

STAND. COM. REP. NO.

913

Honolulu, Hawaii

March 6, 2009

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

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 643, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CONTRACTORS,"

begs leave to report as follows:

The purpose of this bill is to protect worker rights by allowing the Contractors Licensing Board to revoke, suspend, or refuse to renew the license of a contractor who knowingly employs individuals who are ineligible for employment within the United States on public works contracts.

The Laborers' International Union of North America Local 368, ILWU Local 142, Hawaii Building and Construction Trades Council AFL-CIO, and Pacific Resource Partnership supported this bill. DLIR, the Hawaii Civil Rights Commission, and Hawaii Immigrant Justice Center opposed this measure. The Contractors License Board submitted comments.

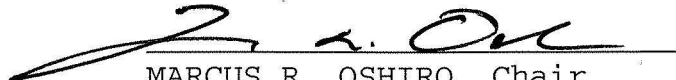
As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 643, H.D. 2, and recommends that it pass Third Reading.

HB643 HD2 HSCR FIN HMS 2009-2750



913

Respectfully submitted on  
behalf of the members of the  
Committee on Finance,

  
MARCUS R. OSHIRO, Chair



State of Hawaii  
House of Representatives  
The Twenty-fifth Legislature

HSCR 913

**Record of Votes of the Committee on Finance**

<b>Bill/Resolution No.:</b> HB 643, HD 2	<b>Committee Referral:</b> LAB, JWD, FIN	<b>Date:</b> March 3 <sup>rd</sup> , 2009		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input checked="" type="checkbox"/> Pass, unamended (as is) <input type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. AQUINO, Henry J.C.	✓			
4. AWANA, Karen Leinani	✓			
5. BROWER, Tom	✓			
6. CHOY, Isaac W.	✓			
7. COFFMAN, Denny	✓			
8. HAR, Sharon E.	✓			
9. KEITH-AGARAN, Gilbert S.C.	✓			
10. LEE, Chris	✓			
11. NISHIMOTO, Scott Y.	✓			
12. SAGUM, Roland D., III	✓			
13. TOKIOKA, James Kunane	✓			
14. WOOLEY, Jessica	✓			
15. YAMASHITA, Kyle T.	✓			
16. PINE, Kymberly Marcos		✓		
17. WARD, Gene	✓			
<b>TOTAL (17)</b>	16	1	0	0
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 0.8em;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b> <u>Marilyn B. Lee</u>				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office      Duplicate (Pink) – HMSO				

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# A BILL FOR AN ACT

RELATING TO CONTRACTORS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 444-17, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§444-17 Revocation, suspension, and renewal of licenses.**

4 In addition to any other actions authorized by law, the board  
5 may revoke any license issued pursuant to this section, or  
6 suspend the right of a licensee to use a license, or refuse to  
7 renew a license for any cause authorized by law, including [~~but~~  
8 ~~not limited to the following~~]:

- 9           (1) Any dishonest, fraudulent, or deceitful act as a  
10 contractor that causes substantial damage to another;
- 11           (2) Engaging in any unfair or deceptive act or practice as  
12 prohibited by section 480-2;
- 13           (3) Abandonment of any construction project or operation  
14 without reasonable or legal excuse;
- 15           (4) Wilful diversion of funds or property received for  
16 prosecution or completion of a specific construction  
17 project or operation, or for a specified purpose in  
18 the prosecution or completion of any construction



- 1 project or operation, and the use thereof for any  
2 other purpose;
- 3 (5) Wilful departure from, or wilful disregard of plans or  
4 specifications in any material respect without consent  
5 of the owner or the owner's duly authorized  
6 representative, that is prejudicial to a person  
7 entitled to have the construction project or operation  
8 completed in accordance with those plans and  
9 specifications;
- 10 (6) Wilful violation of any law of the State, or any  
11 county, relating to building, including any violation  
12 of any applicable rule of the department of health, or  
13 of any applicable safety or labor law;
- 14 (7) Failure to make and keep records showing all  
15 contracts, documents, records, receipts, and  
16 disbursements by a licensee of all the licensee's  
17 transactions as a contractor for a period of not less  
18 than three years after completion of any construction  
19 project or operation to which the records refer or to  
20 permit inspection of those records by the board;
- 21 (8) When the licensee being a partnership or a joint  
22 venture permits any partner, member, or employee of



