

JAN 23 2009

A BILL FOR AN ACT

RELATING TO CONTRACTORS.

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

1 SECTION 1. Section 444-10.5, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsections (a) and (b) to read:

4 "(a) In addition to any other remedy available, the
5 investigator [~~may~~] shall issue citations to persons acting in
6 the capacity of or engaging in the business of a contractor
7 within the State, without having a license [~~previously obtained~~
8 ~~under and in compliance~~] in good standing in accordance with
9 this chapter and the rules [~~promulgated~~] adopted thereunder. If
10 the investigator determines that a person is acting in the
11 capacity of, or engaging in the business of, a contractor within
12 this State without having a license [~~to so act or engage,~~] in
13 good standing, the investigator [~~may~~] shall issue a citation and
14 a cease and desist order, as provided in subsection (b), to
15 [~~such~~] that person.

16 (b) Each citation shall be in writing and shall describe
17 the basis of the citation, including the specific statutory
18 provisions alleged to have been violated, and shall contain an



1 order to cease and desist from the violation, and an assessment
2 of civil penalties as provided in section 444-23. The citation
3 shall also include notice of the sanctions for violating the
4 cease and desist order. Upon the issuance of a citation, the
5 person cited shall cease work immediately and shall not resume
6 work until the person cited holds the licenses required under
7 this chapter to perform the work. All penalties collected under
8 this section shall be deposited in the special fund established
9 under section 26-9."

10 2. By amending subsection (j) to read:

11 "(j) The director may apply to the appropriate court for
12 injunctive or any other relief the court deems appropriate,
13 including a fine of not less than \$10,000 for each offense,
14 against any person who has been issued a citation for operating
15 without a license and who violates a cease and desist order.
16 Each day's violation or failure to comply with the license
17 requirements under this chapter or a cease and desist order
18 shall be deemed a separate offense. The allegations in the
19 citation shall be deemed conclusively established for purposes
20 of a proceeding for permanent or temporary relief to enforce the
21 cease and desist order."



1 SECTION 2. Section 444-23, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Except as provided in subsections (a), (b), (d), and
4 (e), any person who violates or fails to comply with this
5 chapter shall be fined not less than \$100 or more than \$5,000
6 for each violation; provided that any person without a license
7 in good standing in accordance with this chapter who violates
8 section 444-9 shall be fined:

9 (1) [~~\$500~~] \$ _____ per day or forty per cent of the total
10 contract price, whichever is greater, for the first
11 offense;

12 (2) [~~\$1,000~~] \$ _____ per day or forty per cent of the
13 total contract price, whichever is greater, for the
14 second offense; and

15 (3) [~~\$5,000~~] \$ _____ per day or forty per cent of the
16 total contract price, whichever is greater, for any
17 subsequent offense,

18 and when the person is or was a defendant or respondent in a
19 separate citation or lawsuit filed with or by the department,
20 all tools, implements, documents, materials, or any other
21 property used by the person in activities violating section
22 444-9 shall be subject to forfeiture as provided by section



1 444-23.5 and shall be turned over to the department for
2 disposition under that section."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on January 1, 2010.

6

INTRODUCED BY: *[Signature]*

[Signature]

[Signature]
[Signature]

[Signature]

[Signature]



Report Title:

Contractors; License Requirements; Citations; Civil Penalties

Description:

Prohibits the resumption of work for any person who is issued a citation for operating without a contractor's license in good standing until the person cited holds the required licenses conducted and makes the issuance of citations and cease and desist orders mandatory. Amends penalties. Effective 1/1/10.





LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

WEDNESDAY, FEBRUARY 11, 2009
8:30 A.M.

TESTIMONY ON SENATE BILL NO. 203 – RELATING TO CONTRACTORS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE DAVID Y. IGE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 203, Relating to Contractors. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department respectfully opposes Senate Bill No. 203.

