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LAWRENCE M. REIFURTH  
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TO THE HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

March 17, 2009  
7:30 a.m.

**TESTIMONY ON SENATE BILL NO. 687, S.D.2, RELATING TO  
PROCUREMENT**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Rod Maile, and I am the Senior Hearings Officer for the Office of Administrative Hearings, Department and Commerce and Consumer Affairs ("DCCA"). Thank you for the opportunity to present testimony on Senate Bill No. 687, S.D. 2 Relating to Procurement. DCCA has serious concerns with Senate Bill No. 687, S.D. 2.

Under the provisions of Hawai'i Revised Statutes ("HRS") §103D-709, the Office of Administrative Hearings, DCCA, has been tasked with the responsibility

of conducting administrative hearings for disputes arising under HRS §§103D-310, 103D-701, and 103D-702. Pursuant to current law (HRS §103D-709(b)), all procurement hearings must be commenced within twenty-one (21) calendar days from the dates that the requests for hearing are filed.

In regards to the nature of procurement hearings, because HRS §103D-709(b) requires that the rules of evidence apply, procurement hearings conducted pursuant to HRS §103D-709 are more analogous to judicial proceedings than to contested case hearings conducted under HRS Chapter 91, the Hawai'i Administrative Procedure Act. However, despite the accelerated time frame for the commencement of procurement hearings, and despite the applicability of the formal rules of evidence, under HRS §103D-709, there is no discovery process. As such, in many cases the parties are only able to find out about specific details of a contested procurement during the course of the procurement hearing. In almost every significant procurement hearing, the protestor, the intervenor, and the county or State procuring entity, have been represented by legal counsel. Consequently, it is not uncommon for hearings to take place over the course of several days, and involve evidentiary presentations of highly technical data and extensive financial information.

Consequently, it would be very difficult for the parties to complete the hearing process ***and*** have the hearings officer issue a decision within thirty calendar days from the filing of the request for hearing.

DCCA would also like to note that Senate Bill No. 687, S.D. 2, would require that judicial review proceedings being completed within thirty (30) days from the filing of the application for judicial review, and the current provisions of HRS §103D-710(c) require that the record on appeal be transmitted to the circuit court within twenty (20) calendar days. Accordingly, it would appear that under Senate Bill No. 687, S.D. 2, the parties will have very little time in which to present their respective positions to the court, in order for the court to be able to make a final determination within thirty (30) days from the application for judicial review.

Finally, Senate Bill No. 687, S.D. 2 proposes that if a procurement hearing or the judicial review is not "resolved" by the 30<sup>th</sup> day after the filing of a request for hearing or for judicial review, then the administrative body or the court will lose jurisdiction and that the award of the procurement shall be deemed final. DCCA would note that the Hawai'i Public Procurement Code already contains specific statutory remedies including provisions that allow the procurement process to progress even while the procurement hearing is pending.

Given the intent of the Hawai'i Public Procurement Code, and for the reasons set forth above, DCCA has serious concerns with Senate Bill No. 687, S.D. 2.

Thank you for the opportunity to testify on this bill.

LINDA LINGLE  
GOVERNOR



PROCUREMENT POLICY BOARD  
DARRYL W. BARDUSCH  
LESLIE S. CHINEN  
DARYLE ANN HO  
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RUSS K. SAITO  
PAMELA A. TORRES

AARON S. FUJIOKA  
ADMINISTRATOR

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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

March 17, 2009

7:30 AM

SB 687, SD 2

RELATING TO PROCUREMENT.

Chair McKelvey, Vice-Chair Choy and committee members, thank you for the opportunity to testify on SB 687, SD2.

The State Procurement Office (SPO) supports the intent of this bill on a final decision of a procurement protest shall be issued within 30 days of a request for hearing, or subsequent judicial review. This amendment will expedite the protest process to result in a timely award of the contract.

Thank you.



**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

**NOLAN MORIWAKI**

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

March 16, 2009

**JOSEPH O'DONNELL**

*Vice President*  
Iron Workers Local 625

**DAMIEN T. K. KIM**

*Financial Secretary*  
International Brotherhood of  
Electrical Workers Local 1186

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Issac W. Choy, Vice Chair  
Members of the House Committee on Economic Revitalization,  
Business, and Military Affairs  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

**ARTHUR TOLENTINO**

*Treasurer*  
Sheet Metal Workers I.A. Local 293

RE: **IN SUPPORT OF SB 687, SD2**  
**RELATING TO PROCUREMENT**  
Hearing: Tuesday, March 17, 2009, 7:30 a.m.

**MALCOLM K. AHLG**

*Sergeant-At-Arms*  
Carpet, Linoleum, & Soft Tile  
Local 1296

Dear Chair McKelvey, Vice Chair Choy and the House Committee on  
Economic Revitalization, Business, and Military Affairs:

**REGINALD CASTANARES**

*Trustee*  
Plumbers & Fitters Local 675

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.

**THADDEUS TOMEI**

*Elevator Constructors Local 123*

**JOSEPH BAZEMORE**

*Drywall, Tapers, & Finishers*  
Local 1944

The Council SUPPORTS the passage of SB687, SD2 that clarifies  
procurement code to require a final decision to be issued within  
thirty days of the receipt of the request for hearing. Requires a  
judicial decision within thirty days of the filing of the application for  
judicial review.

**RICHARD TAGGERE**

*Glaziers, Architectural Metal &  
Glassworkers Local Union 1889*

**LAUGHN CHONG**

*Roofers, Waterproofers & Allied  
Workers United Union of Roofers  
Local 221*

Thank you for the opportunity to submit this testimony in support  
of SB687, SD2

**MARY AYCOCK**

*Boilermakers, Ironship Builders  
Local 627*

Sincerely,

**LYNN KINNEY**

*District Council 50  
Painters & Allied Trades  
Local 1791*

*W. Hong*  
William "Buzz" Hong  
Executive Director

**JALANI MAHOE**

*Operating Engineers Local 3*

WBH/dg

**EDWARD SEBRESOS**

*International Assoc. of  
Cool & Frost Insulators  
Allied Workers Local 132*

*Skilled Craftsmanship Makes the Difference.*



Testimony in **SUPPORT** of  
SB 687 SD2 Relating to Procurement

By Al Lardizabal, Director of Government Relations  
Laborers' International Union of North America, Local 368

To the  
Committee on Economic Revitalization, Business and Military Affairs

Tuesday, March 17, 2009, 7:30 a.m.  
Room 312, State Capitol

Honorable Angus L.K. McKelvey, Chair; Honorable Isaac W. Choy, Vice  
Chair and Members of the Committee:

The Laborers' Union **supports** SB 687 SD2 that clarifies the procurement code requiring final decision to be issued within thirty days of receipt of the request for a hearing. The bill also requires a judicial decision within thirty days of the filing of the application for judicial review. In either case, the bill imposes a thirty-day limit for the resolution of the protest or the award of the procurement stands.

Since the American Recovery and Reinvestment Act of 2009 imposes a strict time-line to obligate and spend the funds, this measure is deemed necessary to comply with the federal law and utilize to the maximum amount possible, the funds therein.

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