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

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To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on
Labor and Public Employment

Date: Tuesday, February 3, 2009
Time: 8:30 a.m.
Place: Conference Room 309
State Capitol

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

Re: H.B. No. 643 - Relating to Contractors

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. No. 643 establishes a new chapter in the Hawaii Revised Statutes (“HRS”) that attempts to make the Department of Labor and Industrial Relations (“DLIR”) the policing agency for the construction industry by requiring the DLIR to investigate complaints of ineligible workers. Defines “ineligible worker” as a person who is “not eligible to work in the United States, provided by federal law.”

The new chapter imposes a \$1,000 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 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 Act does not have an effective date.

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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 cannot support H.B. 643 for the following reasons:

1. 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.
2. This measure is targeting contractors who employ illegal aliens. The Department has no jurisdiction over determining whether or not an individual is entitled to work in the United States. That is the exclusive jurisdiction of the Immigration and Customs Enforcement agency ("ICE"). Requiring the DLIR to make preliminary investigations and then making referrals to 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. There are already laws in place to affect the purpose of this measure. In the private sector ICE has power to arrest those who knowingly and intentionally hire ineligible workers. In the public works environment the State has the authority to pursue violating contractors for fraud against the State.
4. Adopting this measure would require DLIR investigators in public works investigations to evaluate the validity of federal immigration documents to determine a civil liability on a criminal offense. The order of these events should be reversed. The criminal liability should be determined first by the proper authorities then put the civil liabilities in place. This type of investigation would greatly increase the time it takes to complete an already complicated audit.
5. The DLIR defers to the DCCA on the issues related to the licensing of the contractors.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 643, RELATING TO CONTRACTORS.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Tuesday, February 3, 2009 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 309

TESTIFIER(S): Mark J. Bennett, Attorney General
or Gary S. Ige, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General has legal concerns with this bill.

This bill adds a new chapter to the Hawaii Revised Statutes ("HRS") to address the employment of ineligible workers by licensed contractors. The bill requires contractors to employ only persons who are eligible to work in the United States. Contractors who intentionally or knowingly employ ineligible workers shall be in violation of this chapter.

This bill requires the Director of Labor and Industrial Relations to investigate complaints about contractors intentionally or knowingly hiring ineligible workers. If, after investigation, it is determined that the complaint is not frivolous, the Director shall notify the United States Immigration and Customs Enforcement agency, the county law enforcement agency of the ineligible worker, and the Attorney General for purposes of bringing a civil action and imposing fines against the contractor for violating the provisions of this bill.

An imposition of civil or criminal penalties, except for licensing purposes, is preempted by the United States Immigration Reform and Control Act of 1986 (IRCA), specifically, 8 U.S.C. § 1324a. The IRCA makes it unlawful for a person or entity to hire or continue to employ

an alien knowing the alien is an unauthorized alien with respect to employment. Section 1324a(h)(2) states, "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." Thus, we believe that sections of the bill calling for the assessment of civil fines against contractors hiring ineligible workers are preempted by federal law.

For example, section -6 of the new chapter (page 3, line 8) and section 3 of the bill call for the imposition of civil fines. In addition, section -5 of the new chapter (page 3, line 5) should be deleted as the civil penalty provision in section -6 of the new chapter are preempted by federal law as discussed above. Other sections of the bill referencing civil fines would similarly need to be deleted.

We also note that section -4(b)(2) of the new chapter (page 2, line 20) requires that the Director notify the county law enforcement agency regarding the ineligible worker. There is no indication as to what the county law enforcement agency is required to do with the information.

Because of the preemption concerns discussed, we suggest the new chapter be deleted and instead chapter 444, HRS, be amended to make the hiring of ineligible workers a basis for acting upon the issuance and revocation of a contractor's license.



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TDD: (808) 586-8692

January 29, 2009

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment

From: Livia Wang, Acting Chief Counsel ^w
Bill Hoshijo, Executive Director *BS*

Re: H.B. No. 643

The Hawai'i Civil Rights Commission (HCRC) staff submits this memorandum to inform the Committee that the HCRC will not be able offer testimony on H.B. No. 643 at the hearing scheduled for the morning of February 3, 2009, because the HCRC Commissioners have not met to review and take a position on this bill. A meeting for Commission review of legislative proposals is scheduled for the earliest possible date, 4 p.m. on February 3, 2009, at which time the Commissioners will take a position on this and other bills. After this meeting, the HCRC position on H.B. No. 643 will be decided and testimony will be submitted accordingly.