1 the partnership or joint venture who does not hold a  
2 license to have the direct management of the  
3 contracting business thereof;

4 (9) When the licensee being a corporation permits any  
5 officer or employee of the corporation who does not  
6 hold a license to have the direct management of the  
7 contracting business thereof;

8 (10) Misrepresentation of a material fact by an applicant  
9 in obtaining a license;

10 (11) Failure of a licensee to complete in a material  
11 respect any construction project or operation for the  
12 agreed price if the failure is without legal excuse;

13 (12) Wilful failure in any material respect to comply with  
14 this chapter or the rules adopted pursuant thereto;

15 (13) Wilful failure or refusal to prosecute a project or  
16 operation to completion with reasonable diligence;

17 (14) Wilful failure to pay when due a debt incurred for  
18 services or materials rendered or purchased in  
19 connection with the licensee's operations as a  
20 contractor when the licensee has the ability to pay or  
21 when the licensee has received sufficient funds  
22 therefor as payment for the particular operation for



1           which the services or materials were rendered or  
2           purchased;

3           (15) The false denial of any debt due or the validity of  
4           the claim therefor with intent to secure for a  
5           licensee, the licensee's employer, or other person,  
6           any discount of the debt or with intent to hinder,  
7           delay, or defraud the person to whom the debt is due;

8           (16) Failure to secure or maintain workers' compensation  
9           insurance, unless the licensee is authorized to act as  
10          a self-insurer under chapter 386 or is excluded from  
11          the requirements of chapter 386;

12          (17) Entering into a contract with an unlicensed contractor  
13          involving work or activity for the performance of  
14          which licensing is required under this chapter;

15          (18) Performing service on a residential or commercial air  
16          conditioner, [~~utilizing~~] using CFCs, without using  
17          refrigerant recovery and recycling equipment;

18          (19) Performing service on any air conditioner after  
19          January 1, 1994, without successful completion of an  
20          appropriate training course in the recovery and  
21          recycling of CFC and HCFC refrigerants, which included  
22          instruction in the proper use of refrigerant recovery



- 1           and recycling equipment that is certified by
- 2           Underwriters Laboratories, Incorporated;
- 3       (20) Violating chapter 342C; [~~and~~]
- 4       (21) Failure to pay delinquent taxes, interest, and
- 5           penalties assessed under chapter 237 that relate to
- 6           the business of contracting, or to comply with the
- 7           terms of a conditional payment plan with the
- 8           department of taxation for the payment of such
- 9           delinquent taxes, interest, and penalties[-]; and
- 10       (22) Knowingly or intentionally employing a person to
- 11           perform work under a contract subject to chapter 104
- 12           who is not eligible to work in the United States under
- 13           federal law."

14           SECTION 2. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16           SECTION 3. This Act shall take effect on January 1, 2046.





**Report Title:**

Contractors; Public Works Projects; Ineligible Employees

**Description:**

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. (HB643 HD2)



**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON COMMERCE  
AND CONSUMER PROTECTION

AND

TO THE SENATE COMMITTEE ON LABOR

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, March 23, 2009  
10:15 a.m.

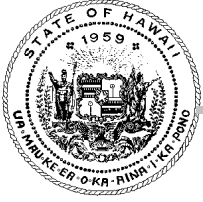
**TESTIMONY ON HOUSE BILL NO. 643, H.D.2, RELATING TO CONTRACTORS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND  
TO THE HONORABLE DWIGHT Y. TAKAMINE, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

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.



# HAWAI`I CIVIL RIGHTS COMMISSION

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

March 23, 2009  
Rm. 229, 10:15 a.m.

