

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 2, 2009

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Tuesday, March 3, 2009
Time: 1:00 p.m.
Place: Conference Room 308
State Capitol

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

Re: H.B. No. 643, H.D. 2 - Relating to Contractors

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. No. 643, H.D. 2 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.

H.D. 2 changed the effective date to January 1, 2046.

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

H.B. No. 643, H.D. 2

March 2, 2009

Page 2

license.

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

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. 2 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.



HAWAI`I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 3, 2009
Rm. 308, 1:00 p.m.

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

From: Coral Wong Pietsch, Chair
and the Commissioners of the Hawai`i Civil Rights Commission

RE: H.B. No. 643, H.D. 2

The Hawai`i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai`i's laws prohibiting discrimination in employment, housing, public accommodations, and access to State and State-funded services. The HCRC carries out the Hawai`i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sect. 5.

The HCRC opposes H.B. No. 643, H.D. 2 which would create a new chapter in the Hawai`i Revised Statutes, prohibiting contractors from employing workers who are not eligible to work in the United States. The bill proposes penalties for contractors who violate the new prohibition in the form of disqualification from state public works projects, fines, and loss of license.

The reasons for HCRC opposition to H.B. 643, H.D. 2, are two-fold:

- 1) Under the U.S. Constitution, enforcement of immigration laws is exclusively within the authority of the federal government, and state intrusions into this area

are preempted. With regard to immigration law and policy, including authorization to work and employer sanctions, there should be only one national standard – the federal law. The proposed statutes would result in inappropriate applications of federal law standards in state law contexts, requiring state agencies and courts to interpret complex federal laws that are better left to the appropriate federal agencies for enforcement.

- 2) The proposed prohibition and penalties create a likelihood of increased ancestry / national origin discrimination in employment. If contractors face the serious penalties under state law as proposed in addition to the sanctions faced under federal law, affecting their eligibility for public works contracts, contractors' licenses and livelihood, it will encourage them to avoid the potential penalties by not hiring workers who appear to be non-native, foreign-born, or immigrant. This will result in unlawful discrimination against those whose language, accent, or other characteristics are not typically "American," creating a climate of discrimination against immigrant workers.

The HCRC opposes H.B. No. 643, H.D. 2, and urges the Committee to hold this measure.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, March 3, 2009
1:00 p.m.

TESTIMONY ON HOUSE BILL NO. 643, H.D. 2, RELATING TO CONTRACTORS.

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Denny Sadowski, Legislative Committee Chair of the Contractors License Board ("Board"). The Board appreciates the opportunity to present testimony on House Bill No. 643, H.D. 2, which authorizes the Board to discipline a licensee for knowingly hiring an ineligible worker on a public works project.

The Board supports the intent of the bill, which is to prevent employers from hiring ineligible workers; however, we question the need for specific penalties for contractors. There are federal statutes and enforcement agencies already in place to address this issue, and employers must submit employment verification forms indicating that the individual is authorized to work in the U.S. We feel that any employer using ineligible workers should be dealt with by the proper authorities, whether or not the employer is a contractor, and regardless of whether the employee was hired for a public works project.

Thank you for the opportunity to testify on House Bill No. 643, H.D. 2.

The Pacific Resource
PARTNERSHIP



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

House Committee on Finance
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

HB 643, HD2 – RELATING TO CONTRACTORS

Tuesday, March 3, 2009

1:00 pm

Conference Room 308

Chair Oshiro, Vice Chair Lee and Members of the House Committee on Finance:

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. PRP strongly supports HB 643, HD2 – Relating to Contractors for the following reasons:

- Our fight is not against the illegal aliens who come here to try to make a living. Our state is made up primarily of those who have come here at one time or another from other countries. Our cause is targeted against those employers who seek to “cheat” our local people out of gainful employment and exploit illegal labor in these tough economic times for the sake of their “bottom line”.
- To date, our state has only one actual law that prohibits the hiring of illegal aliens. This is Act 52 signed into law on May 1, 2007 that basically states: The State and Counties shall only hire workers who are citizens or are legally authorized to work in the U.S.¹
- Because of undocumented status, immigrants are subject to many abuses by employers such as lack of safety training, physical and psychological abuse from employers; they have no one to turn to for help since they are in the country illegally. Seeking help would jeopardize their ability to remain in the states illegally to work. Here in Hawaii, we have seen abuses on undocumented workers by their employers ranging from abhorrent living conditions such as: the case with the Pinnacle Condominiums where there reports of these illegals being housed at an industrial warehouse in Halawa Valley, to over 40 people being crammed into 4 small apartments in Waipahu, as was the case with The Farms raid last year.
- We also have reports that the undocumented workers are being paid sub-standard wages at almost 70% less than what a local unionized carpenter would make for the same type of work. (Based on approx \$51.00/hr wage + fringe for a unionized carpenter vs. \$7.00/hr

