

STAND. COM. REP. NO. 679

Honolulu, Hawaii

March 5, 2009

RE: H.B. No. 654

H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committees on Consumer Protection & Commerce and  
Judiciary, to which was referred H.B. No. 654 entitled:

"A BILL FOR AN ACT RELATING TO CONTRACTORS,"

beg leave to report as follows:

The purpose of this bill is to improve the regulation of  
contractors by:

- (1) Requiring the issuance of a citation and cease and  
desist order when an investigator from the Department of  
Consumer Affairs' (DCCA) Regulated Industries Complaints  
Office (RICO) determines that a person is acting in the  
capacity of, or engaging in the business of, a  
contractor without a license in good standing;
- (2) Prohibiting a cited person from resuming work until the  
person holds the license required to perform the work;  
and
- (3) Amending the penalties for persons cited for unlicensed  
activity.

The Hawaii Building and Construction Trades Council, AFL-CIO,  
Subcontractors Association of Hawaii, and Iron Workers  
Stabilization Fund testified in support of this bill. DCCA, the  
General Contractors Association, and the Building Industry  
Association of Hawaii opposed this measure.

HB654 HD1 HSCR CPC-JUD HMS 2009-1999



DCCA expressed concerns that this bill would require the issuance of citations for unlicensed contracting activity in situations where prosecution through a circuit court action may be the more appropriate enforcement tool. The advantages of a court action over a citation include the ability to obtain restitution for the consumer and to subpoena documents or obtain witness statements and evidence. Furthermore, because the hearing process for an issued citation moves quickly, RICO investigators in certain cases, such as where proof of unlicensed activity is based on third-party testimony rather than the investigator's personal observations, may want to forego a citation in favor of obtaining more time to build a case for a circuit court action.

There are also concerns that the amendments to the penalties for unlicensed contracting activity under this measure are inconsistent with other fines set forth in section 444-23(c), Hawaii Revised Statutes, and may be deemed excessive.

Accordingly, your Committees have amended this bill by:

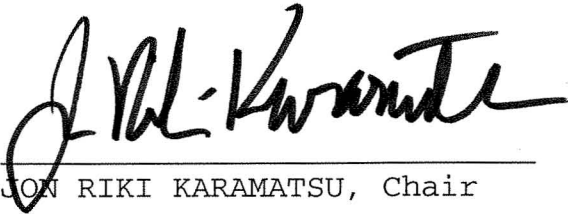
- (1) Requiring investigators to issue a citation in cases where the investigator personally observes and determines a person is acting as a contractor without a license in good standing;
- (2) Authorizing investigators to issue a citation in cases where the investigator does not personally observe but determines that a person is acting as a contractor without a license in good standing;
- (3) Deleting the amendments to the statutory provision relating to court-ordered injunctive or other relief for violations of cease and desist orders;
- (4) Increasing the penalties for first and second offenses of acting as a general engineering contractor, general building contractor, or specialty contractor without a license in good standing, but restoring the original penalty for subsequent offenses; and
- (5) Changing the effective date to January 1, 2030, to encourage further discussion.

As affirmed by the records of votes of the members of your Committees on Consumer Protection & Commerce and Judiciary that



are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 654, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 654, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committees on Consumer  
Protection & Commerce and  
Judiciary,



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JON RIKI KARAMATSU, Chair



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ROBERT N. HERKES, Chair





