

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 COMMITTEES
ON
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS
ON
March 9, 2010

S.B. 2840, S.D. 2

RELATING TO PUBLIC PROCUREMENT

Chair McKelvey, Chair Rhoads, and members of the Committees, thank you for the opportunity to testify on S.B.2840, S.D.2.

The Department of Accounting and General Services (DAGS) has concerns about this bill and defers to the Attorney General's assessment as to whether requiring local residents for construction projects will survive a legal challenge. DAGS understands that S.B. 2840, S.D.2 would be assessed against the privilege and immunities clause of the US Constitution, Article IV, Section 2, which states that citizens of each state shall be entitled to all privileges and immunities of citizens of the other states. This would appear to assure the right of a citizen of one state to do business in another state on an equal basis with a citizen of the other state.

DAGS understands the desire to have local citizens working on Hawai'i construction projects. If the State procurement code and existing laws are applied

rigorously to solicit construction projects, Hawai'i companies can compete with out of state companies on an equal footing, and because they and their employees are already in the state, would have a competitive advantage, all other things being equal.

Thank you for the opportunity to testify on this matter.

Council Chair
Danny A. Mateo

Vice-Chair
Michael J. Molina

Council Members
Gladys C. Baisa
Jo Anne Johnson
Sol P. Kaho'ohalahala
Bill Kauakea Medeiros
Wayne K. Nishiki
Joseph Pontanilla
Michael P. Victorino




Director of Council Services
Ken Fukuoka

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March 8, 2010

TO: The Honorable Karl Rhoads, Chair
House Committee on Labor & Public Employment
The Honorable Angus L.K. McKelvey, Chair
House Committee on Economic Revitalization, Business, & Military Affairs

FROM: Danny A. Mateo 
Council Chair

SUBJECT: **HEARING OF MARCH 9, 2010; TESTIMONY IN SUPPORT OF SB 2840, SD2,
RELATING TO PUBLIC PROCUREMENT**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to require that residents of Hawaii make up at least 80 percent of the labor force working on certain public works projects and construction procurement contracts.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

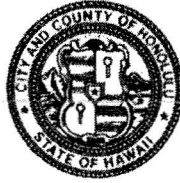
I support this measure for the following reasons:

1. This measure puts Hawaii's construction industry and Hawaii's construction workers back to work. It is no secret that the construction industry has come to a stall within the last few years, and allowing mainland companies to come in and take away what little jobs there already are, only adds to the burden felt by the unemployed men and women of Hawaii's construction industry..
2. This measure keeps Hawaii taxpayers' dollars in Hawaii. By requiring that at least 80 percent of the workforce of certain taxpayer funded construction projects be Hawaii residents, an increased amount of those dollars will stay in Hawaii and help resuscitate local economies. Why export Hawaii tax dollars to the bank accounts of mainland workers when the bank accounts of Hawaii's unemployed are in dire need of infusions?
3. While the goal of this measure is simple—reduce unemployment in Hawaii—the means by which it is achieved creatively challenges previous procurement practices. I feel the time is now to break the status quo and fight hard for the jobs of our residents. We need to get our people back to work.

For the foregoing reasons, I support this measure.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
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MUFI HANNEMANN
MAYOR



RIX MAURER III
DIRECTOR

MARK K. OTO
DEPUTY DIRECTOR

March 8, 2010

The Honorable Angus L. K. McKelvey
and Members
House Committee on Economic Revitalization,
Business and Military Affairs
The Honorable Karl Rhoads, Chair
and Members
House Committee on Labor
The Twenty-Fifth State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear Chairs McKelvey and Rhoad, and Members:

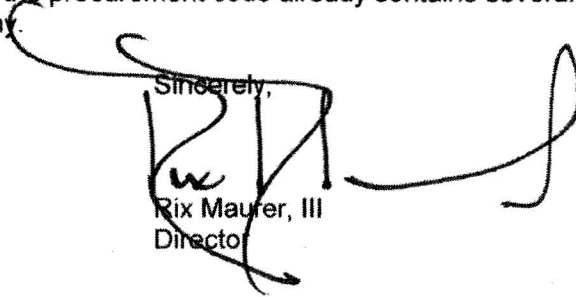
Subject: SB 2840, S D 2 – Relating to Public Procurement

The City and County of Honolulu agrees with the spirit and intent of SB 2840, S D 2. This is particularly true during these difficult economic times when we want to promote efforts to help our unemployed and under employed residents. That is why we have taken full advantage of the federal stimulus program and why Mayor Hannemann has just introduced a \$2.1 billion capital budget for FY 2011.

