



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

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**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 952, H.D. 1, S.D. 1, RELATING TO LABOR.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

**DATE:** Thursday, April 2, 2009 **TIME:** 10:15 AM

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** SUPPLEMENTAL WRITTEN TESTIMONY  
(For more information, contact James Halvorson, Deputy Attorney General, at 587-2900.)

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Chair Taniguchi and Members of the Committee:

The Department of the Attorney General previously submitted written testimony expressing concerns about this bill. Upon further review, the Department now has objections to the bill with regard to the amendment to section 377-9, Hawaii Revised Statutes (HRS) allowing attorneys' fees and costs and penalties to be imposed against the employer only.

1. Award of Attorneys' Fees and Costs

Section 2 of this measure, page 4, lines 8-9, seeks an amendment to section 377-9 modifying the remedial powers of the Hawaii Labor Relations Board to include the authority to award interest on back pay awards, plus costs and attorneys' fees in favor of employees.

Section 89-14, HRS, provides that any controversy concerning prohibited practices may be submitted to the Hawaii Labor Relations Board in the same manner and with the same effect as provided in section 377-9. Section 89-13 provides that it is unlawful for either employers or unions to engage in prohibited practices either against one another or against individual employees. Complaints alleging prohibited practices may be lodged by a union against an employer on

behalf of one or more union members, by an employer against a union, or by an individual employee against his union, his employer, or both.

If passed, this amendment would mean that unions or employees could seek to recover attorneys' fees and costs from employers upon prevailing in prohibited practice complaints, but employers would be provided with no such reciprocal right. Not only does this failure uniquely and improperly stack the playing field against employers for no discernible reason, it is almost certain to be challenged as a violation of the equal protection clauses of the United States and Hawaii State Constitutions. In order to avoid such a logically unjustifiable and constitutionally fatal flaw, the bill must provide that the Hawaii Labor Relations Board may award attorneys' fees and costs in favor of any prevailing party.

## 2. Civil Penalty Against Employers

Section 2, amending section 377-9, beginning on page 4, line 12, provides for the mandatory imposition by the Hawaii Labor Relations Board of a civil penalty not to exceed \$20,000 in the event that an employer is found to have "wilfully or repeatedly"<sup>1</sup> committed a prohibited practice.

The Committee on Labor did not provide an explanation as to why such a mandatory penalty is necessary in the first place, particularly in light of the fact that the Hawaii Labor Relations Board is already empowered with a wide range of discretionary remedial tools. No valid justification exists for prohibiting the Board from using its sound judgment in this regard.

More importantly, even if one assumes *arguendo* that mandatory penalties of this nature are needed, this proposal unaccountably fails to provide for such civil penalty in the event that a union is found by the Board to have committed prohibited practices against an employer, and thus raises the same equal protection flaws as the provision for attorneys' fees and costs discussed above.

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<sup>1</sup> Inclusion of the words "or repeatedly" is either a non sequitur or improperly ambiguous, since a finding of "wilfulness" is a mandatory prong in establishing that a prohibited practice has occurred.

Equally worrisome, however, is the fact that the bill also fails to provide for the imposition of a civil penalty in the event that a union has been found to have committed prohibited practices against one of its own members. In short, for reasons that remain unexplained, this bill stacks the deck in favor of the unions and against both employers and individual employees who are union members. The bill lacks any form of logical justification for doing so and is almost certain to be subject to legal challenge as being unconstitutional.

Lastly, no provision establishes who will receive the benefit of any penalties actually imposed by the Hawaii Labor Relations Board.

We respectfully request that this bill be held.



# LATE

## HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817  
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**NOLAN MORIWAKI**  
*President*  
Bricklayers & Ceramic Tile Setters  
Local 1 & Plasterers/Cement  
Masons Local 630

**JOSEPH O'DONNELL**  
*Vice President*  
Iron Workers Local 625

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

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

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

**REGINALD CASTANARES**  
*Trustee*  
Plumbers & Fitters Local 875

**THADEUS TOMBI**  
Elevator Constructors Local 128

**JOSEPH BAZEMORE**  
Drywall, Tapers, & Finishers  
Local 1944

**RICHARD TAGGERE**  
Glaziers, Architectural Metal &  
Glass Workers Local Union 1889

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

**MARY AYCOCK**  
Rifermakers, Ironship Builders  
Local 827

**RYNN KINNEY**  
District Council 50  
Painters & Allied Trades  
Local 1791

**ALANI MAHOE**  
Paraling Engineers Local 3

**EDONARD SEBRESOS**  
International Assoc. of  
Cable & Frost Insulators  
Allied Workers Local 132

April 2, 2009

Honorable Senator Brian T. Taniguchi, Chair  
Honorable Senator Dwight Y. Takamine, Vice Chair  
Members of the Senate Committee on Judiciary and Government  
Operations  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

RE: **IN SUPPORT OF HB 952, HD1, SD1**

Relating to Labor.

