



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON JUDICIARY

AND

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Wednesday, February 22, 2012
2:05 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 1295, H.D. 2, RELATING TO BUSINESS.

TO THE HONORABLE GILBERT S.C. AGARAN, CHAIR,
TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Celia Suzuki, Licensing Administrator for the Professional and Vocational Licensing Division ("PVLD"), Department of Commerce and Consumer Affairs. Thank you for the opportunity to submit testimony in support of House Bill No. 1295, H.D. 2, which establishes criminal sanctions for unlicensed contracting activity.

This bill is the product of the task force which was created pursuant to House Concurrent Resolution 286, H.D. 1, (2011), to facilitate better enforcement of unlicensed

Testimony on House Bill No. 1295, H.D. 2
Wednesday, February 22, 2012
Page 2

contracting activity. PVLD supports this measure, including Section 2 of this bill, which amends our Professional and Vocational Licensing Act (Chapter 436B, HRS) to conform to the proposed criminal sanctions.

Thank you for the opportunity to testify on House Bill No. 1295, H.D. 2.



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

TO THE HOUSE COMMITTEE ON JUDICIARY

AND

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

WEDNESDAY, FEBRUARY 22, 2012
2:05 P.M.

TESTIMONY ON HOUSE BILL NO. 1295 H.D.2
RELATING TO BUSINESS

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND TO THE HONORABLE RYAN Y. YAMANE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs appreciates the opportunity to testify on House Bill No. 1295 H.D.2, Relating To Business. My name is Daria Loy-Goto, Acting Complaints and Enforcement Officer for RICO and member of the Unlicensed

Contractor Law Enforcement Task Force ("Task Force"). RICO offers the following testimony in support of the bill.

Pursuant to House Concurrent Resolution 286 H.D.1, the Task Force met over several months to develop an enforcement strategy among the various civil, administrative, and criminal enforcement agencies concerning unlicensed contracting. To further this goal, the Task Force created a subgroup called the Law Enforcement Small Working Group, consisting of representatives from RICO, the Office of the Attorney General Criminal Division, and the Offices of the Prosecuting Attorney for the counties. House Bill No. 1295 H.D.2 is the result of that group's collaborative efforts.

The group found that, although unlicensed activity is a misdemeanor under current law, enforcement would be enhanced if there were specific omnibus sections in the Penal Code that establish criminal offenses for unlicensed contracting activity, habitual unlicensed contracting activity, and unlicensed contractor fraud. The bill also amends §436B-27, Hawaii Revised Statutes, to conform to the new language in the Penal Code.

Instances of unlicensed contracting range from persons with experience who ultimately work toward and obtain licensure, to persons with little or no experience who most likely would not qualify for licensure, to those with little or no intention to complete work for monies received. House Bill No. 1295 H.D.2 is intended to address egregious unlicensed contracting activity, including chronic and repeat

Testimony on House Bill No. 1295 H.D.2
February 22, 2012
Page 3

unlicensed contracting activity. The bill is not intended to cover inadvertent oversights by licensees in complying with the licensing law.

Thank you for this opportunity to testify on House Bill No. 1295 H.D.2. I will be happy to answer any questions that the members of the Committees may have.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

**THE HONORABLE ROBERT N. HERKES, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

**Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai`i**

February 22, 2012

RE: H.B. 1295, H.D. 2; RELATING TO BUSINESS.

Chair Keith-Agaran, Chair Herkes, Vice-Chair Rhoads, Vice-Chair Yamane, members of the House Committee on Judiciary and members of the House Committee on Consumer Protection & Commerce, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of House Bill 1295, House Draft 2.

House Concurrent Resolution 286, House Draft 1, requested that the Director of the Department of Commerce and Consumer Affairs (DCCA) establish a task force to develop a collaborative enforcement strategy concerning unlicensed contractors among civil, criminal, and administrative enforcement agencies. The task force was also requested to evaluate existing laws and propose new laws or revisions to existing laws that apply to unlicensed contractors, where appropriate, to facilitate better enforcement.

House Concurrent Resolution 286, House Draft 1, also requested that the task force report its findings and recommendations and any proposed legislation to the Legislature no later than twenty days prior to the 2012 regular session.

In December 2011, the task force submitted a report to the Legislature. The task force also submitted proposed legislation. H.B. 1295, H.D. 2 is the present version of the proposed new legislation recommended by the task force.

