

Testimony In
Support of
HB1289 Related 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 the intent of HB1289, requiring all bidders for construction contracts \$100,000 or more, subject to chapter 103D, to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding.

It is well known that a highly trained work force is more productive, is more apt to prevent serious accidents and thus keep insurance costs low, keep workers relatively safe, and reduces down time. The construction industry is a dangerous vocation and is not a place for the untrained, undisciplined or inexperienced worker unless there is proper supervision and guidance.

The Laborers' Union maintains a relatively modern training facility at Pearl City, Oahu and provides selected training as needed, on the neighbor islands. Our staff of instructors are highly experienced journeymen and our apprentices under go a two-year, 4,000 hour training program.

Thank you for the opportunity to present this testimony.

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House of Representatives
Committee on Labor & Public Employment
February 6, 2009, Conference Room 309

Statement of the Hawaii Carpenters Union on H.B. 1289
Relating To Procurement

The Hawaii Carpenters Union strongly supports H.B. 1289, furthering construction craft training on public construction projects of \$100,000 or more. By passing this Bill, the legislature will:

- Provide now for the capacity to construct public works into the future.
- Contribute to the maintenance of a skilled work force for one of our main economic engines.
- Advance education public policy, and the long standing public-private partnership of apprenticeship.
- Bolster worker safety.

Without increasing labor costs, the benefits of our public construction funds can be maximized. The construction industry is suffering now, but recall not so long ago the clamor over a shortage of skilled construction workers, here and across the nation. The demand will rise again, as it did over the past ten years. Training must go on, if only in consideration of retirements and individual career changes.

Government, in both the Federal Davis-Bacon and Chapter 104, HRS, recognizes the importance of construction training, and therefore includes it in prevailing wage determinations. Since construction contractors already pay prevailing wages on public works projects, there is no increase in labor costs due to this Bill. In fact, labor costs can be reduced by participation in an approved apprenticeship program because lower apprentice rates are recognized in prevailing wage law.

Numerous contractors currently participating in apprenticeship programs do not have apprentices employed, or for that matter any employees, at the time of bidding, instead hiring them after signing a contract. That contractor also has the option of not employing any apprentices on any particular project.

Apprenticeship is an education and career option, in addition to that of seeking a college degree. The State has recognized this with an existing program-approval process, and is a partner through community college and other programs.

Apprenticeship also greatly advances construction job safety training, thereby preventing human tragedy, furthering State policy, and reducing construction costs.

We urge the passage of H.B. 1289, and it's earliest implementation. Thank you for considering our testimony.

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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. 1289
RELATING TO PROCUREMENT**

The ILWU Local 142 supports H.B. 1289, which requires all offerors and subcontractors for construction contracts subject to the state procurement code to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding.

When public monies are used, taxpayers will want the best value for their dollar. Apprenticeship programs will ensure that those working on public works projects are qualified and trained in their respective trade. A state-approved apprenticeship program will provide workers with the knowledge of the trade and help them develop the skills required for the trade on the job.

The ILWU urges passage of H.B. 1289. Thank you for considering our testimony.

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Hawaii State House of Representatives
Committee on Labor and Public Employment
Karl Rhoads, Chair
Kyle Yamashida, Vice-Chair

February 5, 2009

Re: Support of House Bill 1289

Aloha Chair Rhoads, Vice-Chair Yamashida and Committee Members,

On behalf of State Administrator Pane Meatoga Jr. of the Operating Engineers Joint Apprenticeship Committee, I Hamona Dowell instructor coordinator; testify in favor of House Bill 1289. This bill is a step in securing a skilled workforce.

Offerors will be making an investment to stabilize our industry with a skilled work force as they seek public funded projects. A bona fide, state-approved apprenticeship program meets and exceeds the requirements set forth by the U.S. Department of Labor.

I respectfully ask your support in passing House Bill 1289.

Sincerely

Hamona Lee Dowell
Instructor/Coordinator

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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. 1289, 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. 1289, Relating to Procurement.

Some examples of the vagueness of the bill are.

1. "Regular employee" is defined under HRS Section 393-3 (Prepaid Health Care Law) as one who works more than 20 hours per week. Does this mean all employees of a contractor or only those that work on the Project? It also appears to prohibit the use of independent contractors or temporary workers even if prevailing wages are paid.
2. Apprenticeship Program. The provision that a Contractor shall maintain an apprenticeship program is very broad.
 - a. Does that mean you can't use a carpenter, maintenance worker, window cleaner, janitor, clerk, etc. unless your company has an apprenticeship program for that employee?
 - b. What about the small contractor who may just have himself or one or two skilled workers—must he maintain an apprenticeship program for his company even if he never hires apprentices?
 - c. What about the sole proprietor? What apprenticeship programs does he/she need to maintain?

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d. What if you don't have a certified apprenticeship program because you use a licensed subcontractor or you don't have an agreement with every union, or it is a trade in which the Associated Builders and Contractors (ABC) does not have a State certified apprenticeship program. Does that mean you are not a qualified bidder and a protest can be filed?

e. The status of "employee" is vague because it's not limited to laborers and mechanics. Everyone must be a regular employee. Appears to imply cannot have independent contractors. What if you need temporary workers on a particular job?

f. Apprenticeship program is "vague" and broad and not appear to be confined to laborers and mechanics (which is in the prevailing wage statute). What about subcontractors hired to clean windows?

The GCA opposes the language of proposed Section 104-D Apprentice use on public works; requirements. This section requires that no less than fifteen per cent of labor hours on the project be performed by individuals enrolled in an apprenticeship program established under section 104-C. The State should not dictate the Contractors personnel makeup.

Section 104 of HRS relates to paying prevailing wages on public works projects. The GCA has no issue with this law. We are raising the issue of the advisability of adding a new section that would mean adding more costs to a public works project. The State cannot afford to have added costs to any of its projects.

The GCA is **opposed** to the passage of H.B. 1289, Relating to Procurement, and recommends that this bill not be passed.

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

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

Re: HB 1289 Procurement; State Approved Apprenticeship Program.

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 1289, "Relating to Procurement" (also referred to as the "Apprentice Relief Bill")** 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 a well trained workforce but this bill does not further that end. The bill increases costs and delays procurement yet serves no pressing public purpose.

1. The bill is objectionable because it requires a "bona fide, state-approved apprenticeship program".
 - a. Chapter 372 on Apprenticeship is currently a voluntary program for "**registration**" of apprenticeship agreements which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to subcontractors at any tier no matter how small. ***Does registration under Chapter 372 of an apprenticeship agreement mean that it is a "bona fide, state-approved apprenticeship program"?***
 - 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 until they can work through the procedures in place under Chapter 372.
 - c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project, (there is no exception for a sole proprietor or a small business of two or three owner employees).
 - 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 for registration; and,
 - e. It does not define an "apprenticeable trade" which would mean an job on a construction Project.

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2. 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.

3. Section 103D-310(d) does not state that it is limited to construction contracts, although that may have just been an oversight.

4. 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 small contractor and subcontractor. The penalties are significant even if the error is inadvertent. It subjects a contractor or subcontractor to withholding of payments, suspension or even debarment.

5. It appears to place an unreasonable burden upon the procuring officer to "police" the continuing work and verify compliance on a monthly basis.

6. 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. It 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.

I respectfully request that this bill be held.

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

/s/ Roy Ogawa

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