

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

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February 11, 2009

To: The Honorable Jon Riki Karamatsu, Chair
and Members of the House Committee on Judiciary

Date: Thursday, February 12, 2009

Time: 2:05 p.m.

Place: Conference Room 325
State Capitol

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

Re: H.B. No. 643, H.D. 1 - Relating to Contractors

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. No. 643, H.D. 1 establishes a new chapter in the Hawaii Revised Statutes ("HRS") that requires the Department of Labor and Industrial Relations ("DLIR") to police the construction industry's hiring of ineligible workers. Defines "ineligible worker" as a person who is "not eligible to work in the United States, provided by federal law."

H.D. 1 changed the employer's responsibility from "intentionally or knowingly employs" to requiring a certification of eligibility under public works. H.D.1 also added that a contractor shows good-faith if using E-verify to determine the status of employees.

The new chapter imposes a \$1,000 civil penalty for each ineligible worker employed by the contractor to be deposited into the contractors enforcement special fund created in the measure.

It also requires the DLIR to notify the Department of Commerce and Consumer Affairs ("DCCA") of violations so that the DCCA can suspend or revoke the violator's contractor's license.

Provisions are added to the procurement code that requires workers on public works to be eligible to work in the United States.

This bill is effective August 1, 2009.

II. CURRENT LAW

There is no requirement for the DLIR to check eligibility of employees to work in the United States.

III. HOUSE BILL

The Department opposes H.B. 643, H.D. 1 for the following reasons:

1. The Department defers to the testimony of the Attorney General and understands that federal law preempts the Department's authority to enforce the violations proposed by this measure.
2. This measure is targeting contractors who employ illegal aliens. Requiring the DLIR to make preliminary investigations and then making referrals to the Immigration and Customs enforcement agency ("ICE") will frustrate the purpose of the investigation by tipping off any potential violators and facilitate their opportunity to evade detection by those with authority to take any action.
3. This measure applies to both private and public construction, yet new provisions requiring certification added in H.D. 1, appear to only apply to public works.
4. The DLIR defers to the DCCA on the issues related to the licensing of the contractors.
5. The Department's policy is to ensure that all workers get paid what they are due. There is no distinction that workers are eligible to work in the United States. This policy works to protect workers from unscrupulous employers who may take advantage of individuals who may have other concerns that would keep them from reaching out for assistance.

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

House Committee on Judiciary
Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

HB643 HD1– RELATING TO CONTRACTORS
Thursday, February 12, 2009
2:05 pm
Conference Room 325

Chair Karamatsu and Members of the House Committee on Judiciary:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

Purpose:

- The purpose of this bill is to help to recover more jobs for our local citizens by discouraging those unscrupulous employers who would choose to exploit illegal workers and cheat our local citizens out of gainful employment in tough economic times for the sake of “padding” a bottom line.
- A further reason that this bill is to recognize that it is in the best interest of the State of Hawaii and its counties to have any and all of its projects completed in a safe and timely manner. Therefore, the presence of undocumented workers employed by a contractor on any state project could seriously jeopardize the quality, safety procedures, and timely delivery of the project.
 1. Quality: Unsure about qualifications of undocumented workers.
 2. Safety: Many undocumented workers are from countries that don't have as progressive attitudes toward safety as we do in our state.
 3. Timeliness: Any raid for undocumented workers on any state or county project will result in delay to the production schedule.

Background:

- Between December 2007 and December 2008 at least 168 illegal undocumented workers were arrested in our state.
- Of this number, 103 (or 61%) were employed in the construction industry.

- Of these projects one main general contractor was associated with 3 different raids on local projects. All involving sub-contractors who have hired illegal aliens.
- The U.S. Attorney's office has active investigations still open on these companies, and has been extremely responsive with regard to helping to "round up" illegal workers and prosecute those who have facilitated their employment.
- To date, we are unaware of any enforcement activity or otherwise taken by the State with regard to these projects. It is our position that The State of Hawaii can directly affect those who profit from these actions, the companies themselves, because the state holds power over contracting on its own projects. Further, the state has the power to directly affect the licensing of the "bad players" directly affecting their ability to do business in Hawaii.

Research:

- In March 2005, The Pew Hispanic Center released a study that estimated that Hawaii's illegal immigrant population was in the neighborhood of 20,000 – 35,000.
- A follow up study by the Pew Hispanic Center in April of 2006, indicated that the construction industry was the largest employer of short-term illegal workers, estimating that overall the construction industry employs around 1.4M unauthorized workers or 12% of our industry's workforce.¹

With over 3,000 able bodied and trained construction workers statewide available to contribute to Hawaii's economy, we strongly believe that dialogue and conversation between the stakeholders would be beneficial for Hawaii's Construction Industry, as well as the general community. To that end, PRP respectfully asks that the legislation remain alive to ensure that purpose can be fulfilled. We respectfully ask for your favorable consideration of HB643 HD1. Thank you for the opportunity to share our views with you.

¹ See Pew Hispanic Center; The Labor Force Status of Short-Term Unauthorized Workers, April 13, 2006.

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