The Department of the Prosecuting Attorney was a member of the task force. The Department supports H.B. 1295, H.D. 2. The purpose of H.B. 1295, H.D. 2 is to create the new offenses of: Unlicensed Contracting Activity, as a misdemeanor; Habitual Unlicensed Contracting Activity, as a class C felony; and Unlicensed Contractor Fraud, as a class A, B or C felony. The Department agrees with the other members of the task force that the language of HB 1295, H.D. 2 is appropriate and necessary to address the problem of unlicensed contractor activity, and in particular, unlicensed contractor fraud.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 1295, H.D. 2. Thank for you the opportunity to testify on this matter.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

**Testimony to House Committees on Judiciary and Consumer Protection &
Commerce**

Wednesday, February 22, 2012

2:05 p.m.

Capitol Room 325

RE: H.B. 1295 HD2, Relating to Business

Good morning Chairs Keith-Agaran and Herkes, Vice-Chairs Rhoads and Yamane, and members of the Committees:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii **supports** H.B. 1295 HD2, which would: 1) Establish unlicensed contracting activity as a misdemeanor offense; 2) Establish habitual unlicensed contracting activity and unlicensed contractor fraud as felonies; and 3) Require that each day of unlicensed contracting activity be deemed a separate offense.

H.B. 1295 HD2 is a result of findings and proposed legislation by the Unlicensed Contractor Law Enforcement Task Force (UCLETF), which was created pursuant to H.C.R. 286 HD1 (2011). This resolution requested that the Director of the Department of Commerce and Consumer Affairs establish a task force to develop a collaborative enforcement strategy concerning unlicensed contractors among civil, criminal, and administrative enforcement agencies. The task force was also requested to evaluate existing laws and propose new laws or revisions to existing laws that apply to unlicensed contractors, where appropriate, in order to facilitate better enforcement.

The UCLETF included a working group comprised of prosecuting attorneys from the various Counties and the Office of the Attorney General. The working group suggested a new, omnibus law that would be housed in the penal code, assisting criminal law enforcement officers.

The bill's habitual unlicensed contracting activity provision is to create a new felony provision that could be used to prosecute egregious and otherwise undeterred conduct. The bill's new fraud provision is aimed at prosecuting serious, fraudulent unlicensed contracting schemes, especially against our elderly.

Reps. Keith-Agaran and Herkes, Chairs
Judiciary and Consumer Protection & Commerce
February 22, 2012
HB 1295 HD2
BIA-Hawaii Testimony

The construction industry had concerns that contractors whose license temporarily lapsed due to late insurance filings, etc., may be prosecuted under this measure. However, the working group discussed this concern, with the Prosecuting Attorney's office, and it is clear that prosecution of inadvertent lapses in licensure is not the intent of this bill. The bill is intended to address habitual unlicensed activity.

Unlicensed contractors cost the State and its taxpayers millions of dollars in tax revenue because these contractors receive or pay wages in cash, thereby avoiding unemployment, payroll, and personal tax obligations. Unlicensed contractors often operate without regard to worker and workplace safety requirements. There are unlicensed contractors who continue to engage in illegal contracting despite prior judgments and injunctions. Furthermore, unlicensed contractors place consumers at serious risk of faulty construction and financial harm, without any recourse. Finally, unlicensed contractors adversely impact the legitimate and licensed business operations within the contracting industry.

For the foregoing reasons, BIA-Hawaii **supports** H.B. 1295 HD2.

Thank you for the opportunity to share with you our views.

The Pacific Resource
PARTNERSHIP



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

House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

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

HB 1295, HD2 – Relating to Business
Wednesday, February 22, 2012
2:05 pm
Conference Room 325

Aloha Chair Keith-Agaran, Chair Herkes, Vice Chair Rhoads, Vice Chair Yamane and Members of the Committees:

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 Regional Council of Carpenters (formerly the Hawaii Carpenters Union).

PRP feels that increased enforcement of laws, as well as stiffer penalties, will help to ensure that our citizens, consumers, and stakeholders in the construction industry are protected from those who choose to cheat or circumvent existing laws.

