

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

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

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April 3, 2009

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

Date: Friday, April 3, 2009
Time: 3:00 p.m.
Place: Conference Room 308
State Capitol

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

**Comments Regarding
Re: S.B. 19 SD 1 HD 1, Relating to Procurement**

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 19 SD 1 HD 1 proposes to add a new section to Chapter 103, H.R.S, to require governmental bodies that enter into public works contracts having an estimated value of not less than \$250,000 to decrease the bid amount of a bidder by five per cent if the bidder is a party to an apprenticeship agreement registered with the Department of Labor and Industrial Relations. The contract amount awarded shall be the amount of the price offered, exclusive of the 5% deduction in bid price.

In determining whether the bidder is participating in a bona fide apprenticeship program, the procurement officer shall consider the following:

- (1) Actual number of apprentices enrolled in the program; and
- (2) Annual number of graduates of the apprenticeship program.

In addition, bidders shall certify in writing on a monthly basis, their maintenance and participation in the apprenticeship program for the entire duration of the bidder's work on the project.

II. CURRENT LAW

Chapter 103D currently does not require a bidder to participate in an apprenticeship program.

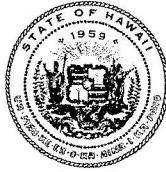
III. HOUSE BILL

The Department opposes this bill for the following reasons:

1. Although apprenticeship programs are useful, their existence is highly dependent on the employer's ability to provide adequate supervision and training. If an employer is fully staffed with journey workers, or otherwise unable to provide the necessary supervision and training, the employer may not be able to hire additional workers as apprentices. Although employers are encouraged to participate in apprenticeship programs, many are unable to do so. Therefore, the Department opposes this bill as it gives a significant competitive advantage in the public works bidding process to employers who are able to participate in apprenticeship programs, at the expense of those who cannot.

2. The Department also opposes the criteria given for determining the validity of a bidder's participation, i.e., number of apprentices enrolled and number of graduates. These criteria are highly dependent on factors outside of the contractor's control, such as diminished demand for construction workers, which would lower the need for apprentices and/or lower the number of work hours that an apprentice could complete to meet graduation requirements for apprenticeship programs.

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

BARBARA A. ANNIS
Deputy Comptroller

**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES**
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
April 3, 2009

S.B. 19, S.D. 2, H.D. 1

RELATING TO PROCUREMENT

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on S.B. 19, S.D.1, H.D. 1.

The Department of Accounting and General Services (DAGS) opposes S.B. 19, S.D.1, H.D. 1, because it will disadvantage construction contractors that do not have certified apprentice programs and will unnecessarily increase the administration and/or oversight responsibilities of government contracting agencies. Certified apprenticeship programs are useful training programs under certain conditions but not necessary to ensure the qualification of contractors to perform state work.

There are currently over 18 State-certified apprentice programs. These are aimed at workforce development, and are certified by the Department of Labor and Industrial Relations. However, all of these programs, except one, are based on trade groups that have collectively bargained contracts. If solicitations of public works contracts give preference to contractors with certified apprentice programs, the State's ability to have an

open bidding process would be jeopardized and bidding on public works projects would unfairly favor those companies with certified apprentice programs. This may eliminate small and other construction firms that do not have a certified apprentice program.

Thank you for the opportunity to testify on this matter.

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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

April 1, 2009

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

SUBJECT: S.B. 19, SD1, HD 1, RELATING TO PROCUREMENT

NOTICE OF HEARING

DATE: Friday, April 3, 2009
TIME: 3:00 PM
PLACE: Conference Room 308

Dear Chair Oshiro and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, is **strongly opposed** to S.B. 19, SD1, HD1, "Relating to Procurement". S.B. 19, SD1, HD1 requires a procurement preference to a contractor in a public works construction contract of not less than \$250,000 if the contractor is a party to an apprenticeship agreement registered with the department of labor and industrial relations at the time of general bidding. Requires a public works contractor to comply with state labor laws.

