

IRONWORKERS STABILIZATION FUND

Honorable Representative Rhoads, Chair
Members of the House Committee on Labor & Public Employment
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF HB1280, RELATING TO PROCUREMENT
Hearing: Friday, February 6, 2009

Dear Chair Rhoads, and the House Committee on Labor & Public Employment:

The Ironworkers Stabilization Fund Local 625 SUPPORTS the passage of HB1280, which amends HRS section 103 of awarding contracts for public construction projects.

We believe this bill will assist in stopping contractors who have been violating the state laws and who have been awarded state contracts over contractors who comply with the state labor laws. We believe that the passage of this bill is only the first step in preventing violations in the construction field. We would like this and strong enforcement to go hand in hand. The Ironworkers Union feels it is imperative during this tough economic time to give the working men and women of Hawaii the break they deserve to make a decent wage.

As such, we know that with passage of this bill and others to cease all unlicensed activity in the workplace will go a long way in helping those who are following the law.

Thank you for the opportunity to submit this testimony in support of HB1280

94-497 Ukee Street

Waipahu, Hawaii 96797

671-4344

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS®

The House of Representatives
Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor & Public Employment

Rep. Karl Rhodes, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Friday February 6, 2009
Time: 08:30 a.m.
Place: Conference Room 309

Testimony of the International Brotherhood of Electrical Workers
(IBEW)

Re: H.B 1280, Relating To Procurement

H.B 1280 would help ensure that tax payer dollars are only spent on contractors who "play by the rules" and who are in strict compliance with all State laws and requirements.

The IBEW strongly supports this measure.

The Hawaii unionized construction industry takes great pride in ensuring that our workers are properly paid, highly trained, extremely productive and receive a superior standard of safety training. We believe that the state laws and requirements are there to protect our citizens and to ensure the highest level of safety and workmanship and that these laws should always be followed and obeyed.

Unfortunately, we are seeing more and more unscrupulous contractors come in this state who have a total disregard for our laws, rules and regulations. They blatantly violate established provisions putting Hawaii's citizens at risk and making a mockery of our safety, consumer and worker protections.

This is a serious moral, health and safety issue for all of Hawaii and should not be tolerated any longer.

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H.B 1280 takes the first step in correcting this problem by ensuring that not one penny of tax payer money goes to any of these irresponsible, law-breaking contractors.

You can and should put an end to this injustice with the quick passage of H.B 1280.

Thank you for the opportunity to provide testimony.

Harold J. Dias, Jr
IBEW, International Representative

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Testimony in **Support** of
HB1280 Relating to Procurement

By
Al Lardizabal, Director of Government Relations
Laborers' International Union of North America Local 368

To the Committee on Labor & Public Employment
Friday, February 6, 2009, 8:30 a.m.
Room 309, State Capitol

Honorable Karl Rhoads, Chair; Honorable Kyle T. Yamashita, Vice Chair
and Members of the Committee:

The Laborers' Union **supports** HB1280 regarding responsible contractor bidding on state construction projects. This bill is a Hawaii Building Trades Council submission.

Government agencies¹ in other jurisdictions have similar concerns as Hawaii does in ensuring that contractors will be selected based upon demonstrated ability to provide high quality services and thereby enhance the value of government property, as evidenced by their record of compliance with applicable statues and payment of fair compensation and benefits to workers, as well as their experience, reputation, responsiveness, fees and dependability. We believe that a fairly compensated and trained workforce, and a company that complies with the laws, delivers a higher quality of service and product to government.

States have separate responsible contractor laws similar to federal requirements that a company's compliance with labor, environmental, and health and safety laws is relevant to the "responsibility" determination. This express move to acknowledge the importance of compliance with laws to the responsibility determination demonstrates the growing consensus that a company's respect for law is critical to a determination of whether it is a reliable partner on public contracts.

¹ Ohio Public Employees Retirement System, federal government agencies, (POGO) Project On Government Oversight; City of Worcester, Massachusetts; City of Somerville, Massachusetts; California, Delaware, New Jersey, Oregon, New York, Michigan etc.

At the outset, we state that Hawaii contractors by and large, are responsible contractors. This is a small community. The reputation and performance of a local business is crucial to its success. It is when there is an influx of non-Hawaii companies that have little or no record of performing on government contracts in Hawaii that creates concerns. The owners are in foreign countries or other states and will move to where the projects are with the intent of making a profit and moving on. Often times they will “import” workers who will work for substandard wages and benefits and not complain out of fear. Often times too, workers will be misclassified so as to acquire the lower wages. And when enforcement is lacking, this practice continues.