Having said this, the bill, as drafted raises several concerns. First we believe the bill creates several opportunities for vendors to protest the award of a contract. The effect of that would be delays to the execution of the contract and delays in getting workers onto the job site. Second, the sanctions provided for in this bill actually may serve to increase the cost of the project, as well as to delay the completion of the project. Third, the bill will be an administrative nightmare to an already short staffed public workforce, as we anticipate problems with respect to the monitoring and enforcement of a contract.

While we understand the concerns regarding the effect of non-resident employed on public work projects, we believe the procurement code already contains several preferences which promote Hawaii's economy.

Sincerely,


Rix Maurer, III
Director

**DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU**

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CRAIG I. NISHIMURA, P.E.
DIRECTOR

COLLINS D. LAM, P.E.
DEPUTY DIRECTOR

March 8, 2010

The Honorable Angus L. K. McKelvey
and Members
House Committee on Economic Revitalization,
Business and Military Affairs
The Honorable Karl Rhoads, Chair
and Members
House Committee on Labor
State Capitol
Honolulu, Hawaii 96813

Dear Chairs McKelvey and Rhoad, and Members:

Subject: SB2840 SD2

The Department of Design and Construction (DDC) respectfully **opposes** SB2840 SD2. We concur with the City Department of Budget and Fiscal Services' testimony that the bill would create opportunities for vendors to protest the contract award, delay the execution of the contract, increase project costs, and be an administrative nightmare for the contracting officer.

Further, we find the term "resident" as defined in the bill too general and vague to monitor accurately, rendering the bill unenforceable. Adding an ambiguous layer of contract compliance could result in construction delays, contract cancellations and a lapse of funding. Accordingly, we respectfully **oppose** SB2840 SD2.

Thank you for the opportunity to testify.

Very truly yours,

Handwritten signature of Craig I. Nishimura in black ink.

Craig I. Nishimura, P.E.
Director

CN/MR:lm



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Economic Revitalization, Business, and Military Affairs &
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
March 9, 2010

S.B. 2840, SD2 – RELATING TO PUBLIC PROCUREMENT

The Hawaii State AFL-CIO strongly supports S.B. 2840, SD2 which requires at least eighty percent of workers on public works and construction contracts to be Hawaii residents and requires contractor to provide proof of compliance, if challenged.

Hawaii's unemployment rate remains alarmingly high. With such high unemployment and a substantial state budget deficit, it is imperative to pass S.B. 2840, SD2. No longer should Hawaii residents sit on the bench while out-of-state workers get the jobs our workers so desperately need. It is time to put our unemployed back to work and stimulate our economy. We must do all we can to keep the unemployment rate from rising further and allow local families to be forced out of their homes because out-of-state workers have claimed their local jobs.

Than you for the opportunity to testify on this matter.

Respectfully submitted,

Randy Perreira
President

The Twenty-Fifth Legislature
Regular Session of 2010

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

State Capitol, Conference Room 309
Tuesday, March 9, 2010; 10:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2840, SD2
RELATING TO PUBLIC PROCUREMENT**

The ILWU Local 142 supports S.B. 2840, SD2, which requires at least 80% of workers on certain public works contracts and construction procurements to be Hawaii residents.

At first glance, this bill may appear unconstitutional because it provides for preference in hiring to Hawaii residents. However, we are informed by the testimony of Professor Jon Van Dyke of the William S. Richardson School of Law at the University of Hawaii that federal case law exists to allow for such preference if it is "substantially related to the important government goal of reducing unemployment."

Clearly, this measure will help to ease the burgeoning unemployment among construction workers. Unions report that more than half of their members are "on the bench," meaning that they are waiting to be referred for work. Many may still be receiving unemployment benefits, but some may have exhausted those benefits and are desperate for work.

At the same time, the State is issuing public works contracts to companies that bring workers into the state to complete the contracted work--as if no qualified workers are available in Hawaii! This is a travesty.