Decision Making: Thursday, April 2, 2009, 10:15 a.m., Room 016

Dear Chair Taniguchi, Vice Chair Takamine and the Senate Committee  
on Judiciary and Government Operations:

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.

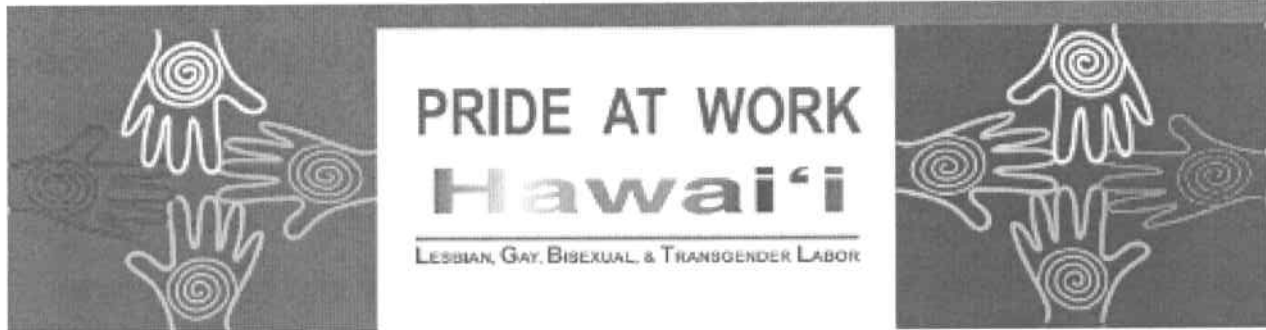
The Council SUPPORTS the passage of HB 952, HD1, SD1 that  
certifies entities as exclusive representatives absent an election  
where no other representatives are certified as the exclusive  
bargaining representatives. Requires immediate collective  
bargaining between parties once entities are certified as exclusive  
representatives.

Our working families in Hawaii want and deserve to have a level  
playing field. The health of the economy is improved by making  
possible for workers to form unions and bargain for a better life.

Thank you for the opportunity to submit this testimony in support  
of HB 952, HD1, SD1.

Sincerely,

William "Buzz" Hong  
Executive Director



PO Box 22416 Honolulu, HI 96822  
 (808) 543-6054  
*prideatworkhawaii@hawaiiantel.net*  
*www.hawaflcio.org/PAWHI*

April 2, 2009

Hawaii State Senate  
 Committee on Judiciary and Government Operations  
 Chair, Sen. Taniguchi  
 Vice Chair, Sen. Takamine

Testimony in favor of H.B. 952 HD1 SD1 – RELATING TO LABOR

Pride At Work Hawai'i, whose mission is to advocate for full equality for lesbian, gay, bisexual, and transgender (LGBT) workers in their workplaces and their unions, and to build mutual support between the labor movement and the LGBT community, strongly supports H.B. 952. As currently amended, the bill would allow employees to unionize through majority sign-up, and would provide necessary protections for workers who advocate for unionization. Presently, an employer does not have to recognize majority sign-up and can insist on a secret ballot election, resulting in numerous delays, threats, coercion and any other tactics to ensure union organizing drives fail.

According to Kate Bronfenbrenner from Cornell University, “employers fire workers in a quarter of all campaigns, threaten workers with plant closings or outsourcing in half and employ mandatory one-on-one meetings where workers are threatened with job loss in two-thirds.” In fact, nationwide, over 86,000 workers have been fired over the past eight years for trying to unionize. Experience proves that there is nothing free and fair about the current system, but this bill will help change that.

Passage of this bill is especially important for lesbian, gay, bisexual, and transgender workers. Nationally, studies have shown that gay workers are typically paid less than their heterosexual peers. A union contract helps to put straight and gay workers on a more even level, as well as provide additional protections against discrimination. LGBT workers are also particularly vulnerable to employer intimidation during organizing efforts. By providing for penalties against abusive employers, this bill will make LGBT workers feel safer and more willing to join unionization campaigns.