To: The Honorable Rosalyn Baker, Chair  
The Honorable Dwight Takamine, Chair  
and Members of the Senate Committees on Commerce and Consumer  
Protection and Labor

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, in its current form, would amend Hawai`i Revised Statutes § 444-17 to subject public works contractors who knowingly or intentionally employ workers who are not eligible to work in the United States to license revocation, suspension, or refusal to renew.

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

- 1) The proposed statute would result in the application 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 license revocation 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 Committees to hold this measure.



Testimony of C. Mike Kido  
External Affairs  
The Pacific Resource Partnership  
Committee on Commerce and Consumer Protection  
Senator Rosalyn Baker, Chair  
Senator David Ige, Vice Chair

Committee on Labor  
Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice Chair

HB 643, HD2 – RELATING TO CONTRACTORS  
Monday, March 23, 2009  
10:15 a.m.  
Conference Room 229

Chair Baker, Vice Chair Ige, Chair Takamine, Vice Chair Taniguchi, Members of the Committee on Commerce and Consumer Protection and Members of the Committee on Labor:

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. The Bill would authorize 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. We support this bill for the following reasons:

- On May 1, 2007, Governor Lingle signed Act 52 into law prohibiting the State and its counties from hiring illegal and/or undocumented workers.
- In December of the same year, 19 illegal workers were arrested at The Pinnacle condominium located in downtown Honolulu, and another 11 being housed at a warehouse in Halawa Industrial Park.
- In 2008, an additional estimated 150 and illegal or undocumented workers were arrested across our state. Of this number 127 of the illegal workers were employed in the construction industry.
- Since the occurrence of these raids, the DCCA and its licensing entities have been silent on this issue, and have shown no sign of taking any action against the licenses of these unscrupulous contractors who take part in the illegal and morally bankrupt business practice of hiring illegal aliens.

- In 2005, The Pew Hispanic Center produced a study that estimated the illegal immigrant population in Hawaii to be approximately 20-35 thousand. In January of 2009, the U.S. Bureau of Labor Statistics estimated the number of unemployed people in our state to be approximated 39,000. Therefore, companies who are hiring illegal workers in our state are taking gainful employment away from our local workers who are struggling to keep food on their families tables, pay their bills, and keep their homes.
- HB 643 HD 2 adds to the list of actionable items given to the DCCA and its licensing boards that can be used to affect the license status of unscrupulous employers.
- HB 643 HD 2 does not raise issues of federal preemption as this Bill addresses only the ability of the state to affect the business and professional or vocational licenses of unscrupulous employers. A function that rest soundly within the State's powers.
- The intent of HB 643 HD 2 is not to have negative effect on employers found to have illegal or undocumented workers in their employment, BUT only to affect those employers who INTENTIONALLY OR KNOWINGLY hire these workers.
- HB 643 is not intended to require employers test the veracity of the documents presented to them by their employees beyond what is on the face of the documents presented for federal I-9 recordkeeping purposes. However, if a contractor wishes to be sure that his employee is cleared to work in the U.S. it is recommended that the contractor consult the free federal service e-Verify provided online by the Department of Homeland Security.

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



March 23, 2009

Senator Rosalyn Baker, Chair  
Committee on Commerce and Consumer Protection  
Senator Dwight Takamine, Chair  
Committee on Labor  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: HB 643, HD2 Relating to Contractors**

Dear Chairs Baker and Takamine and Members of the Committees on Commerce and Consumer Protection and Labor:

I am Karen Nakamura, 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 would like to offer comments on HB643, HD2 Relating to Contractors.

BIA-Hawaii believes that this bill is unnecessary to carry out the objective of this bill—enforcement of the Act making it unlawful to employ unauthorized aliens and requiring employers to verify employment eligibility of employees. The Immigration and Nationality Act already does this. Enacting HB643, HD2 would be duplicative effort.