¹ Act 52 signed into law May 1, 2007. Formerly HB 1750 HB 2 SD 1.

Testimony of C. Mike Kido
HB643, HD2 - RELATING TO CONTRACTORS
Page 2

for an undocumented worker). There are also UNCONFIRMED reports that one tactic of these unscrupulous employers is to hire illegal workers at a higher, more competitive rate of pay and when they get to the islands, they fire the illegal worker leaving them stranded. They are then offered to be hired back by the same company at a rate that is far less than what was initially agreed on. Because of Hawaii's geographic location, the illegal workers are "forced" to accept these new terms.

- Many of these undocumented workers also get paid in cash, thereby avoiding income tax contributions that the rest of us pay that goes to support our schools and other social and infrastructure services.
- Nearly 30% of unionized carpenters statewide are unemployed, and nearly 50% of all outer-island carpenters are unemployed. The hiring of illegal aliens "cheats" our local people from obtaining good paying work to support their families.
- Hiring of illegal workers cheats those who wish to enter our country legally out of opportunities to work. Unscrupulous employers steal jobs away from conscientious law abiding emigrants.
- There is also a public safety concern as we cannot be sure that these workers are aware or trained in the most up-to-date building techniques as our own unionized contractors are.

Thank you for the opportunity to share our views with you and we respectfully ask for your consideration on HB 643, HD2.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
CENTURY PACIFIC DESIGN CENTER, STE. 215A • 680 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI
President
Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement
Masons Local 630

March 3, 2009

JOSEPH O'DONNELL
Vice President
Iron Workers Local 625

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
Members of the House Committee on Finance
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

DAMIEN T. K. KIM
Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

ARTHUR TOLENTINO
Treasurer
Sheet Metal Workers I.A. Local 293

RE: IN SUPPORT OF HB 643, HD2
RELATING TO CONTRACTORS.
Hearing: Tuesday, March 3, 2009, 1:00 p.m., Conf. Room 308

MALCOLM K. AHLGREN
Sergeant-At-Arms
Carpet, Linoleum, & Soft Tile
Local 1298

Dear Chair Oshiro, Vice Chair Lee and the House Committee on Finance:

RONALD CASTANARES
Painters & Filers Local 675

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.

THADDEUS TOMEI
Elevator Constructors Local 126

The Council **SUPPORTS** the passage of HB 643, HD2 that authorizes the Contractors License Board to suspend, revoke, or refuse to renew a contractor's license for employing a worker on a public work project who is ineligible to work in the United States under federal law.

JOSEPH BAZEMORE
Drywall, Tapers, & Finishers
Local 1944

Thank you for the opportunity to submit this testimony in support of HB 643, HD2.

RICHARD TAGGERE
Glaziers, Architectural Metal &
Glassworkers Local Union 1889

Sincerely,

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

William "Buzz" Hong
Executive Director

MARY AYCOCK
Scaffolding, Ironship Builders
Local 627

LYNN KINNEY
District Council 50
Painters & Allied Trades
Local 1791

WBH/dg

ALANI MAHOE
Operating Engineers Local 3

EDWARD SEBRESOS
National Assoc. of
Electrical Insulators
Allied Workers Local 132



The Twenty-Fifth Legislature
Regular Session of 2009

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308
Tuesday, March 3, 2009; 1:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 643, HD2
RELATING TO CONTRACTORS**

The ILWU Local 142 supports H.B. 643, HD2, which authorizes the Contractors License Board to suspend, revoke, or refuse to renew a contractor's license for employing a worker on a public works project who is ineligible to work in the U.S. under federal law.