In these difficult and uncertain economic times, it is more important than ever to give workers a fair shake if they want to organize themselves into unions. It is working people - LGBT and straight - that will help revitalize our economy and get us out of this economic crisis we are currently in. Passage of the employee free choice act is a step in the right direction.

Thank you for the opportunity to testify in support of H.B. 952. On behalf of all LGBT workers in Hawai'i, we hope you will support this bill.

Respectfully submitted,  
Steve Dinion  
President  
Pride At Work Hawai'i

LATE

THE SENATE  
24<sup>th</sup> LEGISLATURE  
REGULAR SESSION of 2008

COMMITTEE ON JUDICIARY & LABOR  
Senator Brian Taniguchi, Chair

3/19/08  
10:00 AM – Room 016

HB 952, HD 1 SD 1  
Relating to Labor

Chair Taniguchi and members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels, to offer our opposition to this bill.

What makes this great country the greatest in the world is the freedoms that it's citizens have. We have the freedom of free speech, freedom to travel anywhere with out papers and of course the freedom of choice.

The freedom of making a choice thru a secret ballot is also the hallmark of the union organizing process, because it provides the best safeguards against abuse. Both from the employer and the union attempting to organize.

The current process allows employees to pause and carefully consider the arguments from both side, consider their choices and then make a decision thru a secret ballot.

This bill would deny employees of that opportunity for a freedom of choice. This bill would allow the unions to approach an employee to sign a card, even if they do not understand what it means and the union can use it to get certification. There is no procedure to show that the union broke the rules in getting authorizations. The employee could be threatened or bribed to sign because there is no procedure to challenge it.

Finally, where currently the employees have the freedom to decide whether they like what the union has negotiated for them or not, this measure takes that choice away by allowing a third party decide what is best for them.

Outrigger Hotels is primarily a non-union company, but we are not anti-union. We are pro-employee. This bill will put the employee in the middle of a situation that they don't need to be in. The current process protects employees, this bill does not.

We urge you to hold this bill and mahalo for allowing us to testify.

# HICA \* Hawaii Island Contractors' Association

494 C Kalanikoa Street \* Hilo, HI 96720 \* Phone 935-1316 \* Fax 934-7779 \* hical@hawaiiantel.net

Senator Brian Taniguchi, Chair  
Committee on Judiciary and Government Operations  
State Capitol, Room 224  
Honolulu, HI. 96813

**LATE**

RE: HB 952, HD1, SD1-Relating to Labor

Chair Taniguchi and Members of the Committee on Judiciary and Government Operations:

My name is Earl Yempuku, Chairman of the Legislative Committee of the Hawaii Island Contractor's Association. We are an island wide organization of contractors, suppliers, and construction related businesses representing approximately 140 companies and 160 individuals. The HICA is a member and partner with the Building Industry Association and strives to unite and promote the interests of our members to improve the quality of life of for the people of Hawaii.

The HICA is strongly opposed to HB 952, HD1, Relating to Labor, also known as the "Card Check" bill. The elimination of the secret ballot for employees in an election for unionization is especially repugnant in our democratic society as it does not allow all parties an equal and fair opportunity to present their side of the argument. Imagine if it were possible to collect signatures constituting a majority of registered voters in your district to elect someone else (without your knowledge and with no time limits) and you were then suddenly forced to leave office when those signatures were presented to the Governor. Would you consider that "fair"? This bill would similarly be unfair to business owners and employers, many of which are already struggling to survive while coping with a poor economy and already burdensome regulations. Whether unionization is good or bad is really not the point. The issue is fairness to all sides in determining how a decision is made.

We respectfully request that this bill be held.

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

Earl Yempuku,  
Chairman  
HICA Legislative Committee



Testimony in SUPPORT OF  
HB 952, HD1, SD1 Relating to Labor

LATE

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

To the Senate Committee on Judiciary and Government Operations  
Tuesday, April 2, 2009, 10:15 a.m., Room 016

Honorable Brian T. Taniguchi, Chair; Honorable Dwight Y. Takamine, Vice  
Chair and Members of the Committee:

HB 952, HD1, SD1 provides for the certification of exclusive bargaining  
representative without an election where there is no other certified  
representative and also provides for immediate collective bargaining.

Request for collective bargaining

No later than 10 days after the request for collective bargaining is made the  
parties must meet. No later than 90 days after bargaining has commenced  
and if no agreement is reached, either party may notify the board of the  
dispute and request conciliation under HRS. 377-3.