This is a major reason the federal government has amended Federal Acquisition Rules (FAR) and imposed an anti-scofflaw rule² to make it clear to businesses that there are consequences for breaking the law. And the consequence is that a law breaker can not do further business with government.

In these “perilous economic times” where dozens of economic stimulus construction projects will induce unknown contractors to bid for Hawaii projects, the bidder’s background, experience and performance require scrutiny and closer examination. There is a well known axiom, “You get what you pay for”. The lowest bid is not always necessarily the “best” bid. And in the rush to put out economic stimulus projects as fast as the system will allow, time is limited to check out the bidders.

The bill essentially states the need to show proof of workers’ compensation insurance, medical insurance, apprenticeship program, comply with prevailing wages, provide a neutral process for resolving work-related issues, be appropriately licensed and commit to employing a percentage of qualified Hawaii residents.

Thank you for the opportunity to present this testimony.

² 41U.S.C. 253b (“shall award a contract ...to the responsible source”; 403(7) (D)“Responsible source” is defined by statute as, inter alia, a prospective contractor who “has a satisfactory record of integrity and business ethics.”



International Brotherhood of Electrical Workers
LOCAL UNION NO. 1186 • Affiliated with AFL-CIO

1935 HAU STREET, ROOM 401 • HONOLULU HI 96819-5003
TELEPHONE (808) 847-5341 • FAX (808) 847-2224

TESTIMONY SUPPORTING HB1280, RELATING TO PROCUREMENT

TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT (VIA FAX 586-6331)

For Hearing on Friday, February 6, 2009, at 8:30 a.m., in Room 309

RE: SUPPORT FOR HB1280, RELATING TO PROCUREMENT

Honorable Chair Rhoads, Vice Chair Yamashita, and House Labor Committee members,

My name is **Damien Kim**, and I am the Business Manager / Financial Secretary of the International Brotherhood of Electrical Workers Local Union 1186 representing over 3,500 members of the electrical construction, telecommunication, Oceanic Cable, and civil service employees at Pearl Harbor Shipyard, Kaneohe Marine Base and Hickam. IBEW local 1186 also represents over 120 signatory electrical contractors that perform most of the electrical work in Hawaii.

HB1280 levels the playing field for state projects by ensuring bidders have met their responsibilities for safety, training, apprenticeship, licensing, compliance and other requirements. These safeguards provide the state procurement process with responsible contractors and quality projects that provide value for our public funds.

Thank you for providing me with this opportunity to testify in strong support for HB1280.

Mahalo and aloha,

Damien Kim
Business Manager / Financial Secretary
International Brotherhood of
Electrical Workers, Local Union 1186

000051

The Twenty-Fifth Legislature
Regular Session of 2009

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

State Capitol, Conference Room 309
Friday, February 6, 2009; 8:30 a.m.

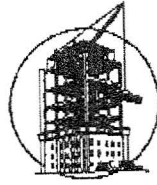
**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1280
RELATING TO PROCUREMENT**

The ILWU Local 142 supports H.B. 1280, which enacts the responsible construction contractor law for government procurements of construction projects.

With a stalled economy, all eyes are turning to public works projects in the near term to revitalize the economy. Construction in the private sector is stagnating as companies find it more and more difficult to secure financing for their projects. H.B. 1280 will provide for fairness in the competitive bid process, keep construction jobs in the hands of legal Hawaii residents, and ensure that construction workers are paid prevailing wages and receive good benefits. Responsible contractors should have no problem with this bill.

The ILWU urges passage of H.B. 1280. Thank you for considering our testimony.

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HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 580 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

President
Erickson's & Ceramic Tile Setters
Local # & Plasterers/Cement
Masons Local 630

JOSEPH O'DONNELL

Vice President
Iron Workers Local 626

DAMIEN T. K. KIM

Financial Secretary
International Brotherhood of
Electrical Workers Local 1166

ARTHUR TOLENTINO

Treasurer
Sheet Metal Workers I.A. Local 230

MALCOLM K. AHLGREN

Sergeant-At-Arms
Carpet, Linoleum, & Soft Tile
Local 1286

REGINALD CASTANARES

Trustee
Plumbers & Fitters Local 875

THADDEUS TOMEI

Elevator Constructors Local 128

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
Local 1944

RICHARD TAGGERE

Glaziers, Architectural Metal &
Glassworkers Local Union 1688

VAUGHN CHONG

Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221

GARY AYCOCK

Boilermakers, Ironship Builders
Local 627

LYNN KINNEY

District Council 50
Painters & Allied Trades
Local 1731

GALANI MAHOE

Operating Engineers Local 3

EDWARD SEBRESOS

International Assoc. of
Heat & Frost Insulators
Allied Workers Local 132

February 5, 2009

Honorable Representative Karl Rhoads, Chair
Honorable Representative Kyle T. Yamashita, Vice Chair
Members of the House Committee on Labor & Public Employment
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF HB 1280
RELATING TO LABOR
Hearing: Friday, February 6th, 2009, 8:30 a.m.

