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WRITTEN COMMENTS
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS

February 27, 2009

9:30 AM

SB 1125, SD1

RELATING TO PROCUREMENT.

Chair Taniguchi, Vice-Chair Takamine and committee members, thank you for the opportunity to provide comments on SB 1125, SD1. This bill requires that an offeror be a party to apprenticeship agreement for certain construction projects.

The State Procurement Office does not support this bill. This bill will negatively affect open competition by limiting the number and type of construction contractors that would be qualified to respond to construction bids. Requiring construction companies to be party to a apprenticeship program would restrict competition, restricting construction firms without a registered apprenticeship program or firms without apprentices as part of its labor workforce to compete for state and county contracts.

Thank you for the opportunity to provide comments on this bill.

Testimony In
Support of
SB 1125 SD1 Relating to Procurement

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

To the Committee on Judiciary and Government Operations
Friday, February 27, 2009, 9:30 a.m.
Conference Room 016, State Capitol

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

The Laborers Union **supports** SB 1125 SD1, requiring all offerors for construction contracts \$250,000 or more, subject to chapter 103D, be a party to an apprenticeship agreement that is registered with the department of labor and industrial relations at the time of general bidding.

It is well known that a highly trained work force is more productive, is more apt to prevent serious accidents and thus keep insurance costs low, keep workers relatively safe, and reduces down time. The construction industry is a dangerous vocation and is not a place for the untrained, undisciplined or inexperienced worker unless there is proper supervision and guidance.

The Laborers' Union maintains a relatively modern training facility at Pearl City, Oahu and provides selected training as needed, on the neighbor islands. Our staff of instructors are highly experienced journeymen and our apprentices under go a two-year, 4,000 hour training program. The Union and signatory contractors have invested millions of dollars throughout the years to maintain a well-trained, safe and proficient workforce. Responsible contractors should do the same.

Thank you for the opportunity to present this testimony.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 10, 2009

Senator Dwight Takamine, Chair
Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB 1125 "Relating to Procurement"

Chair Takamine and Members of the Senate Committee on Labor:

I am Karen Nakamura, Executive Vice President and Chief Executive 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 is strongly opposed to **SB 1125, "Relating to Procurement" (the "Apprentice Relief Bill")** because of the increased burden that it places upon Contractors and Subcontractors; the Procurement Officers and DLIR at a time when they can least afford it and at a time when the budget for Public Works Projects cannot withstand significant increases in costs and delays.

Everyone is in favor of having a well trained workforce but this bill does not further that end. Why further cloud and burden the Procurement process at a time when our economy needs streamlining of the procurement process? We need to be expediting the work under the stimulus package that will be required to preserve work for every citizen of this state, not creating further roadblocks that allow for legal challenges. The bill increases costs and delays procurement yet serves no pressing public purpose.

1. The bill is objectionable because it requires a "bona fide, state-approved apprenticeship program".

- a. **Chapter 372** on Apprenticeship is currently a voluntary program for "*registration*" of apprenticeship agreements which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to subcontractors at any tier no matter how small. *Does registration under Chapter 372 of an apprenticeship agreement mean that it is a "bona fide, state-approved*

apprenticeship program”? Acceptance for registration does not constitute “state-approval” under Chapter 372 which makes every bid subject to challenge until new rules are promulgated.

In the Matter of International Brotherhood of Painters and Allied Trades, et al 88 P.3rd 647 (2004) the Hawaii Supreme Court found that participants in existing apprenticeship programs did not have due process property interests with respect to registration of these programs which would require the Director of the Department of Labor and Industrial Relations to provide them with a contested case hearing. Since SB 1125 will now require “legal rights, duties or privileges...required by law..” to be determined, constitutional due process will require contested case hearings since the Director of Labor and Industrial Relations will no longer be in an advisory role but would be determining the eligibility of bidders for Public Procurement. The Application by the Carpenter’s Union for registration of their painter’s apprenticeship program in the Painter’s case above, was submitted on February 13, 1998. The Supreme Court decision is dated April 30, 2004. It took over ***six years*** to get a final determination on the propriety of the registration of the Carpenter’s apprenticeship registration. It is safe to assume that the Bill as drafted will require new Procurement Rules and will subsequently face legal challenges involving not only Procurement but also the function of the DLIR and its rules for contested cases.

- b. It does not require the unions to open their apprenticeship programs to all comers. In effect this will currently prevent most non-union contractors and subcontractors from bidding on public works projects until they can work through the procedures in place under Chapter 372.
 - c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project, (there is no exception for a sole proprietor or a small business of two or three owner employees).
 - d. It does not expedite and provide for the state registration of individual company apprenticeship programs. I am not aware of any single employer apprenticeship agreement that has been approved for registration, and,
 - e. It does not define an “apprenticeable trade” which would mean any job on a construction Project. All work is arguably apprenticeable.
2. As written, the bill will require journeyman/apprenticeship ratios that will be dictated by the current collective bargaining agreements/signatory

agreements rather than by efficiency and cost effectiveness. This will result in a significant increase in costs to the State and to the Counties.