If it is the decision of the Legislature to pursue the enactment of this bill, BIA-Hawaii requests the retention of the provision requiring that a contractor must “knowingly and intentionally” employ an ineligible worker before it is determined to be a violation as represented in HD2. This provision would be consistent with Federal Law and is a safeguard for the responsible licensed contractor. If this safeguard is removed, licensed contractors who follow the law and are not in violation of the Immigration and Nationality Act would still be subject to a revocation and suspension of their licenses.

We do not believe this bill is necessary in order to deter licensed contractors from hiring undocumented or ineligible workers as this is covered by Federal Law.

Thank you for the opportunity to express our views.

A handwritten signature in cursive script that reads "Karen L. Nakamura".

Chief Executive Officer, BIA-Hawaii

The Senate  
The Twenty Fifth Legislature  
Committees on Commerce and Consumer  
Protection and on Labor  
March 23, 2009, 10:15 a.m.  
Conference Room 229

Statement of the Hawaii Carpenters Union on H.B. 643, HD2

The Hawaii Carpenters Union supports the intent of H.B. 643, HD2, noting that it has undergone considerable amendment.

HRS 444-17 already provides for the loss of a contracting license for "...willful violation of any law of the State...", and in 2007 Act 52 limited hiring by the State and Counties to workers legally authorized to work in the U.S. Chapter 103D requires contractors bidding on public works to comply with all laws. H.B 643 bridges these policies to cover employment on public works, while protecting contractors unless they "Knowingly or intentionally..." commit a violation.

Temporary project by project employment, and subcontracting practices in the construction industry provide fertile ground for violations of labor, tax, insurance and other laws. There is a growing realization across the nation that in both public and private sector construction, workers are misclassified as independent contractors, or are completely "off the books". In this way, workers both legally authorized and not authorized to work in the U.S. are cheated, and millions of dollars in tax revenues are lost to each State and the Federal government.

A presumption that individuals performing work in Hawaii are employees, requiring equal treatment under labor standards, income tax, unemployment insurance, workers compensation insurance, social security and medicare, healthcare, and other laws, unless otherwise proven, should be reinstated in this Bill. This would cover the most common method of exploitation of unauthorized workers, as well as authorized workers.

Short of that, we would hope this Bill will orient State agencies to the problem, and to develop practices of mobilizing to investigate employers when Federal action is taken, or questionable "cash pay" arrangements become known. An interdepartmental task force to enforce existing laws would be a good start.

Thank you for considering our testimony.



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 Senate Committee on Commerce and Consumer Protection  
And Senate Committee on Labor  
Monday, March 23, 2009, 10:15 a.m.  
Room 229, State Capitol

Chair Rosalyn Baker, Chair Dwight Takamine and Members of the Committees:

The Laborers' Union supports 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.

We strongly support the rights of all workers to seek legitimate work, provide food, shelter, clothing, education and security for their families. We are against those employers who willfully and knowingly abuse ineligible workers and who entice desperate, ineligible workers to break the laws with them. We are against employers that willfully deprive eligible Hawaii workers, unemployed locals and immigrants who pay taxes in Hawaii, out of jobs they are qualified to perform.

Act 52, signed into law on May 1, 2007 (formerly HB1750, SD2) requires the State and counties to hire only workers who are citizens or legally authorized to work in the U.S. Thus, government policy already exists to not hire ineligible workers.

This bill (HB643, HD2) will establish a similar policy for private contractors by subjecting their license to HRS 444-17 to revocation, suspension or non-renewal for knowingly or intentionally employing a person to perform work under contract subject to chapter 104 who is not eligible to work in the U.S. under federal law. Contractors have a means to ascertain the eligibility of applicants before they are hired by utilizing the E-Verify system of the federal government now in operation. There is little or no cost. Opponents may categorize this action as an "immigration" function and thus, falls under the purview of the federal government. We disagree. It is a Human Resource function and a special and convenient HR tool as in any pre-employment review situation.