Dear Chair Rhoads, Vice Chair Yamashita 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.

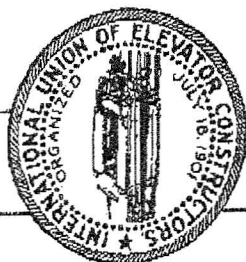
The Council **SUPPORTS** the passage of HB1280 that enacts the
responsible construction contractor law for government
procurements of construction projects.

A bidder's background, experience, and performance is crucial to
their success and the success of the project. HB1280 declares the
need to show proof of workers' compensation and medical
insurance, apprenticeship program, comply with prevailing wages,
provide a neutral process for resolving work-related issues, be
appropriately licensed, and commit to employing a percentage of
qualified Hawaii residents.

Thank you for the opportunity to submit this testimony in support
of HB1280.

Sincerely,

William "Buzz" Hong
Executive Director



LOCAL UNION NO. 126



OF THE
International Union of Elevator Constructors

AFFILIATED WITH THE AFL-CIO

SUITE 314, 707 ALAKEA STREET • HONOLULU, HI 96813 • TELEPHONE (808) 536-8653 • FAX (808) 537-3779

February 5, 2009

Honorable Representative Karl Rhoads, Chair
Honorable Representative Kyle T. Yamashita, Vice Chair
Members of the House Committee on Labor & Public Employment
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF HB 1280
RELATING TO LABOR
Hearing: Friday, February 6th, 2009, 8:30 a.m.

Dear Chair Rhoads, Vice Chair Yamashita and the House Committee on Labor & Public Employment:

My name is Thaddeus Tomel, Business Representative and Financial Secretary of the International Union of Elevator Constructors Local 126.

We SUPPORT the passage of HB1280 that enacts the responsible construction contractor law for government procurements of construction projects.

A contractor's background, experience, and performance is crucial to their success and the success of the project. HB1280 declares the need to show proof of workers' compensation and medical insurance, apprenticeship program, comply with prevailing wages, provide a neutral process for resolving work-related issues, be appropriately licensed, and commit to employing a percentage of qualified Hawaii residents.

Thank you for the opportunity to submit this testimony in support of HB1280.

Sincerely,

Thaddeus Tomel
Business Representative/Financial Secretary

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 4, 2009

TO: THE HONORABLE REPRESENTATIVE KARL RHOADS, CHAIR AND
MEMBERS OF THE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

SUBJECT: H.B. 1280, RELATING TO PROCUREMENT

NOTICE OF HEARING

DATE: Friday, February 06, 2009
TIME: 8:30 A.M.
PLACE: Conference Room 309

Dear Chair Rhoads and Members of the Committee on Labor & Public Employment:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (560) general contractors, subcontractors, and construction related firms, **opposes** the passage of H.B. 1280, Relating to Procurement.

The bill proposes to enact a new chapter in the Hawaii Revised Statutes to be called the Responsible Construction Contractor Law. The GCA believes many of the provisions proposed in the bill are already adequately covered in the existing statutes. Other provisions that are proposed are not practical, such as maintaining and participating in apprenticeship programs, because many small contractors do not have a workforce that would sustain an apprentice.

The proposed bill is unnecessary and duplicates many other provisions of the procurement statutes. Therefore, the GCA does not recommend that this bill be favorably considered.

The GCA is **opposed** to the passage of H.B. 1280, Relating to Procurement, and recommends that this bill not be passed.

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

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BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 6, 2009

8:30 a.m.

Honorable Karl Rhoads, Chair
Committee on Labor & Public Employment
State Capitol, Room 309
Honolulu, HI 96813

RE: HB 1280 Procurement; Responsible Contractor Law

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

I am Karen Nakamura, Executive Vice President and 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 is **strongly opposed to HB 1280**, "Relating to Procurement," (otherwise known as the Responsible Contractor Law) because of the increased burden that it places on all contractors and subcontractors at a time when they can least afford it. The public works budgets of the state and the counties cannot withstand significant increases in costs at any time, but most especially at this time. The bill increases costs and delays procurement, yet serves no public purpose. We also take exception to the term "Responsible Contractor Law," as it implies that contractors are not responsible and therefore need to be regulated further with unreasonable requirements.

