



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

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March 10, 2008

To: The Honorable Alex M. Sonson, Chair
and Members of the House Committee on Labor & Public Employment

Date: March 11, 2008

Time: 9:00 a.m.

Place: Conference Room 309, 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 (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, 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.

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

In Support of

SB3087, SD1 Relating to Contractor Suspension on Public Works Projects

To the Committee on Labor & Public Employment
Tuesday, March 11, 2008, 9:00 a.m.
Conference Room 309
State Capitol

Honorable Representative Alex M. Sonson, Chair; Representative Bob Nakasone, Vice Chair
and Members of the Committee:

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 SB3087, SD1. 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 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.



GENERAL CONTRACTORS ASSOCIATION OF HAWAII

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E-MAIL ADDRESS: gca@gcahawaii.org • WEBSITE: www.gcahawaii.org

March 10, 2008

TO: THE HONORABLE REPRESENTATIVE ALEX M. SONSON, CHAIR AND MEMBERS OF COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

NOTICE OF HEARING

DATE: Tuesday, March 11, 2008
TIME: 9 a.m.
PLACE: Conference Room 309

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.

SB 3087, SD1 is the consensus bill approved by the Ad Hoc Committee on Prevailing Wages. The GCA was one of the parties involved in this Committee. This bill was drafted by the Department of Labor & Industrial Relations and reflects the concurrence of the labor unions and the construction contractors. There was much time and effort expended that resulted in SB 3087, SD1.

Please pass SB3087, SD1 that will assist the DLIR in fulfilling their mission to investigate and charge violators of Chapter 104.

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

**RALPH S. INOUE CO LTD**
GENERAL CONTRACTOR2831 Awaawaloa Street
Honolulu, Hawaii 96819T: 808.839.9002
F: 808.833.5971License No. ABC-457
Founded, in 1962

March 10, 2008

The Honorable Alex Sonson, Chair and
Members of the House Committee on Labor & Public Employment

SUBJECT: Testimony in SUPPORT
S. B. 3087, SD1, - Relating to Contractor Suspension on Public Works Projects
Hearing: Tuesday, March 11, 2008, 9:00 A.M., Conference Room 309

Dear Chair Sonson and Members of the Committee,

Ralph S. Inouye Co., Ltd. (RSI), general contractor, **supports** the passage of S. B. 3087, SD1.

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. S. B. 3087, SD1, 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.

RSI 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.

For the above noted reasons, RSI **supports** the passage of S. B. 3087, SD1 and requests that this bill be passed.

Thank you for considering our concerns on the above bill.

Very Truly Yours,

RALPH S. INOUE CO., LTD.

Lance M. Inouye
President

LMI:ma

Attach.

Leonard K.P. Leong
Vice President

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



Chair Sonson and Members of the House Committee on Labor & Public Employment::

I am Leonard Leong - Royal Contracting Co., Ltd and I strongly support SB3087, SD1 "Relating to Contractor Suspension on Public Works Projects." I am a member of GCA-Hawaii and support SB3087, SD1.

SB 3087, SD1 is the consensus bill approved by the Ad Hoc Committee on Prevailing Wages. GCA-Hawaii was one of the parties involved in this Committee. This bill was drafted by the Department of Labor & Industrial Relations and reflects the concurrence of the labor unions and the construction contractors. There was much time and effort expended that resulted in SB 3087, SD1.

Please pass SB3087, SD1 that will assist the DLIR in fulfilling their mission to investigate and charge violators of Chapter 104.

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

"An Equal Employment Opportunity Employer"
Royal Contracting Company • 877 Ahua Street • Honolulu, Hawaii 96819 • (808) 839-9006 • Fax (808) 839-7571

Aloha,

I am writing on behalf of the Hawaii Island Contractors Association, Legislative Committee to urge all members of the House Labor and Public Employment Committee to vote **AGAINST SB 3087, SD1** "Relating to Contractor suspension on Public Works Projects".

Many of our member companies here on the Big Island work with all levels of government and adhere to the established guidelines set forth through Act 104. As a whole, **we feel that the laws that are currently in place are sufficient in regulating activities surrounding prevailing wages.**

We feel that (like in years past), proposed laws such as these are primarily driven by the union lobby and would ultimately provide an unfair advantage of union contractors. In addition, said laws would invite large mainland corporations to come in and take away business from local companies.

To reiterate, we humbly ask that your committee **STRIKE DOWN SB 3087, SD1** as well as any future attempts to alter existing prevailing wage law.

Mahalo Nui,

John E.K. Dill

Project Manager

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HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
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March 10, 2008

Honorable Representative Alex M. Sonson, Chair
Honorable Representative Bob Nakasone, Vice Chair
Members of the House Committee on Labor & Public Employment
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF SB3087, SD1
RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS
PROJECTS.
Decision Hearing: Tuesday, March 11, 2008, 9:00 a.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.

The Council supports the passage of SB3087, SD1 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, SD1.

Sincerely,

William "Buzz" Hong
Executive Director

WBH/dg



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. 3087, S.D. 1, RELATING TO CONTRACTOR SUSPENSION ON PUBLIC WORKS PROJECTS.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Tuesday, March 11, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 309
Deliver to State Capitol, Room 424, 5 Copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Nelson T. Higa, Deputy Attorney General

Chair Sonson and Members of the Committee:

The Department of the Attorney General requests a technical amendment to the proposed statutory language of Section 2.

The purpose of this bill is to allow the Department of Labor and Industrial Relations to immediately begin suspension proceedings against a contractor that interferes with or delays an investigation under Hawaii's Wages and Hours of Employees on Public Works Law. Section 2 of the bill proposes the insertion of a new paragraph (3) to section 104-25(a), Hawaii Revised Statutes. This proposed paragraph now reads:

For interference with or delay of an investigation or falsification of records under section 104-22, the suspension shall remain in force for a period of three years.

The Department of the Attorney General requests that this new wording be modified to read as follows:

For a violation based on interference with or delay of an investigation pursuant to section 104-22(b), the contractor shall be suspended for a period of three years.

We request this technical change to conform the wording of the proposed new paragraph to the wording of the existing paragraphs (1)

and (2), and to reference the definition of "interferes with or delays" or "interference or delay" statutory wording already provided for by section 104-22(b). Under section 104-22(b), interference or delay of an investigation is already defined as encompassing the failure by the contractor to provide records requested under section 104-3, Hawaii Revised Statutes; the failure by the contractor to allow its employees to be interviewed during working hours on the job; and the falsification of records by the contractor that are required under chapter 104, Hawaii Revised Statutes.

The proposed amendment in this bill, to provide for the suspension of a contractor for the "falsification of records" potentially interjects an ambiguity into suspension provisions given section 104-22(b)'s enumeration of what constitutes the interference with or delay of an investigation. The presently proposed language could engender litigation to clarify its meaning.

The Department of the Attorney General respectfully requests that the proposed amendment contained in section 2 of the bill be modified as requested above.



To: The House Committee on Labor & Public Employment
LABestimony@Capitol.hawaii.gov

From: Audrey Hidano *ah*

Date: March 11, 2008

Subject: SB 3087, SD1 Relating to Contractor Suspension on Public Works Projects
Hearing: Tuesday, March 11, 2008 at 9:00 a.m., Room 309

Honorable Representative Sonson, Chair and Committee Members
State Capitol Room 309
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Sonson and Members of the Committee

I am Audrey Hidano, Hidano Construction, Inc. testifying in SUPPORT of SB 3087, SD1 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 will address and assist DLIR with their delayed investigations when contractors falsify records or interfere in turning over said records to DLIR.

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