The HCRC takes its role and authority to testify and make recommendations to the legislature very seriously, and will do everything possible to assist you in your consideration of bills that affect HCRC jurisdiction and civil rights. We hope the temporary constraints we face will not cause inconvenience or difficulty for the House Committee on Labor & Public Employment. Please let us know if we can provide you any background information or answer any questions. Thank you for your understanding and patience.

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HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
 GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #80 • HONOLULU, HAWAII 96817
 (808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

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

January 31, 2009

JOSEPH O'DONNELL

Vice President
 Iron Workers Local 625

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

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**
RELATING TO CONTRACTORS
 Hearing: Tuesday, February 3, 2009, 8:30 p.m.

MALCOLM K. AHLG

Sergeant-At-Arms
 Carpet, Linoleum, & Soft Tile
 Local 1296

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

REGINALD CASTANARES

Trustee
 Plumbers & Fitters 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 128

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
 Local 1944

The Council **SUPPORTS** the passage of **HB643** that prohibits
 contractors from employing persons not eligible to work in the
 United States, imposes fines for violations, and authorizes the
 contractors license board to suspend or revoke a license if a civil
 judgment is entered against the contractor on a complaint alleging
 that the contractor hired ineligible workers.

RICHARD TACCHERE

Glaziers, Architectural Metal &
 Glassworkers Local Union 1889

Thank you for the opportunity to submit this testimony in support
 of **HB643**.

VAUGHN CHONG

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

Sincerely,

BARY AYCOCK

Boilermakers, Ironship Builders
 Local 627

William "Buzz" Hong
 Executive Director

YANN KINNEY

District Council 90
 Painters & Allied Trades
 Local 1791

WBH/dg

ALANI MAHOE

Operating Engineers Local 3

EDWARD SEBRESOS

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

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Skilled Craftsmanship Makes the Difference.



Testimony in Support of
HB643 Relating To Contractors

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

To the Committee on Labor and Public Employment
Tuesday, February 3, 2009, 8:30 a.m.
Conference 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 HB643 requiring contractors on public works projects to employ only persons who are eligible to work in the United States and to make it a violation for a contractor who intentionally or knowingly employs an ineligible worker.

The Laborers' Union has compassion for all workers, eligible and ineligible to work, who strive to make a decent living for themselves and their families. They have human rights to food, shelter and security like all people. But for too long, ineligible workers have been taken advantage of by unscrupulous employers, knowing that these workers live in fear of exposure to authorities and thus, will not complain. Federal law punishes these workers while the unscrupulous employer is usually not and so it continues this practice. HB643 intends to correct this unfairness by holding the offending employer accountable.

At the outset, we believe that Hawaii contractors endeavor to abide by the law however; there have been instances where the Immigration and Customs Enforcement agency has had to make jobsite raids as reported in the local newspapers. This could be the tip of the iceberg.

We recommend one amendment to the bill. Page 3, after line 2, add a subsection, "(4) the director shall notify the Hawaii State Tax Office of the ineligible worker to ascertain that state taxes have been paid for related to the ineligible worker(s).

Thank you for the opportunity to present this testimony.

**Late
Testimony
For H.B. 643**



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

Committee on Labor & Public Employment
Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair

HB643 – RELATING TO CONTRACTORS
Tuesday, February 3, 2009
8:30 am
Conference Room 309

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

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.

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- 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

Proposed Changes:

- We propose that the language in §3 "A contractor that intentionally or knowingly employs an ineligible worker shall be in violation of this section", be OMITTED.
- We propose substituted language requiring upon that prior to as part of certifications process that contractors be required to certify that "all workers on the project under their employ are eligible to work in the U.S." and that a presumption that the certification was made in good faith if the contractor has used e-verify as the verification source to verify the status of the employee(s) in question.

Thank you for the opportunity to share our views with you.

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

yamashita2 - Kristen

From: Roy T. Ogawa [rogawa@OLLON.COM]
Sent: Monday, February 02, 2009 8:52 PM
To: LABtestimony
Cc: KHI@biahawaii.org
Subject: RE: HB 643 Relating to Contractors

Late Testimony

To: Committee on Labor & Public Employment.
Time: Tuesday, February 3, 2009 at 8:30 a.m.
Place Conference Room 309

Re: HB 643 Relating to Contractors

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

My name is Roy T. Ogawa and I am a lawyer and small business person.

I am strongly opposed to HB 643 because it forces a contractor to perform immigration functions that it is ill equipped to handle.

Contractors already must follow the I-9 requirements when they hire employees. However, this Bill, as written requires them to certify that the documents that are presented to them are authentic and belong to that employee. How is a contractor “certify” that this is correct? Unlike prevailing wage provisions that a Contractor may have control over, the statute makes the Contractor strictly liable for determining legal status and subjects 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.

Please kill HB 643.
Thank you.

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