BIA opposes this bill for the following reasons:

1. The bill appears to have been drafted to exempt collective bargaining agreements in general, thereby allowing union contractors to exempt themselves from the statute which would be illegal and unconstitutional as the statute would only apply to non-union contractors.
2. The bill is objectionable because it requires a "bona fide" Apprenticeship Program.
 - a. Chapter 372 is currently a voluntary program which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to any subcontracts **exceeding only \$25,000. Most Public Works projects will have at least some subcontracts that will exceed \$25,000.** The Okada Trucking case and its ramifications regarding subcontract work have brought this to light in significant disputes over its application.

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- b. It does not require unions to open their apprenticeship programs to all comers. In effect, this will currently prevent most non-union contractors and subcontractors from bidding on public works projects.
 - c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project.
 - d. It does not expedite and provide for the state registration of individual company apprenticeship programs. We are not aware of any single employer apprenticeship agreement that has been approved.
3. As written, the bill will require journeyman/apprenticeship ratios that will be dictated by current collective bargaining agreements/signatory agreements rather than by efficiency and cost effectiveness. This will result in a significant increase in costs to the State and to the Counties.
4. The bill also imposes additional health and medical insurance requirements which could be pre-empted by ERISA and would make all public works projects subject to a Court challenge that could bring the entire proposed stimulus package public works projects to a halt.
5. The bill also requires a vague and ambiguous “fair and neutral process for resolving work-related issues” which may require an employment agreement with a “grievance procedure” which is not spelled out in the proposed legislation.
6. It requires “certification under oath” on a **monthly basis**, and subjects the employer to penalties of perjury if the certification is incorrect. There is no knowledge, intent or recklessness requirement. This would be unreasonably burdensome to a contractor and subcontractor. The penalties are significant even if the error is inadvertent. It subjects a contractor to withholding of payments, suspension or even debarment.

Most significantly, this bill will automatically increase bid protests for non-compliance with these additional requirements since they are prerequisites to be eligible to bid on a public works project; i.e., the bidder will be disqualified even if they are the low bidder.

Because of the harmful effects this bill would have on our industry and on the State and Counties, we respectfully request that the bill be held.

Thank you for the opportunity to express our views.



Executive Vice President & Chief Executive Officer
BIA-Hawaii

February 5, 2009

Honorable Karl Rhoads, Chair
Committee on Labor & Public Employment
State Capitol, Room 309
Honolulu, HI 96813

RE: HB 1280 Procurement; Responsible Contractor Law

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

My name is John F. Metzler and I am a licensed General Building and General Engineering Contractor on the Big Island of Hawaii. We founded our business in 1976 and employ approximately 200 people plus many, many subcontractors and other vendors and suppliers, many of whom do business solely in the State of Hawaii.

Metzler Contracting Co. is **strongly opposed to HB 1280**, "Relating to Procurement," (otherwise known as the Responsible Contractor Law) because of the increased burden that it places on all contractors and subcontractors at a time when they can least afford it. The bill increases costs and delays procurement, yet serves no public purpose. We also take exception to the term "Responsible Contractor Law," as it implies that contractors are not responsible and therefore need to be regulated further with unreasonable requirements or, in the alternative, that some contractors are responsible and others are not, leaving the State to make that determination with no real objective criteria.

Metzler Contracting Co. and its employees oppose this bill for the following reasons:

1. The bill appears to have been drafted to exempt collective bargaining agreements in general, thereby allowing union contractors to exempt themselves from the statute. This is patently illegal and unconstitutional as the statute would only apply to merit based (also known as non-union) contractors.
2. The bill is objectionable because it requires a "bona fide" Apprenticeship Program.
 - a. Chapter 372 is currently a voluntary program which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to any subcontracts **exceeding only \$25,000. Most Public Works projects will have at least some subcontracts that will exceed \$25,000.** The Okada Trucking case and its ramifications regarding subcontract work have brought this to light in significant disputes over its application.
 - b. It does not require unions to open their apprenticeship programs to all comers. In effect, this will currently prevent most merit based (non-union) contractors and subcontractors from bidding on public works projects.
 - c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project.