Conciliation

The HLRB will notify the governor who appoints a neutral conciliator who  
has twenty days to have the parties reach an agreement. Failing an  
agreement the conciliator's authority terminates and the process is moved  
into mandatory arbitration with the selection of the panel under HRS-89-11  
(e)(2)(A). The arbitration panel's decision is effective for 2 years.

NLRB election system broken

Mr. Chairman and members of the committee, the opponents of the majority  
sign up process have focused on the right of the workers to have a secret  
election free from coercion from both employer and union. This is their  
mantra. We can agree with the theory but cannot agree with reality of the  
current system of supposedly secret elections free from coercion by the  
employer.

The current system is broken because the employer has the cards stacked in  
its favor. The employer controls the employees time, personal information,  
training, meeting agenda, meeting topics, worker association, rewards,

discipline, speech on the job, behavior on the job, leave of absence, information distribution, and visitations. The employee is an “at-will” worker and the employer does not let the worker forget that fact.

#### Majority sign-up procedure since 1935

The majority sign-up procedure is not new; it has been legal throughout the life of the NLRA. However under current law, the employer can refuse to recognize a union even though 100% of the employees have signed union authorization forms. The employer can also insist on an NLRB election process. This is where the fun begins for the employer who hires expensive union busters to divide and conquer the workers. In any case, delays are commonplace and a worker attrition strategy takes place. At the end, few workers remain or are neutralized that originally supported a union. This is what happened at the Pacific Beach Hotel. It’s a shame.

The card check system as an option has existed since the advent of the NLRA of 1935. Supreme Court Chief Justice Earl Warren presented the majority opinion of the Court in upholding the majority sign-up system in 1969.

#### Voluntary recognition policy

Since 1935 the NLRB had a policy of supporting voluntary recognition where over 50% of the employees sign authorization cards for exclusive representation, the employer could recognize the union voluntarily and enter into collective bargaining. If 30% of the employees sign the cards, the NLRB would order an election. But the Bush administration stopped this policy of voluntary recognition.

#### Concern

It was testified by the State Department of Agriculture that most of the Hawaii agriculture workers by which this measure could affect, are laborers of Filipino ancestry. The department was in opposition to the measure. We express concern that a group of Hawaii workers of a minority race do not have similar collective bargain rights as other Hawaii workers as guaranteed by the Hawaii State Constitution. We hope that the Hawaii State Civil Rights Commission is cognizant of this situation.

#### Democracy means majority rule

Mr. Chairman, opponents of the card check system cite democracy as the American way of life. We agree whole-heartedly. But Democracy means

majority rule. And if the majority of the employees want a union for collective bargaining, that's their right under the U.S. Constitution and the Hawaii State Constitution. No union busting chicanery should prevent this right. We recommend amending the effective date of this measure to July 1, 2009.

Thank you for the opportunity to submit this testimony.



LATE

P.O. Box 700848 Kapolei, HI 96707

Phone: (808) 677-9516 Fax: (808) 677-9412

March 31, 2009

Senator Brian Taniguchi, Chair,  
Senator Dwight Takamine, Vice Chair,  
Senate Judiciary and Government Operations  
Hawaii State Capitol, Room 016  
415 South Beretania St.  
Honolulu, HI 96813

Dear Senator Taniguchi, Senator Takamine and Members:

**Subject: Testimony on HB952, HD1**

Aloun Farms has been a part of Hawaii Agriculture community for over 30 years. Currently, Aloun Farms employs about 160 employees. The passing of HB952 would not be beneficial to our employees as it infringes on their basic right to a secret ballot election. It is our belief that this bill would also add a negative challenge to the survival and success of Aloun Farms. Over two decades ago, we began as a small nucleus of a couple dozen employees-family farm and have today developed a strong bond and a good working relationship with our employees of 160 plus. HB952 in its very nature, will breach that strong bond that we have and created an eventual hostile environment between owners, managers, and employees and that will destroy our company.

Hawaii agricultural industry remains in a constant struggle as we contend with increasing costs of land, water, fuel and supplies. However, with the current global recession, the success that the Hawaii agriculture community is experiencing offers hope that there is a sustainable industry here that continue to produce jobs and fresh produce for Hawaii. Unlike the military and tourism sectors of our economy which both are affected by external national and global pressures, farmer producing food for our people on an isolated island is only affected and limited by our own ability to produce and consume. The environment to produce is already a challenge and therefore should be supported with favorable policies, and not be tested and negatively affected by bill such as HB952. We strongly oppose HB952 and respectfully ask for your support. Mahalo.

Sincerely,

Alec Sou  
President and General Manager  
Aloun Farms, Inc.