Senate Bill No. 203 mandates the issuance of a citation and a cease and desist order when a RICO investigator determines that a person is acting in the capacity of, or engaging in the business of, a contractor without having a license in

good standing. The bill also prohibits a person to whom a citation has been issued from resuming the work until the person holds the license required to perform the work, amends the penalty provisions in unspecified amounts, and provides for an effective date of January 1, 2010.

Senate Bill No. 203 is nearly identical to Senate Bill No. 694, which this Committee is also hearing today. On the House side, House Bill Nos. 627 and 654 contain virtually identical language as Senate Bill Nos. 203 and 694. House Bill No. 627 was heard by the Committee on Consumer Protection and Commerce ("CPC") and House Bill No. 654 was heard by CPC and the Committee on Judiciary ("JUD") jointly. House Bill No. 627 was deferred and House Bill No. 654 was passed out of CPC/JUD with an H.D.1 on February 9, 2009. House Bill 654, H.D.1 incorporates the recommendations of the Department and the Department supports the form of the bill reflected in the H.D.1. In addition, the Department also supports the language of Senate Bill No. 1274, which contains the same language as House Bill No. 654, H.D.1.

The issues raised in this bill have been heard in a number of prior legislative sessions in various forms. The Department appreciates the efforts of all parties to craft revisions to the existing law that will bolster the State's efforts to effectively address and combat unlicensed contracting activity. Last session, these issues were heard in the context of Senate Bill No. 2896. Senate Bill No. 2896 went to conference, and although a conference draft was under consideration, no conference draft could be agreed upon.

The Department opposes Senate Bill No. 203 in its current form for the following reasons:

1. A citation is not the appropriate enforcement tool in all instances of unlicensed activity. Unlicensed activity can be prosecuted criminally through the Attorney General's or Prosecutor's office, through a circuit court action (lawsuit), or through the citation process. The fact that a citation is not issued in every unlicensed activity investigation does not mean that the case is not prosecuted. Instead, many cases are prosecuted through a circuit court action. A circuit court action is used where, for example, we want to obtain a restitution judgment in favor of an affected consumer, since restitution is not available through a citation. In addition, sometimes we have to subpoena documents or obtain witness statements or otherwise obtain evidence that we would not be able to do in a citation situation. In fiscal year 2008, RICO obtained 95 court judgments for unlicensed contracting activity and obtained 17 contracting citation orders.
2. Citations are time-sensitive. After a citation is served, the person served has 20 days to request a hearing. If a hearing is requested, the hearing is held approximately 45 days after the citation is served. The State must be ready to prosecute at that time. For this reason, investigators generally rely on their own observations of unlicensed activity and their own interviews before issuing a citation to ensure

that there is sufficient proof of the violation through their own testimony at the time of hearing. Where proof of unlicensed activity is based upon third party witness testimony or documents, investigators exercise discretion in determining whether to issue a citation or build a case for a circuit court enforcement action.

3. Senate Bill No. 203 amends the penalty provisions in subsection (j) by providing for a \$10,000 fine for any person who has been cited for unlicensed activity. However, this language is internally inconsistent with the fines that are set forth in Haw. Rev. Stat. §444-23(c) and would create confusion as to which fine provision applies. The Department also opposes this amendment because the fine amount may be deemed excessive.

For these reasons, the Department opposes this bill as drafted.

Thank you for the opportunity to testify on Senate Bill No. 203. I will be happy to answer any questions that the members of the Committee may have.



February 11, 2009

Senator Roz Baker, Chair
Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: SB 694 AND SB 203 "RELATING TO CONTRACTORS"

Chair Baker and Members of the Committee on Commerce and Consumer Protection:

I am Karen Nakamura, Executive Vice President and 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 supports the intent of SB 694 and SB 203; however, we oppose the bills as introduced. It has been one of BIA-Hawaii's priorities to curtail or stop any individuals or companies from performing construction work without the proper licenses. We believe the consumers need to be protected from those individuals and companies that do not have the public's best interests in conducting their work. We disagree with the mandate imposed upon the Regulated Industries Complaints Office (RICO) in the course of doing their job.