MAILING ADDRESS: PO BOX 617 KAPA'AU, HAWAII 96755
PHYSICAL ADDRESS: 55 743 HAWI ROAD HAWI, HAWAII 96719
EMAIL: mail@metzlercontracting.com

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d. It does not expedite and provide for the state registration of individual company apprenticeship programs. We are not aware of any single employer apprenticeship agreement that has been approved.

3. As written, the bill will require journeyman/apprenticeship ratios that will be dictated by current collective bargaining agreements/signatory agreements rather than by efficiency and cost effectiveness. This will result in a significant increase in costs to the State and to the Counties.

4. The bill also imposes additional health and medical insurance requirements which could be preempted by ERISA and would make all public works projects subject to a Court challenge that could bring the entire proposed stimulus package public works projects to a halt.

5. The bill also requires a vague and ambiguous "fair and neutral process for resolving work-related issues" which may require an employment agreement with a "grievance procedure" which is not spelled out in the proposed legislation.

6. It requires "certification under oath" on a **monthly basis**, and subjects the employer to penalties of perjury if the certification is incorrect. There is no knowledge, intent or recklessness requirement. This would be unreasonably burdensome to all contractors and subcontractors. The penalties are significant even if the error is inadvertent. It subjects a contractor to withholding of payments, suspension or even debarment.

Most significantly, this bill will automatically increase bid protests for non-compliance with these additional requirements since they are prerequisites to be eligible to bid on a public works project; i.e., the bidder will be disqualified even if they are the low bidder.

Because of the harmful effects this bill would have on our industry and on the State and Counties, we respectfully request that the bill be held.

Sincerely,

//S//

John F. Metzler
Managing Member



Hawaii Chapter

House Committee on Labor and Public Employment
Friday, February 6th
House Conference Room 309

House Bill 1280--Relating to Procurement

Chairman Karl Rhoads, Vice-Chair Kyle Yamashita, Members of the Committee:

I am Karl Borgstrom, President of Associated Builders and Contractors Hawaii, a company-based organization of construction contractors, service providers, and suppliers dedicated to the free enterprise approach to construction contracting. **Associated Builders and Contractors Hawaii OPPOSES House Bill 1280.**

ABC Hawaii believes that HB 1280, the so-called "Responsible Construction Contractor Law" will place increased and unnecessary regulatory burdens and requirements on contractors and increase the cost of doing business without serving any purpose that benefits the people of the State of Hawaii.

The chapter will not apply to employees covered by a collective bargaining agreement if the chapter is expressly waived in the agreement – if there is going to be a Responsible Contractor Law, it should be applicable to union and non-union contractors, and not give one or the other an unfair advantage in the bidding process.

The requirement for an apprenticeship program applies to all projects, regardless of the need or applicability of apprentice-level employees on a project. Apprentice trades should be used and are used on projects in which the contractor or subcontractor has such a need and can employ them cost-effectively.

Many of the pre-requisites, such as the health and medical insurance requirements and a fair and neutral process of resolving work-related issues, are vague and ambiguous, which could cause delays and disputes that will be costly to both the State and contractors.

In closing, without any demonstrated or compelling reason for enacting such a law, and the likelihood that the administrative burdens and costs to the state and businesses will increase, we ask that this bill be deferred.

ABC Hawaii urges the Committee to vote NO on HB 1280!

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yamashita1- Kathy

From: Michael Fairall [mokulua_mike@yahoo.com]
Sent: Thursday, February 05, 2009 12:04 PM
To: LABtestimony
Subject: Testimony HB1280 - February 6, 2009 8:30 a.m

To Whom It May Concern;

This is my official testimony against HB1280, this bill is unfair to those who practice in construction and are non-union. There is a reason many contractors choose to be independent, for me it is due to the poor skills often found with union carpenters. It has been my experience that the majority of the most skilled and truly journeyman carpenters are not part of the union. I have worked with the union before and have had far better success outside of their reigns. By preventing independent contractors from bidding on public works projects you are essentially setting up a monopoly and limiting a fair and balanced bidding process. Independent contractors are no being sought on military contracts as they have proven to be more fair and better suited for the various needs of these projects. The unions have, in the past, been part of corrupt work and do not ensure a honest and quality job.

Again, my testimony is in opposition to HB1280 and taking away work from a plethora of long-standing, good natured contractors, who are in the business based on name and reputation, which is far harder to maintain than when unionized. The constitution assures all people the right to work on projects and earn a wage by taking this opportunity from independent contractors you are depriving the hardest working Americans from earning a living. Especially in this time of economic crisis it just makes sense to keep projects up for bid to all parties, ensuring a true and fair process.