3. Section 103D-310(d) does not state that it is limited to construction contracts.

4. It requires "certification under oath" on a *monthly basis*, and subjects the employer to penalties of perjury if the certification is incorrect. There is no knowledge, intent or recklessness requirement. This would be unreasonably burdensome to a contractor and subcontractor. The penalties are significant even if the error is inadvertent. It subjects a contractor or subcontractor to withholding of payments, suspension or even debarment.

5. It appears to place an unreasonable burden upon the procuring officer to "police" the continuing work and verify compliance on a monthly basis.

6. Most significantly it will automatically increase bid protests for non-compliance with these additional requirements since they are *prerequisites* to be eligible to bid on a public works project i.e. the bidder will be disqualified if they are the low bidder.

The Bill as written would make all Public Works projects subject to a Court challenge that could bring the entire proposed stimulus package public works projects to a halt.

BIA-Hawaii respectfully requests that the bill be held.

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



Executive Vice President and Chief Executive Officer
BIA-Hawaii



Associated Builders and Contractors of Hawaii
80 Sand Island Access Road, M-119
Honolulu, Hawaii 96819

February 26, 2009

COMMENTS to be PRESENTED to the
SENATE COMMITTEE on JUDICIARY AND GOVERNMENT OPERATIONS
For decision making on Friday, February 27, 2009, 0930, Room 016

by

Karl F. Borgstrom, President
ASSOCIATED BUILDERS & CONTRACTORS OF HAWAII

IN OPPOSITION TO

SENATE BILL 1125 SD1
RELATING TO PROCUREMENT

CHAIR AND MEMBERS OF THE COMMITTEE:

The Associated Builders and Contractors is a professional trade association representing Merit Shop construction contractors, suppliers and service providers throughout the State of Hawaii.

SB 1125 SD1 would allow only contractors with State-certified apprentice programs to bid on public construction projects in the trade areas of the contracted work. ABC Hawaii's apprentice training program is a unified training program with the 4 basic trades recognized by the State of Hawaii as certified by DLIR.

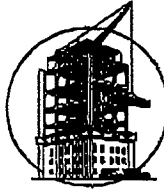
Under SB 1125 SD1, our member contractors would only be qualified to bid on state projects that involved one of those trades – plumbing, painting, electrical, or carpentry – even though they may be otherwise qualified to perform the work, and only if they had apprentices enrolled in the ABC Apprenticeship Program. The bill does not account for the fact that current, licensed journeymen employed by the firm may, in fact, have already graduated from the Program, nor does it account for the need for apprentices based on the size or scope of the project.

Despite that certification by the DLIR, which provides a Statewide standard for qualifying apprenticeship programs, 1125 SD1 would insert another level of qualifications standards administered by any procurement officer on a project-by-project, contract-by-contract basis which would, in effect, defeat the purpose of having a “standard.” In addition, both the additional administrative cost to the state and to the contractors of reporting on a monthly basis will add to the costs of public projects. Such a requirement ignores the fact that apprentices enroll on a semester basis and their performance and completion of their programs is recorded annually.

In these difficult economic times, and particularly for small contractors, the cost of having to maintain an active involvement in the Apprentice Program, whether or not you are using apprentices, could be significant.

For these reasons, Associated Builders and Contractor of Hawaii opposes SB 1125 SD1.

Thank you for your consideration; should the need arise, ABC Hawaii will respond to any requests of the Committee for additional information regarding this matter.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 580 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
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JOLAN MORIWAKI
President
Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement
Masons Local 630

February 26, 2009

JOSEPH O'DONNELL
Vice President
Iron Workers Local 825

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

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

RTHUR TOLENTINO
Treasurer
Sheet Metal Workers I.A. Local 283

RE: **IN SUPPORT OF SB 1125, SD1**

ALCOLM K. AHLO
Organizer-At-Arms
Carpenters, Linoform, & Soft Tile
Local 1235

Relating to Procurement

Decision Making: Friday, Feb. 27, 2009, 9:30 a.m., Conf. Room 016

REGINALD CASTANARES
Custodian
Painters & Filers Local 676

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

ADDEUS TOMEI
Scaffold Constructors Local 126

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.

JOSEPH BAZEMORE
Drywall, Tapers, & Finishers
Local 1944

The Council SUPPORTS the passage of SB1125, SD1 which requires
all offerors for construction contracts \$250,000 or more, subject to
Chapter 103D, be a party to an apprenticeship agreement that is
registered with the Department of Labor and Industrial Relations at
the time of general bidding.

CHARL TACGERE
Steelers, Architectural Metal &
Ironworkers Local Union 1889

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

Thank you for the opportunity to submit this testimony in support
of SB1125, SD1.

RY AYCOCK
Ironmakers, Ironship Builders
Local 627

Sincerely,

NN KINNEY
Local Council 50
Painters & Allied Trades
Local 1791

W. Hong
William "Buzz" Hong
Executive Director

LANI MAHOE
Drafting Engineers Local 3

JONARD SEBRESOS
International Assoc. of
Sheet Metal & Freeing Insulators
Local Workers Local 132