We support the DCCA/RICO's proposed amendments as incorporated in HB654, HD1 (attached) on which decision-making took place on February 9, 2009.

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

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

Executive Vice President & Chief Executive Officer
BIA-Hawaii

A BILL FOR AN ACT

RELATING TO CONTRACTORS.

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

1 SECTION 1. Section 444-10.5, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) In addition to any other remedy available, [~~the~~
4 ~~investigator may issue citations to persons acting in the~~
5 ~~capacity of or engaging in the business of a contractor within~~
6 ~~the State, without having a license previously obtained under~~
7 ~~and in compliance with this chapter and the rules promulgated~~
8 ~~thereunder. If the investigator determines that a person is~~
9 ~~acting in the capacity of, or engaging in the business of, a~~
10 ~~contractor within this State without having a license to so act~~
11 ~~or engage, the investigator may issue a citation to such~~
12 ~~person.] citations shall be issued in the manner set forth in
13 this subsection. The investigator shall issue a citation and a
14 cease and desist order, as provided in subsection (b), to a
15 person not exempt under section 444-2, whom the investigator
16 personally observes and determines is acting in the capacity of,
17 or engaging in the business of, a contractor within this state
18 without having any license in good standing pursuant to this~~



1 chapter. Where the investigator does not personally observe but
2 determines that a person not exempt under section 444-2 is
3 acting in the capacity of, or engaging in the business of, a
4 contractor within this state without having any license in good
5 standing pursuant to this chapter, the investigator may issue a
6 citation to that person.

7 (b) Each citation shall be in writing and shall describe
8 the basis of the citation, including the specific statutory
9 provisions alleged to have been violated, and shall contain an
10 order to cease and desist from the violation, and an assessment
11 of civil penalties as provided in section 444-23. The citation
12 shall also include notice of the sanctions for violating the
13 cease and desist order. Upon the issuance of a citation, the
14 person cited shall cease work immediately and shall not resume
15 work until the person cited holds the licenses required under
16 this chapter to perform the work. All penalties collected under
17 this section shall be deposited in the special fund established
18 under section 26-9."

19 SECTION 2. Section 444-23, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:

21 "(c) Except as provided in subsections (a), (b), (d), and
22 (e), any person who violates or fails to comply with this



1 chapter shall be fined not less than \$100 or more than \$5,000
2 for each violation; provided that any person without any license
3 in good standing pursuant to this chapter who violates section
4 444-9 shall be fined:

5 (1) [~~\$500~~] \$2,500 or forty per cent of the total contract
6 price, whichever is greater, for the first offense;

7 (2) [~~\$1,000~~] \$3,500 or forty per cent of the total
8 contract price, whichever is greater, for the second
9 offense; and

10 (3) \$5,000 or forty per cent of the total contract price,
11 whichever is greater, for any subsequent offense,

12 and when the person is or was a defendant or respondent in a
13 separate citation or lawsuit filed with or by the department,
14 all tools, implements, documents, materials, or any other
15 property used by the person in activities violating section
16 444-9 shall be subject to forfeiture as provided by section
17 444-23.5 and shall be turned over to the department for
18 disposition under that section."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect on January 1, 2030.



Report Title:

Contractors; License Requirements; Citations; Civil Penalties

Description:

Requires the issuance of citations and cease and desist orders in cases where an investigator personally observes and determines that a person is acting as a contractor without a license in good standing. Amends penalties. Effective 01/01/2030. (PROPOSED HB654 HD1)



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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

FEBRUARY 10, 2009

TO: THE HONORABLE SENATOR ROSALYN H. BAKER, CHAIRS AND
MEMBERS OF THE COMMITTEE ON COMMERCE AND CONSUMER
PROTECTION

SUBJECT: S.B. 203, RELATING TO CONTRACTORS

NOTICE OF HEARING

DATE: Wednesday, February 11, 2009
TIME: 8:30 a.m.
PLACE: Conference Room 229

Dear Chairs Baker 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, **strongly opposes** the passage of S.B. 203, Relating to Contractors.

