SB 3087, SD1 "Relating to Suspension on Public Works Projects". This bill is the consensus bill drafted by the Department of Labor and Industrial Relations in concurrence with the BIA, GCA and the Hawaii Building and Construction Trades Council. The bill gives added reasons to suspend contractors who falsify or interfere with turning over payroll records on government jobs. We believe this would help the DLIR in enforcement of the current law, Chapter 104.

Thank you for the opportunity to voice our support.



Karen Nakamura, CEO
Building Industry Association of Hawaii (BIA-Hawaii)

testimony

From: Al Lardizabal [zabal7@msn.com]
Sent: Saturday, February 23, 2008 6:49 PM
To: testimony
Subject: SB3087 SD1

Senate Committee on Judiciary and Labor
February 25, 2008, 10:00 a.m. Rm 016
SB3087 SD1

February 23, 2008

Dear Senator Taniguchi Chair, Senator Hee, Vice Chair and Members of the Senate Committee on Judiciary and Labor:

The Laborers' Union Local 368 strongly supports SB3087 SD1. We, Labor, Management and the Administration, in the spirit of cooperation, developed the bill over the year. Please pass the bill out of Committee. Thank you very much.

Al Lardizabal
Government and Community Relations Director
Laborers' Union Local 368

LATE

**The Pacific Resource
PARTNERSHIP**



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

Committee on Judiciary and Labor
Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair

SB3087 SD1
Monday, February 25, 2008
10:00 am
Conference Room 016

Chair Taniguchi and members of the Committee on Judiciary and Labor:

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 - 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.