Therefore, PRP in its efforts to ensure a level playing field among those who do business in the State of Hawaii, supports HB 1295, HD2 and its efforts to strengthen the impact of contractor's licensing laws in an effort for the DCCA to bring unlicensed activity in the construction industry in our State under control.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HB 1295, HD2.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 22, 2012

Testimony To: House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair

House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons
President

Subject: H.B. 1295, HD 2 – RELATING TO BUSINESS

Chair Keith-Agaran, Chair Herkes and Members of the Joint Committees:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we support this bill. The Subcontractors Association of Hawaii is composed of the following nine separate and distinct subcontracting organizations which include:

HAWAII FLOORING ASSOCIATION
ROOFING CONTRACTORS ASSOCIATION OF HAWAII
HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION
TILE CONTRACTORS PROMOTIONAL PROGRAM
PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII
SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII
PAINTING AND DECORATING CONTRACTORS ASSOCIATION
PACIFIC INSULATION CONTRACTORS ASSOCIATION
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

As this Committee is well aware unlicensed contracting is the bane of existence for licensed contractors. Most of them feel that they get licensed, go through the problem of tax clearances, making sure they have workers' compensation, temporary disability insurance, unemployment insurance, tax identifications and on and on, only to then to have the primary competition be some guy down the street who typically doesn't pay taxes, doesn't declare any income and has no license. The unknowing consumer falls prey to this kind of activity on a daily basis and if we want to preserve the integrity of the licensing process and the safeguards and protections that it affords then we need to have an enforcement component.

Our congratulations go out to the Unlicensed Contractor Law Enforcement Task Force which worked so hard on this issue over the interim and it is our hope that the measures that they recommend can be adopted by this Committee and this legislature. This bill is long overdue.

Based on the above, we support the bill and request your favorable consideration.

Thank you.

Representative Gilbert Keith-Agaran, Chair
Committee on Judiciary
State Capitol, Room 325
Honolulu, HI 96813

RE: HB 1295 Unlicensed Contacting Activity

Chair Keith-Agaran and Members of the House Committee on Judiciary:

I am Gerald Yamada, President of GW Construction & Yamada Paint Contracting on the Big Island of Hawaii. We are a family company located in the Shipman Business Park in Keaau. GW Construction and Yamada Paint have been in business here for apprx 25 years.

I support HB 1295. Unlicensed activity here is at an all time high. Unlicensed contractors blatantly do all types of work here. We estimate that apprx 80 percent of home construction here is being done by unlicensed contractors. **A lot of the construction workers believe they are better off collecting unemployment and being paid cash by unlicensed contractors.** This is unfair to licensed contractors who must work four times as hard to make an honest living.

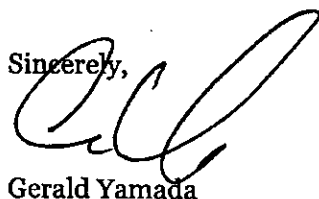
A licensed contractor must meet rigorous tests of the Contractors License Board, such as having the required training and experience in the trade, financial standing, and knowledge of state laws. The licensed contractor must have workers compensation, TDI and liability insurance. **A licensed contractor must pay taxes.** Hiring a licensed contractor provides certain remedies to the consumer if a licensed contractor has violated the law. There are no remedies for the consumer if they hired an unlicensed builder.

There is no way for a legitimate contractor to compete against an unlicensed one. Many homeowners and property managers use unlicensed contractors to save money. We all want to save money but let's do it properly. The State is losing out on millions of dollars due to unpaid taxes.

HB1295 would help to significantly curb unlicensed activity.

I ask for your support in passing HB 1295.

Sincerely,



Gerald Yamada

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via capitol website

February 22, 2012

TO: HONORABLE REPRESENTATIVES GILBERT S.C. KEITH-AGARAN,
CHAIR, KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE
COMMITTEE ON JUDICIARY

HONORABLE REPRESENTATIVES ROBERT HERKES, CHAIR, RYAN
YAMANE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE
ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **COMMENTS REGARDING H.B. 1295, HD 2, RELATING TO
BUSINESSES.** Establishes unlicensed contracting activity as a misdemeanor
offense; establishes habitual unlicensed contracting activity and unlicensed
contractor fraud as felonies. Requires that each day of unlicensed contracting
activity be deemed a separate offense. Effective July 1, 2112. (HB1295 HD2)

HEARING

DATE: Wednesday, February 22, 2012
TIME: 2:05 p.m.
PLACE: Conference Room 325

Dear Chairs Keith-Agaran and Herkes, Vice Chairs Rhoads and Yamane and Members:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80th anniversary this year; GCA remains the largest construction association in the State of Hawaii. GCA is in **support of the intent** of H.B. 1295, HD 2 Relating to Business.