S.B. 203, Relating to Contractors, amends Section 444-10.5, to mandate the issuance of a citation to persons found to be working without the required contractors' license in good standing and that all work cease upon the issuance of a citation until a hearing is held on the citation. The requirement that all work cease upon the issuance of a citation may create a problem for the legitimately licensed contractor because the proposed changes fails to recognize cases where licenses may have expired due to failure of the contractor to attend to simple administrative requirements such as filing a proper certificate of insurance. The amendment may thereby result in unintended job delays and financial consequences for the contractor before being given an opportunity to contest the citation.

A major problem with the proposed amendment is that the citation of alleged unlicensed activity may not be resolved for several months during which time no work can be done by the alleged violator. The GCA believes that RICO should be given the discretion to determine when a citation should be issued as a stop and desist order is not appropriate in all situations.

The GCA is **strongly opposed** to the passage of S.B. 203, and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this issue.

IRON WORKERS STABILIZATION FUND

Fax: 586-6659

February 10, 2009

Hon. Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Affairs
State Capitol – Room 231
Honolulu, HI 96813

Iron Workers Stabilization Fund – T. George Paris, Managing Director

Hearing Date – February 11, 2009, 8:30 a.m. – Conference Room 229

Support of SBs 203 and 694, Relating to Contractors

As this committee is well aware, numerous bills have been introduced in prior sessions attempting to curtail *unlicensed* contracting activity. In gist, there are 3 different categories of unlicensed activities.

1. The first pertains to an individual or entity that is *absolutely unlicensed*, either as a general contractor or a specialty contractor.
2. The second pertains to a *licensed* general or specialty contractor that undertakes specialty work for which it is not licensed.
3. The third pertains to a *licensed* general or specialty contractor that falls out of compliance with the insurance and bonding requirements found in HRS Chapters 444 and 436B.

HRS section 444-9, entitled **Licenses required**, states:

“No person within the purview of this chapter shall act, or assume to act, or advertise, as general engineering contractor, general building contractor, or specialty contractor without a license previously obtained under and in compliance with this chapter and the rules and regulations of the contractors license board.”

The language found in HRS section 444-9 is *clear and unambiguous*. Any person or entity that does not possess a general contracting license is *prohibited* from performing any general contracting work. And, any person or entity that does not possess a specialty contracting license in a particular specialty is *prohibited* from performing any work in that specialty.

In the now well-known **Okada Trucking** case decided by the Hawaii Supreme Court in 2002, our high court in defining HRS section 444-9 clearly set forth as follows:

*“ . . . pursuant to HRS section 444-9, a general engineering or building contractor is **prohibited** from undertaking **any** work, solely or as part of larger project, that would require it to act as a specialty contractor in an area in which the general contractor was not licensed to operate. . . .”*

Reading HRS section 444-9 together with the above language from the **Okada Trucking** case, there can be no doubt that a general building contractor is **prohibited** from undertaking **any** specialty work for which it is not licensed. The same prohibition should hold true for a specialty contractor attempting to undertake work in another specialty for which it is not licensed.

