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To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on
Labor and Public Employment

Date: Tuesday, February 3, 2009
Time: 8:30 a.m.
Place: Conference Room 309
State Capitol

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

Re: H.B. No. 826 - Relating to Public Works

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. No. 826 establishes a new part in the Wages and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes ("HRS") that limits employees who may work on public works to "regular employees" who work at least twenty hours a week, as defined in the Prepaid Health Care Act, section 393-3, HRS.

This new proposed provision also requires bidders on public works to maintain a State-certified apprenticeship program and projects over \$1 million use at least 15% of the man hours work performed by apprentices.

Penalties for violating the new part are temporary or permanent suspension from the project and all public works in addition to monetary penalties.

This Act is effective January 1, 2010.

II. CURRENT LAW

There is no restriction on who is eligible to work on a public work.

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III. HOUSE BILL

The Department cannot support H.B. 826 for the following reasons:

1. This measure limits who may be employed on public works to only those who are employed more than twenty hours a week. It would restrict specialty contractors that have small jobs to finish that do not take twenty hours and would negatively impact the State's ability to get qualified individuals on the job site. Many public works subject to Chapter 104 are jobs that require less than twenty hours on the job site.
2. Contractors who cannot hire independent contractors restrict the use of many small businesses that do not have employees. This will negatively impact the State to get the best workers at the best price to bid and complete construction on public works.
3. Allowing only contractors with State-certified apprentice programs to bid on public works further limits the State's ability to have an open bidding process. Currently, the Workforce Development Division has over 18 certified apprentice programs. One associated with a merit-based organization and all others collective bargaining unit-based. This is an attempt to restrict bidding on public works to only those who participate in collective bargaining agreements.

This provision which appears in section 104-C is more appropriately addressed in the procurement law as relates to bidding requirements.

House of Representatives
The Twenty-Fifth Legislature
Committee on Labor and Public Employment
February 3, 2009, 8:30 a.m.
Conference Room 309

Statement of the Hawaii Carpenters Union on HB 826

The Hawaii Carpenters Union supports the intent of HB 826, to prevent exploitation of “off the books” workers on public works construction projects, and to provide for a trained and ready skilled work through apprenticeship.

This Bill makes it clear that workers on public works construction shall be employees. This will address the problem of unscrupulous contractors unfairly competing by not transmitting social security, medicare, unemployment or income taxes, and failing to cover workers with medical, workers compensation or liability insurance. These contractors may misclassify employees as independent contractors, or simply not record or report them at all.

While this is a problem throughout our economy, the work force on a construction site is made up of either licensed contractors or subcontractors, or employees. While employee status should be clear cut in the construction industry, the transient nature of the work calls for added scrutiny.

Requiring that contractors be participants in a State approved apprenticeship program, contributes to the ability of the State and county governments to conduct public works projects. Costs will not be increased because Ch. 104 requires prevailing wages to be paid, which include the area standard contribution towards training. If we want to advance our public policy to maintain a skilled construction work force, provide education options, decrease work injuries and costs, should we not do so in the course of public works?

While there are a number of Bills supporting apprenticeship training in the course of public works, this Bill also requires that 15% of hours worked on a project costing \$1 million or more, be actually worked by apprentices. Work hours on a job site are an integral part of apprenticeship, and this provision would contribute to that need. It would also guard against apprenticeship programs that exist on paper but are not truly functional, giving them an incentive to increase their efforts and quality.

Implementation of this provision would require the weekly reporting of total hours worked on a project, and hours worked by apprentices. Flexibility is provided by considering the total number of hours pursuant to the contract, rather than each subcontract or each trade.

Thank you for considering our testimony.

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