If Hawaii taxpayers are paying for public works projects, Hawaii workers should be doing the work. It makes no sense to pay a company that hires offshore workers, pays for their travel and living expenses, and lets them contribute taxes elsewhere. As much as possible, our taxes should be used to support working men and women who live in Hawaii and will, in turn, support our own economy.

The ILWU urges passage of S.B. 2840, SD2. Thank you for the opportunity to testify on this matter.



Committee: Committees on Labor and Public Employment and Economic Revitalization, Business and Military Affairs
Hearing Date/Time: Tuesday, March 9, 2009, 10:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii with Comments to S.B. 2840, SD2, Relating to Public Procurement

Dear Chairs Rhoads and McKelvey and Members of the Committees on Labor and Public Employment and Economic Revitalization, Business and Military Affairs:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes to offer comments to S.B. 2840, SD2, which seeks to require at least eighty percent of workers on certain public works contracts and construction procurements to be Hawaii residents.

Laws like this one, which give a hiring preference to local residents, implicate constitutional scrutiny under the Privileges and Immunities Clause of Article I, §2. *United Bldg. & Constr. Trades Council v. Mayor & Council of Camden*, 465 U.S. 208, 218 (1984). Accordingly, the applicable scrutiny under the P&I Clause is exacting and strict. First, a “substantial reason for the discrimination” does not exist “unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the discriminatory statute is aimed.” *Toomer v. Witsell*, 334 U.S. 385, 398. Additionally, there must be a “reasonable relationship between the danger represented by non-citizens, as a class, and the . . . discrimination practiced upon them,” even where the presence or activity of non-residents causes or exacerbates the problem the State seeks to remedy. *Id.* at 399.

With the current economic climate, the ACLU does not believe the bill to pose an immediate constitutional concern. To avoid a later constitutional challenge, however, the ACLU suggests that the bill be amended to include a sunset provision in 2015. In five years, the Legislature may reassess whether such a hiring preference remains necessary to combat the unemployment of resident construction workers.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

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March 9, 2010
Page 2 of 2

Thank you for this opportunity to testify.

Sincerely,

Lois K. Perrin
Legal Director
ACLU of Hawaii

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**Hawaii State Legislature
Joint Hearing
House Committee on Labor and Public Employment
House Committee on Economic Revitalization, Business, & Military Affairs
Tuesday, March 9, 2010
10:30 a.m.
Conference Room 309**

Re S.B. No. 2840 S.D. 2 Relating to Public Procurement

**Testimony of Jon M. Van Dyke
On Behalf of
District Council 50**

Introduction Regarding the Changes to the Original Bill.

S.B. No. 2840 (which was identical to H.B. No. 2736) has been strengthened by several technical changes, changes to its purpose section, and a change to facilitate enforcement. These changes will assist in enabling the State to defend the constitutionality of the statute, should it be challenged after enactment.

S.B. No. 2840 S.D. 2 contains a long purpose section explaining the economic conditions that underlie the enactment of this statute. This material will be useful in helping a reviewing court understand the need for this legislation. It also contains a specific reference to the test utilized by the U.S. Supreme Court in *United Building & Construction Trades Council of Camden County & Vicinity v. Mayor and Council of the City of Camden*, 465 U.S. 208 (1984), with regard to the Privileges and Immunities Clause, and explains why "the purpose of this Act is substantially related to the important governmental goal of reducing unemployment." Again, this addition will be useful in defending the statute should it be challenged.

S.B. No. 2840 S.D. 2 also contains a new section requiring contractors to "provide the procurement officer with documentation sufficient to demonstrate compliance with this chapter." This addition will facilitate enforcement, and raises no constitutional issues.

S.B. No. 2840 S.D. 2 does not contain the definition of "shortage trade," which is contained in H.B. No. 2736 H.D. 1. It would probably be best to add this definition to the statute as ultimately passed, to avoid any ambiguity on this matter.

S.B. No. 2840 S.D. 2 says that the Act "shall take effect on July 1, 2050." This date needs to be changed to July 1, 2010, so that this statute can address the immediate economic challenges facing our community.

The Constitutional Regime Governing This Bill.