This bill amends Section 708, Hawaii Revised Statutes (HRS) to address unlicensed construction activity by creating a new Chapter establishing unlicensed contracting activity as a criminal offense. The bill provides that individuals found guilty of repeated violations or fraudulent unlicensed construction activity may be charged as a felony offense. The bill also establishes a schedule of fines for violations of the section.

The GCA appreciates the work of the Unlicensed Contractor Law Enforcement Task Force and their proposed legislation. GCA supports the rationale and need for added disincentives to curtail repeated violations of Chapter 444, HRS that require the licensing of all contractors doing work in Hawaii. However, the statutes should include safeguards to ensure that only those individuals who were never licensed under Chapter 444, HRS are considered unlicensed contractors. Licensed contractors who are found to be working out of scope or those with lapsed licenses due to failure to timely file for renewal or those whose licenses are in the process of being transferred should not be considered as unlicensed.

The Contractor's Licensing Board should continue to maintain jurisdiction over issues relating to proper licensure and transfer of licenses. The GCA supports the intent of H.B. 1295, HD 2 and recommends its passage by the Committee.

Thank you for the opportunity to present our concerns regarding this measure.

Testimony for HB1295 on 2/22/2012 2:05:00 PM

Testimony for HB1295 on 2/22/2012 2:05:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 22, 2012 8:55 AM

To: JUDtestimony

Cc: greg@ccs-hawaii.com

Testimony for JUD/CPC 2/22/2012 2:05:00 PM HB1295

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Greg Thielen

Organization: Complete Construction Services

E-mail: greg@ccs-hawaii.com

Submitted on: 2/22/2012

Comments:

I am the Owner of Complete Construction Services a small business specializing in residential remodeling and new home construction. I have over 20 years experience in the construction industry. Please pass HB1295. Unlicensed activity is a huge problem for both the Construction Industry and the State of Hawaii. Passing this law is an important step in reigning in the rampant abuse.

Testimony for HB1295 on 2/22/2012 2:05:00 PM

Testimony for HB1295 on 2/22/2012 2:05:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 21, 2012 10:46 AM

To: JUDtestimony

Cc: wendy@gwconstruction.net

Testimony for JUD/CPC 2/22/2012 2:05:00 PM HB1295

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Wendy Yamada

Organization: GW Construction

E-mail: wendy@gwconstruction.net

Submitted on: 2/21/2012

Comments:

We support HB 1295 as stated in BIA support testimony

"Unlicensed contractors cost the State and its taxpayers millions of dollars in tax revenue because these contractors receive or pay wages in cash, thereby avoiding unemployment, payroll, and personal tax obligations. Unlicensed contractors often operate without regard to worker and workplace safety requirements. There are unlicensed contractors who continue to engage in illegal contracting despite prior judgments and injunctions. Furthermore, unlicensed contractors place consumers at serious risk of faulty construction and financial harm, without any recourse. Finally, unlicensed contractors adversely impact the legitimate and licensed business operations within the contracting industry"

As licensed contractors, we pay an overwhelming amount fees and taxes (including the additional GE tax in which the subcontractor deduction was repealed) making it difficult for licensed business to survive especially when competing against unlicensed businesses. It's a truly unfair system the way things are set up now. It's impossible to be cheaper than unlicensed contractors when we pay everything to support state programs. We strongly support this bill.

Testimony to House Committees on Judiciary and Consumer Protection & Commerce

Wednesday, February 22, 2012

RE: H.B. 1295, HD2 relating to business

Chairs Keith-Agaran and Herkes, Vice Chairs Rhoads and Yamane, committee members.

My name is Scotty Anderson and am a business owner who recently completed 8 years as a member of the State Contractors License Board.

During my time on the Board no problem was more apparent to Board members than the subject of unlicensed activity.

I believe that the Enforcement Task Force which was created by HCR 286 in 2011 has made strides in the right direction to bring an end to this unlawful business practice of being unlicensed and not contributing to fair share of taxes, wages and other obligations. Their actions cheat all of Hawaii's citizens. We need to move forward on this matter.

I wholeheartedly support this bill.

Thank you for this opportunity to present my view.

F.M. Scotty Anderson
2435 Aha Aina Place
Honolulu, Hi 96821
306-5697