



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

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LATE TESTIMONY

February 4, 2008

To: The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Tourism and Government Operations

Date: February 5, 2008

Time: 1:15 p.m.

Place: Conference Room 229, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 3087 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

The current penalty under section 104-22(b), HRS is a \$1,000 fine.

Currently, contractors have violations imposed according to the investigation. This means if the Department investigates the complaint of a laborer who worked on three different projects for the same contractor and the Department found multiple offenses, it would issue the first notice of violation. The current method of investigation imposes penalties for each offense, but only one notice of violation.

III. SENATE BILL

S.B. 3087 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.

The Pacific Resource
PARTNERSHIP



LATE

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

Committee on Tourism and Government Operations
Senator Clarence Nishihara, Chair
Senator Donna Mercado Kim, Vice Chair

SB3087
Tuesday, February 5, 2008
1:15pm
Conference Room 229

Chair Nishihara and members of the Committee on Tourism and Government Operations:

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 - 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 Senate Committee on Tourism and Government Operations Hearing
TSGtestimony@Capitol.hawaii.gov

From: Audrey Hidano

Date: February 4, 2008

Subject: SB 3087 Relating to Contractor Suspension on Public Works Projects
Hearing: Tuesday, February 5, 2008 at 1:15 p.m., Room 229

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Honorable Senator Nishihara, Chair and Committee Members
State Capitol Room 229
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members of the Committee

I am Audrey Hidano, Hidano Construction, Inc. testifying in SUPPORT of SB 3087, 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 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.

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

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In support of

SB3087 Relating to Contractor Suspension on Public Works Projects

To the Committee on tourism and Government Operations
Tuesday, February 5, 2008, 1:15 p.m.
Conference Room 229
State Capitol

Honorable Senator Clarence K. Nishihara, Chair; Senator Donna Mercardo Kim, Vice Chair;
and Members of the Committee on Tourism and Government Operations:

SB3087 is known as our "three strikes" bill. If a contractor intentionally and continuously violates the prevailing wage law of the state then, the offending contractor should be "out of the game" and let honest contractors perform the work and pay workers the wages they are entitled to under law. SB3087 is nearly identical to HB2927 Relating to Public works which was heard by the House Committee on Labor and Public Employment this morning. Both intents are the same.

We call it "our" three strikes bill because 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. 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 over the past year to discuss a problem that has plagued the industry for years. This bill alone will not solve the problem entirely, but it is a step in the right direction. We look forward to continuing joint discussions on problems 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.