Laws giving preference to local residents for work funded by state taxpayers have been found to be constitutional under the Market Participant Exception to the Dormant Commerce Clause, *White v. Massachusetts Council of Construction Employers, Inc*, 460 U.S. 204 (1983), and they can also be constitutional under the Privileges and Immunities Clause if they are substantially related to the important governmental goal of reducing unemployment. *United Building & Construction Trades Council of Camden County & Vicinity v. Mayor and Council of the City of Camden*, 465 U.S. 208 (1984). The determination whether a specific local preference law is constitutional is, therefore, fact-specific and depends on whether the law is properly related to a specific unemployment problem needing attention. Because of the serious unemployment in Hawai'i's construction industry, and because of Hawai'i's unique geography, the approach taken in S.B. No. 2840 and H.B. No. 2736 logically addresses Hawai'i's unemployment challenges and should be found to be constitutional under existing caselaw if a proper legislative record confirms the relationship between this law and the current rates of unemployment in the construction industry.

Hawai'i's Unemployment Challenges in the Construction Industry.

The unemployment rate in Hawai'i as of December 2009 was 6.9%. As Governor Lingle acknowledged in her State of the State Address, the construction industry has been hit especially hard during the current economic downturn. Between December 2008 and December 2009, 4,900 construction jobs were lost.¹ This problem appears to be exacerbated by the practice of some contractors who receive state public works contracts to hire nonresident construction workers.

S.B. No. 2840/H.B. No. 2736 Relating to Public Procurement.

This Bill is designed to address the problem of unemployment in Hawaii's construction industry. It requires any contractor awarded a public works contract to "ensure that Hawaii residents comprise not less than eighty per cent of the workforce employed to perform the contract." This requirement also applies to subcontracts of \$50,000 or more, but it does not apply to "procurements for professional services under section 103D-304 and procurements for small purchases under chapter 103D-305." In addition, "hours worked by employees within shortage trades, as determined by the department of labor and industrial relations, shall not be included in the calculations for purposes of this section."

The Privileges and Immunities Clause.

United Building & Construction Trades Council of Camden County & Vicinity v. Mayor and Council of the City of Camden, 465 U.S. 208 (1984), involved a municipal ordinance enacted by the City Camden, New Jersey, requiring that at least 40% of the employees of

¹ Hawai'i Dept. of Labor and Industrial Relations, Hawai'i's Seasonally Adjusted Unemployment Rate at 6.9 Percent in December, Jan. 22, 2010.

contractors and subcontractors working on City construction projects be City residents. The Supreme Court ruled that the Privileges and Immunities Clause in Article IV of the U.S. Constitution protected the right of all U.S. citizens to seek employment from private employers, even those receiving governmental contracts, and that discrimination against citizens of other states can be justified only “where there is a ‘substantial reason’ for the difference in treatment” and if it can be shown that the nonresidents “constitute a peculiar source of the evil at which the statute is aimed.” 465 U.S. at 222. In explaining this test, the Court noted that it would be proper in the usual case to defer to the judgment of local legislative bodies, especially when they are utilizing taxpayer funds to stimulate their local economy and to create jobs:

* “*The fact that Camden is expending its own funds or funds that it administers in accordance with the terms of a grant is certainly a factor – perhaps the crucial factor – to be considered in evaluating whether the statute’s discrimination violates the Privileges and Immunities Clause.*” *Id.* at 221 (emphasis added).

* “Every inquiry under the Privileges and Immunities Clause ‘must...be conducted with due regard for the principle that the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.’ *Toomer v. Witsell*, 334 U.S. 385 (1948). *This caution is particularly appropriate when a government body is merely setting conditions on the expenditure of funds it controls.*” *Id.* at 222-23 (emphasis added).

The U.S. Supreme Court remanded the *Camden* case back to the New Jersey Supreme Court to apply this test, because no factual record had been prepared when the case came to the U.S. Supreme Court. No further recorded proceedings took place in this particular case, however, so we do not know how the test was in fact applied. And in the following 26 years, no other cases have come before the U.S. Supreme Court to reevaluate the appropriate test or to apply it to any other fact situations.