Thank You,

Michael Fairall
Principal RME
Mokulua Woodworking, Ltd.
Lic. BC 28243
808-263-WOOD Office
808-263-9664 Fax

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To: Committee on Labor & Public Employment.
Time: Friday, February 6, 2009 at 8:30 a.m.
Place Conference Room 309

Re: HB 1280 Procurement; Responsible Contractor Law

Chair Rhoads; Vice Chair Yamashita and members of the Committee on Labor & Public Employment.

My name is Roy Ogawa and I am a lawyer and small business person. I am strongly opposed to HB 1280, "Relating to Procurement" (also referred to as the Responsible Contractor Law") because of the increased burden that it places upon Contractors and Subcontractors at a time when they can least afford it and at a time when the budget for Public Works Projects cannot withstand significant increases in costs and delays. Everyone is in favor of having "responsible contractors" but this bill does not further that end. The bill increases costs and delays procurement yet serves no pressing public purpose.

1. The "exemption by collective bargaining agreement" is nonsensical since Chapter 89 relates to Public Employers and Public Employees. However, it appears to have been drafted to exempt collective bargaining agreements in general thereby allowing union contractors to exempt themselves from the statute which would be illegal and unconstitutional as the statute would only apply to non-union contractors.
2. The bill is objectionable because it requires a "bona fide" Apprenticeship Program.
 - a. Chapter 372 on Apprenticeship is currently a voluntary registration program which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to any subcontracts exceeding only \$25,000. Most Public Works projects will have at least some subcontracts which will exceed \$25,000. The Okada Trucking case and its ramifications regarding subcontract work has brought this to light in significant disputes over its application.
 - b. It does not require the unions to open their apprenticeship programs to all comers. In effect this will currently prevent most non-union contractors and subcontractors from bidding on public works projects.
 - c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project, and
 - d. It does not expedite and provide for the state registration of individual company apprenticeship programs. I am not aware of any single employer apprenticeship agreement that has been approved.

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3. As written, the bill will require journeyman/apprenticeship ratios that will be dictated by the current collective bargaining agreements/signatory agreements rather than by efficiency and cost effectiveness. This will result in a significant increase in costs to the State and to the Counties.

4. The bill also imposes additional health and medical insurance requirements which could be pre-empted by ERISA and would make all Public Works projects subject to a Court challenge that could bring the entire proposed stimulus package public works projects to a halt.

5. The bill also requires a vague and ambiguous “fair and neutral process for resolving work-related issues” which may require an employment agreement with a “grievance procedure” which is not spelled out in the proposed legislation.

6. It requires “certification under oath” on a *monthly basis*, and subjects the employer to penalties of perjury if the certification is incorrect. There is no knowledge, intent or recklessness requirement. This would be unreasonably burdensome to a contractor and subcontractor. The penalties are significant even if the error is inadvertent. It subjects a contractor to withholding of payments, suspension or even debarment.

7. Most significantly it will automatically increase bid protests for non-compliance with these additional requirements since they are *prerequisites* to be eligible to bid on a public works project i.e. the bidder will be disqualified if they are the low bidder.

I respectfully request that this bill be held.

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

/s/ Roy Ogawa



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441
Fax: (808) 593-2149

The Twenty-Fifth Legislature
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 6, 2009

H.B. 1280 – RELATING TO PROCUREMENT

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 1280 which enacts the responsible construction contractor law for government procurements of construction projects in Hawaii.

No longer should responsible contractors be punished for complying with state labor laws in the bidding process. There must be greater penalties for contractors who consistently violate state labor laws. It is the only sensible way to act. Contractors who follow and obey the law should not have an unfair advantage to contractors who feel violating the law is perfectly fine to save money and bid low; only to hurt the responsible contractors.

As a result, H.B. 1280 would require that workers be trained or have been trained by a certified state department of labor approved apprenticeship training program, have a valid Hawaii state license, have complied with the state labor laws such as prevailing wages, workers' compensation, and the hiring of no illegal workers before bidding. In addition, H.B. 1280 would also require that bidders have a good safety record and commit to hiring Hawaii residents to compose not less than eighty percent of the workforce on the project.

These new stipulations will help level the playing field for all responsible contractors and help ensure that Hawaii workers are employed. Often times, outside bidders import workers with little or no training and put them in very poor housing. They are treated bad and paid very low wages because the contractors know that government enforcement is not strong. Therefore, H.B. 1280 is imperative to pass. It is time to put a stop to outside bidders violating state labor laws.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President