While we concur that we need a well-trained construction trades work force for both private and public construction, we oppose the preference for a bidder for a public works project who is a party to an apprenticeship agreement. Proponents of the bill may think that they have deleted the most objectionable part of the bill; however, the outcome of this bill is that the "reward" or preference is based on the affiliation with a registered apprenticeship program. This places an additional requirement on bidders and results in an uneven bidding situation for contractors who are affiliated with unions and those who are not.

We ask that this bill be held.

Thank you for the opportunity to testify on this measure.

Testimony in SUPPORT OF
SB19, SD1, HD1 Relating to Procurement
By Al Lardizabal, Director of Government Relations
Laborers' International Union of North America, Local 368

To the Committee on Finance
Friday, April 3, 2009, 3:00 p.m.
Room 308, State Capitol

Chair Marcus R. Oshiro; Vice Chair Marilyn B. Lee and Members of the
Committee:

The Laborers' Union strongly supports this measure providing for procurement preference to a contractor in a public works construction contract of not less than \$250,000 if the contractor has a written agreement with an apprenticeship program registered with the department of labor and industrial relations at the time of general bidding.

This measure if enacted into law, will provide an incentive for contractors to enhance their training program. Construction is one of the most volatile and dangerous vocations or employment a worker can engage in. Everyday, he or she risks major injury, long-term disability or even death.

There is no substitute for effective training with proper supervision and mentoring. Safety and a skilled and proficient workforce are of the utmost priority for any employer; apprenticeship programs are the foundation for these elements. A contractor without an apprenticeship and training program is at a higher level of risk than an employer who has one.

There is also no substitute for quality workmanship by skilled and knowledgeable workers who have undergone several thousand hours of training on the job and in the classroom. It takes time to develop skilled workers to a level of proficiency and safety. It takes only one major accident to stop the project, lose valuable time, money and the confidence of the funding source. Hawaii needs more properly trained construction workers.

Thank you for the opportunity to submit this testimony.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

April 3, 2009

Representative Marcus Oshiro, Chair
Committee on Finance
State Capitol, Room 308
Honolulu, HI 96813

RE: SB19, SD1, HD1 "Relating to Procurement"

Chair Oshiro and Members of the Committee on Finance:

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 strongly opposes SB 19, SD1, HD1 "Relating to Procurement". SB 19, SD1, HD1 requires a procurement preference to a contractor in a public works construction contract of not less than \$250,000 if the contractor is a party to an apprenticeship agreement registered with the department of labor and industrial relations at the time of general bidding. The current draft further specifies that the bidder must furnish written proof of having a written agreement with a registered apprenticeship program, and, if awarded the contract, must continue to certify monthly in writing that the bidder has a written agreement with a registered apprenticeship program for the entire duration of the bidder's work on the project.

The current draft, HD1, further requires sanctions that include temporary or permanent cessation of work on the project without recourse to breach of contract claims by the bidder and restitution for nonperformance or liquidated damages. Bidders are also subject to debarment or suspension under section 103D-702. BIA-Hawaii believes that these requirements and sanctions are unreasonable.

While we concur that we need a well-trained construction trades work force for both private and public construction, we oppose the preference for a bidder for a public works project who is a party to an apprenticeship agreement. This places an additional requirement on bidders and results in an uneven bidding situation for contractors who are affiliated with unions and those who are not.

We ask that this bill be held.

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

A handwritten signature in cursive script that reads "Karin L. Nakamura". The signature is written in black ink and is positioned above the printed name and title.

Chief Executive Officer
BIA-Hawaii

House of Representatives
Committee on Finance
April 3, 2009, 3:00 p.m.
Conference Room 308

Statement of the Hawaii Carpenters Union on S.B. 19, SD1, HD1 Relating To Procurement

The Hawaii Carpenters Union strongly supports S.B. 19, with the amendments listed below for accuracy, to: a) Maintain a skilled work force to construct public works and for private industry. b) Advance State education policy, and the public-private partnership of apprenticeship. c) Bolster worker safety.