Some lower courts have struck down statutes mandating employment preferences,² and

² See, e.g., *People ex rel Bernardi v. Leary Construction Co, Inc.*, 10 Ill.2d 295, 464 N.E. 2d 1019 (1984) (striking down a law requiring an absolute preference for Illinois residents in public works projects because nothing in the record, including the complaint itself, showed that nonresident laborers were a cause of unemployment in Illinois); *W.C.M. Window Co. v. Bernardi*, 730 F.2d 486 (7th Cir. 1984) (ruling that this same Illinois law violated the Privileges and Immunities Clause, in light of the complete failure of the state to make any attempt to justify the law); *Robison v. Francis*, 713 P.2d 259 (Alaska 1986) (striking down a law requiring that 95% of the workers on public works contracts be Alaska residents, as violating the Privileges and Immunities Clause); *Opinion of the Justices to the Senate*, 393 Mass. 1201, 469 N.E.2d 821 (1984) (rendering a nonbinding advisory opinion, without the benefit of any record of legislative findings, that a proposed bill requiring that 80% of workers on public works contracts by Massachusetts residents would violate the Privileges and Immunities Clause); *State v. Enserch Alaska Construction, Inc.*, 787 P.2d 624 (Alaska 1990) (striking down a law requiring that 50% of the construction workers in economically distressed areas to be hired for public works projects in that area, as violating the Equal Protection Clause of the Alaska Constitution); *A.L. Blades v. Yerusolim*, 121 F.3d 865 (3rd Cir. 1997) (striking down a Pennsylvania law requiring that all laborers on public works contracts have lived in Pennsylvania for at least three months prior to their employment, as violative of the Privileges and Immunities Clause).

others have upheld them.³ A number of states do now have such statutes, as listed below.

The clearest case upholding a resident-preference hiring law is *State v. Antonich*, 694 P.2d 60, 61-64 (Wyo. 1985), upholding a requirement that available and qualified Wyoming residents be hired in preference to nonresident laborers. The Wyoming Supreme Court explained that "[w]ithout question, reduction in unemployment among Wyoming citizens constitutes a valid state goal," *id.* at 62, and ruled "that Wyoming's Preference Act...precisely fits the particular evil identified by the State." *Id.* at 63. The court went on to say:

"We hold that the Wyoming Preference Act does not violate the privileges-and-immunities clause of the federal constitution, notwithstanding the Act's infringement upon a recognized fundamental right. The Act narrowly addresses the goal of reduced unemployment among the state's taxpayers by preferring available, qualified residents for government-funded positions. Since the degree of discrimination bears a close relation to the state's valid reasons for discriminatory treatment, we affirm the Act's validity under the test established in *Toomer v. Witsell*, *supra*, and refined in subsequent cases."

Id. at 64. This decision has been cited with approval by the U.S. Court of Appeals for the Eighth Circuit, in *A-G-E Corporation v. United States*, 968 F.2d 650, 654 (8th Cir. 1992), where the court stated that "[a] direct attack on Wyoming's resident preference statutes [alleging that it violates the Privileges and Immunities Clause] would clearly face an uphill battle after *White v. Massachusetts Council of Constr. Employeers, Inc.*, 460 U.S. 204 (1983), and *United Bldg. & Constr. Trades Council v. Camden*, 465 U.S. 208 (1984)."

Other post-*Camden* decisions that have upheld local preference statutes include:

* *Gary Concrete Products, Inc. v. Riley*, 285 S.C. 498, 331 S.E.2d 335 (1985), upholding a law requiring procurements to be made from South Carolina residents, so long as the South Carolina bidder is not more than 2% higher than that of the nonresident bidder for procurements under \$2,500,000 and not more than 1% higher for procurements over \$2,500,000.

* *APAC-Mississippi, Inc. v. Deep South Construction Co., Inc.*, 288 Ark. 277, 704 S.W.2d 620 (1986), upholding the requirement that contracts be awarded to bidders who paid local taxes, unless they are more than 3% higher than the lowest nontaxpaying bidder.

* *Bristol Steel & Iron Works, Inc. v. State Dept. of Transportation & Development*, 507 So.2d 1233, 1236 (La. 1987), upholding a law requiring that public works contracts must be awarded to Louisiana resident contractors unless it is more than 5% higher than the lowest

³The decision in *Walsh v. City and County of Honolulu*, 423 F.Supp.2d 1094 (D.Hawaii 2006), which struck down a residency requirement for public employees, is not directly applicable to HB No. 2376, because that decision was based on the court's conclusion that the residency requirement had the impermissible purpose of deterring immigration. HB No. 2376, by contrast, is designed to address Hawai'i's significant unemployment problem in the construction industry, and it utilizes a flexible approach, which will still permit one-fifth of all construction workers to be nonresidents.

responsible nonresident bid, explaining that the statute "serves a legitimate state interest, i.e., encouraging Louisiana's industries, and is rationally related to advancing that purpose."