The December 2008 unemployment report indicated that there were some 4,500 unemployed construction workers in Hawaii. The March 2009 UHERO report projects that there will be about 9,000 unemployed construction workers over the next two years. Today, there exists several thousand carpenters, plumbers, laborers, masons, engineers, painters, iron workers, drywall workers, heavy equipment operators, apprentices, support personnel etc. looking for work in Hawaii. They need your help through this bill.

Thank you for the opportunity to present this testimony in support of this bill.

**COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**Senator Rosalyn H. Baker, Chair**

**Senator David Y. Ige, Vice Chair**

**COMMITTEE ON LABOR**

**Senator Dwight Y. Takamine, Chair**

**Senator Brian T. Taniguchi, Vice Chair**

**HEARING:**

**DATE: Monday, March 23, 2009**

**TIME: 10:15 A.M.**

**PLACE: Conference Room 229  
State Capitol**

**Re: HB 643 HD2 Relating to Contractors; Employment of Ineligible Workers**

My name is Roy Ogawa and I thank you for the opportunity to provide written testimony.

**HB 643 HD 1 is unnecessary and duplicative as the Immigration and Nationality Act already makes it unlawful to employ unauthorized aliens and requires all employers to verify employment eligibility of employees.**

**8 U.S.C. § 1324a. Unlawful employment of aliens**

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity--

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien **knowing the alien is an unauthorized alien** (as defined in subsection (h)(3) of this section) with respect to such employment,...

\* \* \*

(h) Miscellaneous provisions

\* \* \*

**(2) Preemption**

**The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.**

Section 1324a (h) (2) clearly preempts any State or local law imposing civil or criminal sanctions for employment of unauthorized aliens. Furthermore, since the determination

of “unauthorized aliens” is made under Federal Immigration laws no action could be taken until a determination is made under Federal law.

The bill as written only serves to put “pressure” on contractors on public works projects to avoid the hiring of minority workers or face the loss of its contractor’s license months or years down the road when a final determination is made by Immigration and Customs Enforcement. In the meantime every public works project would be subject to protest on the grounds that the Contractor is subject to a “pending investigation” in violation of the Statute. In addition there has been much unfounded speculation regarding the illegal hiring of “undocumented workers”. ***There is no credible evidence to support the allegations that licensed contractors in Hawaii are hiring workers who have no documents as they must all comply with Federal laws requiring the completion of the Federal Form I-9.*** Construction workers in Hawaii are out of jobs primarily because of the horrible economy and the imposition of additional rules and regulations only serves to increase the costs of construction which results in fewer construction projects or higher costs to the State and Counties in their procurement of public works projects.

HD 2 as presently proposed, at least makes the hiring of employees not eligible to work in the United States a license violation only if the hiring is “knowing or intentional”. This is consistent with the Federal Immigration laws as stated above. This is an important safeguard for responsible licensed contractor. Without this safeguard licensed contractors would be subject to a licensing infraction even if they have followed the requirements for the completion of the Federal Form I-9 and have no knowledge that the Form I-9 documentation provided may have been falsified. If the safeguard is removed then licensed contractors who followed the law and were not in violation of the Immigration and Nationality Act would still be subject to a revocation or suspension of its license.

As originally written, HB 643 HD1 would have forced a contractor to perform immigration functions that it is ill equipped to handle as they would have to determine that the documents that are presented to them were authentic and belonged to that employee. It was also inconsistent with Federal law. Unlike prevailing wage provisions that a Contractor may have control over, the statute would have made the Contractor strictly liable for determining legal status and subjected the Contractor not only to suspension from public works projects but also makes the Contractor subject to the suspension or revocation of its contractor’s license even if it is not engaged in a Public Works project. The House Judiciary Committee wisely amended the bill into its present form. ***I urge you to retain the present provision requiring that a contractor must “intentionally or knowingly employ an ineligible worker” before it becomes a violation. Do not be swayed by attempts to have this bill amended to make it a strict liability provision that responsible licensed contractors will have no control over.***

Thank you for the opportunity to provide my views on this Bill.

/s/ Roy T. Ogawa