Amendments are first to conform with chapter 372, where apprenticeship agreements, rather than apprenticeship programs, are registered with the DLIR, and ch. 372 already requires that they be written. Secondly, to correct an oversight that occurred when removing references to subcontractors. Amend to read:

In “(a)”: “...if the bidder **is a party to an apprenticeship agreement** *[has a written agreement with an apprenticeship program]* registered with the department of labor and industrial relations, **for each apprenticeable trade the bidder will employ to construct the public works,** and in conformance with...”

In “(c)”: “...shall furnish written proof of **being a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works** *[having a written agreement with a registered apprenticeship program]* and, if awarded the contract...”

In “(c)”: “...in writing that the bidder **is a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works** *[has a written agreement with a registered apprenticeship program]* for the entire...”

In “(c)”: “...the bidder at any time during the construction **is no longer a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works** *[no longer has a written agreement with a registered apprenticeship program]*:...”

Previous amendments were made to address concerns, similar to Finance committee amendments to H.B. 1289, that:

- Reduced a “requirement” that bidders for public works participate in apprenticeship, to a “preference” of 5%. By changing a requirement to an incentive, no contractor will be prevented from bidding. Existing bidding practices are now used for preferences such as utilization of Hawaii products, utilization of recycled goods and others.
- Removed references to subcontractors, giving bidders flexibility, simplifying administration, and exempting smaller contractors.

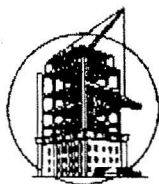
- Increased the minimum contract value from \$100,000 to \$250,000, also exempting smaller contractors.
- Amended Part X of chapter 103D, rather than 103D-310, therefore affecting only 103D-302 and 303 contracts, not sole source or other contracts.

Without increasing labor costs, the benefits of public works funds will be maximized. Construction is down now, but not so long ago there was a clamor over a shortage of skilled construction workers. All contractors should be encouraged to bear their fair share of this industry need.

Apprenticeship is State policy, supported by Community College and other programs, and “pre-apprenticeship” in the State’s Construction Academy, Department of Hawaiian Home Lands, and funding for Building Industry Association facilities. This long standing public-private partnership is with existing apprenticeship programs.

Apprenticeship is also an education and career option, adding to college pathways. It greatly advances construction safety training, thereby preventing human tragedy and reducing construction costs.

S.B. 19 has undergone thorough modification, and we urge its passage with only the amendments above. Thank you for considering our testimony.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

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(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

President

Bricklayers & Ceramic Tile Setters

Local 1 & Plasterers/Cement

Masons Local 630

April 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 SB 19, SD1, HD1
RELATING TO PROCUREMENT.

Hearing: Friday, April 3, 2009, 3:00 p.m., Conf. Room 308

MALCOLM K. AHLO

Sergeant-At-Arms

Carpet, Linoleum, & Soft Tile

Local 1298

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

RONALD CASTANARES

ie

Painters & Fillers 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 SB 19, SD1, HD1 that requires a procurement preference to a contractor in a public works construction contract of not less than \$250,000 if the contractor is a party to an apprenticeship agreement registered with the DLIR at the time of general bidding. It will also require public works contractors to comply with state labor laws.

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers

Local 1944

Thank you for the opportunity to submit this testimony in support of SB 19, SD1, HD1.

RICHARD TAGGERE

Glaziers, Architectural Metal &

Glassworkers Local Union 1889

VAUGHN CHONG

Roofers, Waterproofers & Allied

Workers United Union of Roofers

Local 221

SARY AYCOCK

Boilermakers, Ironship Builders

Local 627

Sincerely,

LYNN KINNEY

Metrical Council 50

Painters & Allied Trades

Local 1791

W. Hong dg

William "Buzz" Hong
Executive Director

GALANI MAHOE

Operating Engineers Local 3

WBH/dg

EDONARD SEBRESOS

Local Assoc. of

Roof Insulators

Roofers & Allied Workers Local 132