All employers should obey the law. Since the Immigration Reform and Control Act was passed in 1986, employers have been required to certify that their employees are legally authorized to work in this country. Each employee must complete and submit to the employer an I-9 form and show proof of U.S. citizenship or lawful permission to work in the U.S.

H.B. 643, HD2 will serve to reinforce what federal law already provides for and will deny contractors their own license to work on public works project for violation of the law. We believe that any contractor who violates the law that prohibits hiring of undocumented aliens should have their licenses revoked for work on any project.

While we understand the desire for workers from other countries to come to the U.S. for work, employers who allow them to work on their projects knowing they either have no documents or their documents are not valid should be penalized for violating the law. These employers are not only exploiting foreign workers but are depriving U.S. citizens and others who have legal authorization to work the opportunity for gainful employment. The livelihoods of these employers should be affected by their actions.

The ILWU urges passage of H.B. 643, HD2. Thank you for considering our testimony.

Hawaii Immigrant Justice Center

(Formerly known as Na Loio)

Serving Hawaii's Immigrant Families and Children

To : Finance Committee
From : Robin H. Kobayashi, Hawaii Immigrant Justice Center
RE : **Testimony Opposing HB 643**

The Hawaii Immigrant Justice Center ("Justice Center"), formerly known as Na Loio, opposes HB 643.

- Hawaii has the third largest immigrant population per capita in the United States. One in five Hawaii residents is born outside this country according to the 2000 U.S. Census. A majority of these individuals are entitled to work legally in the U.S. – more than half of all immigrants are naturalized citizens and even more have Green Cards, Visas, or other legal authority to work lawfully. Federation for American Immigration Reform, *Extended Immigration Data for Hawaii* (2007).
- Hawaii has the second largest immigrant stock, which is immigrants and children born to immigrants in the United States, at 35.7% or about 433,000 individuals of Hawaii's overall population. *Id.*
- Hawaii does not have a large undocumented immigrant population. The Pew Hispanic Center estimates that Hawaii has more undocumented workers than only 9 other states in the Union. The Federation for Immigration Reform estimates that only 3,000 individuals are undocumented immigrants in Hawaii. *Id.*
- HB 643 does not provide any meaningful way for employers to check that employees are truly documented. HB 643 imposes harsh penalties for hiring undocumented workers, but undocumented workers constitute a vast minority of immigrants. The result will only be more pervasive employment discrimination against those who *appear* "foreign," and thereby undocumented, but who actually have a legal right to work in the United States.
- HB 643 is redundant of and preempted by the Federal government's requirement that all employer require every employee to complete and submit an I-9 Employment Verification Form.

Because eligibility is already mandated and the number of undocumented workers is so small in Hawaii, HB 643 levies a heavy hand to a small problem. Consequently, this bill

only reeks of an anti-immigrant sentiment that insults this State's rich tradition that is rooted in the immigrant experience. Please do not pass this bill.

Testimony In Support of HB643 HD2
Relating to Contractors

By

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

To the Committee on Finance
Tuesday, March 3, 2009, 1:00 p.m.
Room 308, State Capitol

Chair Marcus Oshiro, Vice Chair Marilyn Lee and Members of the Committee:

The Laborers' Union is in support of HB643 HD2 authorizing the Contractor's Licensing Board to suspend, revoke, or refuse to renew a contractor's license for employing a worker on a public work project who is ineligible to work in the United States under federal law.

At the outset, the Laborers' Union strongly supports the human rights of all workers to seek legitimate work, provide for their families in food, shelter, clothing, education and security, as we all desire. We are against those employers that willfully and knowingly abuse these workers and who entice desperate, ineligible workers to break the laws. It is the ineligible employee that is arrested and prosecuted, not the employer. Federal enforcement is wanting although several recent raids have been made in the past year. There is no enforcement by the DLIR on ineligible workers due to the lack of authority.

Along with this measure, there must be increased enforcement and monitoring of public contracts by the DLIR. We are concerned that the DLIR, who are performing as well as can be with budget cuts, will not be able to monitor the hundreds of projects coming on line to meet the requirements of the American Recovery and Reinvestment Act of 2009 timetable to expend and or obligate these funds.

This bill will provide some authority and consequence through the Contractors Licensing Board.

Thank you for the opportunity to present this testimony.