HRS Section 444-11.1, entitled *Requirements to maintain license*, clearly sets forth that any licensed contractor must maintain in full force the following: workers' compensation insurance, liability insurance and a bond. Subsection (b) of this section states:

*“Failure, refusal, or neglect of any licensed contractor to maintain in full force and effect, the applicable workers' compensation insurance, liability insurance, or bond shall cause the **automatic forfeiture of the license of the contractor effective as of the date of expiration or cancellation of the contractor's workers' compensation insurance, liability insurance, or bond.**”*

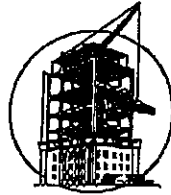
In addition, HRS Chapter 436B, entitled *Professional and Vocational Licensing Act* also contains a similar provision as HRS Section 444-11.1 quoted above. HRS Section 436B-13, entitled *Renewal of License*, contains the following language in subsection (c):

*“The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with **any** other requirement provided by law, shall cause the license to be **automatically forfeited.**”*

Here, again, the law is abundantly clear. Any licensed general or specialty contractor that causes its insurance or bonding requirements to lapse will have its license **automatically forfeited.**

For emphasis, "the law is clear." One who is *absolutely unlicensed*, a *licensed* general or specialty contractor that undertakes specialty work for which it is not licensed, or a *licensed* general or specialty contractor that falls out of compliance with the insurance and bonding requirements found in HRS Chapter 444, are *prohibited* from undertaking any contracting work. This being the case, the *Cease and Desist* order called for in SBs 694 and 203 should be made into law without any equivocation, and, the entity or person that is the subject of the order should be *prohibited* from undertaking any work until the proper license is obtained or reactivated through compliance with HRS Chapters 444 and 436B.

Based on the above, we respectfully submit that SBs 694 and 203 be passed by this committee.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
 GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
 (808) 524-2249 • FAX (808) 524-6893

February 10, 2009

Honorable Senator Rosalyn H. Baker, Chair
 Honorable Senator David Y. Ige, Vice Chair
 Members of the Senate Committee on Commerce & Consumer Protection
 Hawaii State Capital
 415 South Beretania Street
 Honolulu, HI 96813

RE: **IN SUPPORT OF SB 203**
RELATING TO CONTRACTORS
 Hearing: Wednesday, February 11, 2009, 8:30 a.m.

Dear Chair Baker, Vice Chair Ige, and the Senate Committee on
 Commerce and Consumer Protection:

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 **SB203** that prohibits the
 resumption of work for any person who is issued a citation for
 operating without a contractor's license in good standing until the
 person cited holds the required licenses conducted and makes the
 issuance of citations and cease and desist orders mandatory.

Thank you for the opportunity to submit this testimony in support
 of **SB203**.

Sincerely,

W. Hong dg

William "Buzz" Hong
 Executive Director

WBH/dg

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

JOSEPH O'DONNELL
 Vice President
 Iron Workers Local 625

AMIEN T. K. KIM
 Financial Secretary
 International Brotherhood of
 Electrical Workers Local 1188

RICHARD TOLENTINO
 Treasurer
 Steel Mill Workers I.A. Local 293

ALCOLM K. AHLO
 Sergeant-At-Arms
 Pipe, Lineum, & Soft Tills
 Local 1296

SIGNALD CASTANARES
 Vice
 Plumbers & Fitters Local 675

ADDEUS TOMEI
 Labor Constructors Local 126

JOSEPH BAZEMORE
 Wall, Tapers, & Finishers
 Local 1944

HARD TACBERE
 Welders, Architectural Metal &
 Ironworkers Local Union 1889

JOHN CHONG
 Plumbers, Waterproofers & Allied
 Trades United Union of Roofers
 Local 1221

JOHN AYCOCK
 Shipbuilders, Ironship Builders
 Local 627

JOHN KINNEY
 Council 50
 Plumbers & Allied Trades
 Local 1791

JOHN MAHOE
 Civil Engineers Local 3

JOHN SEBRESOS
 National Assoc. of
 Professional Insulators
 Local Workers Local 132

SAH - Subcontractors Association of Hawaii

820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 11, 2009

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons, President

Subject: S.B. 203 - RELATING TO CONTRACTORS

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we generally support this bill.

The Subcontractors Association represents the following eight separate and distinct contracting associations who have combined their testimony in the interest of saving time and resources.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We have seen a proposed SD 1 from RICO that addresses SB 694 and SB 203 and would prefer that version.

Thank you.