

HB2897

HD1 SD1



HAWAI‘I CIVIL RIGHTS COMMISSION

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March 23, 2010
Rm. 016, 9:30 a.m.

To: The Honorable Brian Taniguchi, Chair
Members of the Senate Committee on Judiciary and
Government Operations

From: Coral Wong Pietsch, Chair
and the Commissioners of the Hawai‘i Civil Rights Commission

Comments on H.B. No. 2897, H.D.1, S.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to State and State-funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sect. 5.

The HCRC opposes H.B. No. 2897, H.D.1, S.D.1 which would amend Hawai‘i Revised Statutes § 444-17(22) to subject contractors on any project or operation who knowingly or intentionally employ workers who are not eligible to work in the United States to license revocation, suspension, or refusal to renew.

The reasons for HCRC opposition to H.B. 2897, H.D.1, S.D.1 are two-fold:

- 1) The proposed statute would result in the application of federal law standards in state law contexts, requiring state agencies and courts to interpret complex federal laws that are better left to the appropriate federal agencies for enforcement.

- 2) The proposed prohibition and license revocation create a likelihood of increased ancestry / national origin discrimination in employment. If contractors face the serious penalties under state law as proposed, in addition to the sanctions faced under federal law, affecting their contractors' licenses and livelihood, it will encourage them to avoid the potential penalties by not hiring workers who appear to be non-native, foreign-born, or immigrant. This will result in unlawful discrimination against those whose language, accent, or other characteristics are not typically "American," creating a climate of discrimination against immigrant workers.

The HCRC appreciates the Senate Committees on Labor and Commerce and Consumer Protection recognition that this bill may create a climate of discrimination against immigrant workers, those who do not fit stereotypes of how "American" workers look, speak, or dress, or have names or other characteristics that are not considered "American."

Proponents of the bill argue: 1) that the "knowingly or intentionally" standard in the bill will not require the affected contractor employers to look behind the documents that a prospective employee presents; 2) that current federal employer sanctions for hiring undocumented workers are not sufficient because only individuals are prosecuted for law violations, not companies; and, 3) that the legislature should approve this bill as a means to protect against abuses of immigrant workers.

Addressing these arguments in the order summarized above:

- 1) The "knowingly and intentionally" standard as characterized in support of the bill reflects an oversimplification of a very complex area. Contractors will have to apply complex federal documentation standards, and the licensing board will be required to

make factual determinations of intent. There are many Hawai'i workers who are authorized to work who have neither a lawful permanent resident "green card," a naturalization certificate, nor a U.S. birth certificate – including American Samoans (who are U.S. nationals), individuals from the Federated States of Micronesia (who enter under the Compact of Free Association), and political asylees (who may only have order), as well as numerous others who may have a pending immigration application or other form of documentation. A contractor who chooses to err on the side of caution (or discrimination) could face a federal complaint of immigration-related unfair employment practices, which falls under the jurisdiction of the U.S. Department of Justice.

- 2) It is true that the federal government will only criminally prosecute individuals, not employer companies – just as in other areas, corporations are not subject to personal criminal liability. However, the federal employer sanctions law provides not only for individual criminal penalties, but also for civil penalties on employers, in the form of substantial fines. The Department of Homeland Security has stepped up enforcement of employer sanctions through increased audits of employers.
- 3) It is commendable that the legislature takes an interest in preventing and remedying abuses against undocumented workers. The most effective way to do that is to strengthen and enforce protections against such abuses, not to push these workers farther to the margins.

Enforcement of employer sanctions is best left to the federal government.

The HCRC opposes H.B. No. 2897, H.D.1, S.D.1 and urges the Committee to hold this measure. Thank you for considering these comments and concerns.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE SENATE COMMITTEE ON
JUDICIARY AND GOVERNMENT OPERATIONS**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Tuesday, March 23, 2010
9:30 a.m.**

WRITTEN COMMENTS ONLY

**TESTIMONY ON HOUSE BILL NO. 2897, H.D. 1, S.D. 1, RELATING TO
CONTRACTORS.**

**TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Denny Sadowski, Legislative Committee Chair of the Contractors License Board ("Board"). Thank you for the opportunity to submit comments on House Bill No. 2897, H.D. 1, S.D. 1, which proposes to make it a licensing violation for a contractor to knowingly and intentionally employ a person who is not eligible to work in the United States on any project, not just public work projects.

The Board questions the need for penalties specific to contractors, as there are federal statutes and enforcement agencies already in place to address this issue and employers must submit employment verification forms indicating that the individual is authorized to work in the U.S. We feel that any employer using ineligible workers should be dealt with by the proper authorities, whether or not the employer is a contractor.

Thank you for the opportunity to comment on House Bill No. 2897, H.D. 1,
S.D. 1.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 22, 2010

TO: THE HONORABLE SENATOR BRIAN T. TANIGUCHI, CHAIR AND MEMBERS
OF THE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

SUBJECT: H.B.2897, HD1 SD1 RELATING TO CONTRACTORS.

NOTICE OF DECISION MAKING

DATE: Tuesday, March 23, 2010
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms, **supports** the passage of H.B. 2897, HD1 SD1 Relating To Contractors.

H.B. 2897, HD1 SD1 amends Section 444-17, HRS, to extend the authority of the contractors licensing board to revoke or suspend the license of any contractor found to have knowingly or intentionally employing any individual not eligible to work in the United States under federal law to any contractor subject to Chapter 444, not just those working on state and county contracts.

The GCA believes that this statute enacted in 2009, as Act 145-09, should apply to all contractors licensed by the state of Hawaii, and not just to those working on contracts subject to Chapter 104, HRS.

The GCA **supports** the passage of H.B. 2897, HD1 SD1 Relating To Contractors.

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



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
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PETER GANABAN
Laborers' International Union of
North America Local 368

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

March 22, 2010

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 2897, HD1, SD1**
RELATING TO CONTRACTORS
Hearing: Tuesday, March 23, 2010, 9:30 a.m.

Dear Chair Taniguchi, Vice Chair Takamine and the 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 2897, HD1, SD1 that subjects a contractor to revocation, or non renewal of its license for knowingly or intentionally employing a person on any project or operation who is not eligible to work in the United States under federal law.

Thank you for the opportunity to submit this testimony in support of HB 2897, HD1, SD1.

Sincerely,

William "Buzz" Hong
Executive Director

WBH/kb