* *Big Country Foods, Inc. v. Bd. of Educ. of Anchorage Sch. Dist.*, 952 F.2d 1173 (9th Cir. 1992), upholding a requirement that Alaska school districts receiving state funds purchase dairy products harvested in Alaska unless the price is more than 7% higher than products of like quality harvested outside the state.

Other States with Resident Preference Statutes

Other states statutes that mandate resident-hiring preferences include:

* Idaho Code, Title 44, Chapter 10 § 44-1002, requiring that 95% of the employees in public works contracts be Idaho residents.

* Montana Code Annotated, § 18-2-409, requiring that 50% of the employees on public works contracts be "bona fide Montana residents."

* Oklahoma Statutes, Title 61, § 9, stating that all public works contracts "shall require employment of Oklahoma labor and the use of Oklahoma materials if available....and can be procured at a cost no higher than the same quality of labor or material available from outside this state."

* West Virginia Code Annotated, § 5A-3-37, giving a preference to bidders utilizing at least 75% West Virginia residents who have lived in West Virginia continuously for at least two years, as long as their bid does not exceed the lowest qualified bid by 2 1/2%.

* Wyoming Rules & Regulations, Chapter 14, § 6, giving a preference to Wyoming contractors, if their bid is not more than 5% higher than that of the lowest responsible nonresident bidder, and requiring that resident laborers be used whenever possible.

Applying the Governing Test to S.B. No. 2840/H.B. No. 2736

The decisions since the 1984 *Camden* case confirm that each resident-preference statute must be examined in light of the specific situation in the affected community and the record made to support the statute. Hawai'i's geography complicates its employment situation, because many construction workers cannot easily move or relocate their families to distant sites where jobs might be available, and thus are limited to job opportunities in our islands. Because of this constraint, because the construction industry has been particularly hard hit in the current downturn, and because some contractors receiving public works contracts have brought in workers from elsewhere rather than hiring available local workers, a strong case can be made that S.B. No. 2840/H.B. No. 2736 is substantially related to the important government goal of reducing unemployment. The 80% figure in the Bill provides a contractor with sufficient flexibility to bring in workers from elsewhere who may have unique skills unavailable here, but at the same time ensures that taxpayer moneys spent for public works projects will help alleviate

unemployment in Hawai'i's construction industry. The cases cited in footnote 2 can be distinguished, because they either involved situations where no legislative record was made, or they involved an absolute (or near-absolute) preference rather than the 80% utilized in HB No. 2736, or they involved local state constitutional provisions inapplicable here.

If the proper legislative record is made, therefore, S.B. No. 2840/H.B. No 2736 should be found to be constitutional. As explained in the introductory section to this testimony, the changes made to Section 1 in S.B. No. 2840 S.D. 2 will assist a reviewing court in understanding the purpose for this legislation and should ensure that it will be found to be constitutional.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives

Committee on Labor & Public Employment
Committee on Economic Revitalization, Business & Military Affairs

Testimony by
Hawaii Government Employees Association
March 9, 2010

S.B. 2840, S.D. 2 – RELATING TO
PUBLIC PROCUREMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2840, S.D. 2 which requires at least 80% of workers on public works contracts and construction procurements to be Hawaii residents. This measure seeks to positively impact our state's record-high unemployment by creating jobs for Hawaii residents and in turn stimulate our local economy.

HGEA knows intimately the dampening effect of choosing non-local contractors over local jobs. Our members have been impacted by layoffs, furloughs and wage reductions. Yet at the same time the state has chosen to contract with mainland providers to perform jobs traditionally done by our members who are local residents. This means less money spent at local businesses and less taxes to our state. Contracting with out-of-state companies is a mistake. It furthers the pain of this recession which affects all families and our local community.

We should all agree with supporting our local economy. In these tough economic times, the direction is simple - jobs for Hawaii's people and keeping dollars at home are the right ways to support our economy.

Thank you for the opportunity to testify in support of S.B. 2840, S.D. 2.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

