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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

MONDAY, FEBRUARY 14, 2011
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 885, HOUSE DRAFT 1
RELATING TO CONTRACTORS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND TO THE HONORABLE RYAN I. YAMANE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 885 House Draft 1, Relating To Contractors. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on House Bill No. 885 House Draft 1.

House Bill No. 885 House Draft 1 requires the Contractors Board to conduct a public hearing prior to a decision on: 1) any application for a contractor's license;

2) any disciplinary action; and 3) any settlement agreement. The public hearing shall afford interested persons an opportunity to submit data, views, or arguments, orally or in writing, to the Contractors Board. The bill also provides for a defective effective date of July 1, 2112.

RICO notes that the Senate Committee on Commerce and Consumer Protection deferred the companion measure, Senate Bill No. 1224, on February 9, 2011.

RICO prosecutes licensing violations on behalf of the boards, commissions, and programs that are administered by the Professional and Vocational Licensing Division. Chapter 91, Hawaii Revised Statutes ("HRS"), also known as the Hawaii Administrative Procedures Act, governs all contested cases, including disciplinary proceedings initiated by RICO. Section 91-9(g), HRS, states: "No matters outside the record shall be considered by the agency in making its decision except as provided herein." This law is designed to ensure that respondents are afforded due process in the course of the proceeding and that decisions are made fairly and impartially.

House Bill No. 885 House Draft 1 as drafted would create an ambiguity as to what the Contractors Board may consider in evaluating a contested case, may preclude or complicate compliance with §91-9(g), HRS, and could undermine the legitimacy of any final decision the Board renders. In addition, the procedures set forth in this bill would likely result in making the disciplinary process more time-consuming.

Testimony on House Bill No. 885 House Draft 1
February 14, 2011
Page 3

Thank you for this opportunity to testify on House Bill No. 885
House Draft 1. I will be happy to answer any questions that the members of the
Committee may have.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

**TWENTY-SIXTH LEGISLATURE
Regular Session of 2011**

**Monday, February 14, 2011
2:00 p.m.**

TESTIMONY ON HOUSE BILL NO. 885, H.D. 1, RELATING TO CONTRACTORS.

**TO THE HONORABLE ROBERT N. HERKES, 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 testify in opposition to House Bill No. 885, H.D. 1, which proposes to add a new section to Chapter 444, HRS, requiring the Board to hold public hearings prior to making determinations on license applications, disciplinary actions, and settlement agreements.

The Board opposes this measure, as we believe the proposed amendments to be unnecessary and redundant. The Board currently conducts its administrative procedures in compliance with Chapter 91, HRS, relating to Administrative Procedure, and its rules, Title 16, Chapter 201, HAR, Administrative Practice and Procedure, as does all other licensing authorities within the Department of Commerce and Consumer Affairs. Chapter 201 clearly governs the conduct of all proceedings brought before the licensing boards, and a separate process for the Contractors License Board may prove problematic. Furthermore, there is no justification for handling contractor complaints

and disciplinary actions any differently from the forty other licensing boards and programs under the Professional and Vocational Licensing Division.

The Board also is opposed to the requirement that a public hearing be held for each license application when there is any opposition to the application. This process may be abused to delay certain applications for reasons unrelated to the applicant's qualifications, and may prevent the Board from acting on applications in a timely manner. The Board is also concerned about issues relating to confidentiality if the application is subject to a public hearing. Section 92F-14, HRS, of the Uniform Information Practices Act, states that applicants for licensure have a significant privacy interest in the information they submit for consideration by the Board.

For these reasons, the Board is opposed to House Bill No. 885, H.D. 1.

Thank you for the opportunity to testify on this measure.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 11, 2011

TO: THE HONORABLE REPRESENTATIVE ROBERT N. HERKES, CHAIR AND
MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION &
COMMERCE

SUBJECT: H.B. 885, HD1 RELATING TO CONTRACTORS.

NOTICE OF HEARING

DATE: Monday, February 14, 2011
TIME: 2:00 pm
PLACE: Conference Room 325

Dear Chair Herkes and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B. 885 Relating To Contractors.

The GCA strongly opposes this measure, we believe the proposal is unnecessary and redundant. The Contractors License Board currently conducts its administrative procedures in compliance with Title 16, Chapter 201, Administrative Practice and Procedure, as does all other licensing authorities within the Department of Commerce and Consumer Affairs. Chapter 201 clearly governs the conduct of all proceedings brought before the licensing boards, and a separate process for the Contractors License Board is not justified. The handling of contractor complaints and disciplinary actions should not be different from the forty other licensing boards.

The GCA is opposed to the requirement that a public hearing be held for each license application when there is any opposition to the application. Since this process may be abused to delay certain applications for reasons unrelated to the applicant's qualifications, and may prevent the Board from acting on applications in a timely manner.

The GCA **strongly opposes** the passage of HB 885.

Thank you for the opportunity to testify on this measure.



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice Chair

HB 885, HD1 – RELATING TO CONTRACTORS
Monday, February 14, 2011
2:00 pm
Conference Room 325

Chair Herkes, Vice Chair Yamane and Members of the Committee:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP is in strong support of HB 885, HD1 - Relating to Contractors which would require the Contractors License Board to conduct public hearings for license applications and disciplinary proceedings.

Over the past two years, PRP has responded on several occasions to the Contractors License Board's (CLB) posted request for opposition to an application for a license (Contractor). The testimony, in opposition to these applications, submitted by PRP was accompanied by points raised as to why a particular contractor should not be issued a license or additional license classification.

However, when it came to the date when a contractor would appear before the Board to answer to the points raised by PRP, PRP representatives were not allowed into the same room while the Board was discussing the allegations with the contractor, therefore, the contractor was not afforded the opportunity to face its opposition. Further, the opposition was not afforded the opportunity to hear much less rebut any explanation the contractor may have given the Board.

Additionally, there was no decision or response issued by CLB as to how they decided on specific issues that were raised by PRP or why a particular decision to proceed in the issuance process was made.

We feel that an "open door" with regard to the applications process is required to maintain transparency and the integrity of the application process and thus, formal hearings when opposition to an application is submitted would be the best way to ensure this transparency as well as, formal written decisions by the CLB answering the opposing testimony.

However, we agree with the CLB on two very specific points. The first being that a hearing need not be required for **all** license applications. However, we feel that a hearing **should be** necessary 1) Where opposition is submitted on an application for a “new” license, or a “new license classification, and 2) in disciplinary matters, and that any charges or allegations should be proffered, answered, and decided upon, or resolved in a public forum.

Secondly, we agree that public hearings should not be allowed in settlement agreement meetings. We understand that by the very nature of the settlement process, many of the terms of settlement are, and should remain private.

Those opposing this Bill will argue that this could only delay the application process, however, we feel that this type of delay is worth ensuring that we are admitting the right people into our industry, those who will treat clients fairly and compete in a fair and legal manner to uphold the integrity of our industry.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HB 885, HD1 – Relating to Contractors.