



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 1295, H.D. 3, S.D. 1, RELATING TO BUSINESS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, March 29, 2012 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Ige and Members of the Committee:

The Department of the Attorney General (the "Department") appreciates the intent of this bill, but has concerns and recommends certain amendments be made to the bill as set out in the attached proposed S.D. 2.

The purpose of this bill is to address the growing problem of unlicensed contractors by creating the criminal offenses of: (1) unlicensed contracting activity; (2) habitual unlicensed contracting activity; and (3) unlicensed contractor fraud.

On March 22, 2012, the Department testified and expressed its concerns before the Committees on Judiciary and Labor and on Commerce and Consumer Protection. In Standing Committee Report No. 3006, the Committees noted:

While your Committees appreciate the efforts of the task force and stakeholders, your Committees recognize that this measure is still a work in progress. The Department of the Attorney General raised several concerns regarding the language in this measure. Thus, your Committees urge the stakeholders to continue discussions to streamline the language in this measure as it moves to the Committee on Ways and Means.

Since that hearing, the Department has worked closely with the Department of the Prosecuting Attorney, City and County of Honolulu, as well as the Department of Commerce and Consumer Affairs, to address the concerns, and we have jointly prepared a proposed S.D. 2 that is attached for your review and consideration.

The Department's greatest concerns are as to the provisions on pages 3 and 4 concerning the offense of unlicensed contractor fraud, which is defined as follows:

- (1) A person commits the offense of unlicensed contractor fraud if the person:

- (a) Engages in any activity that requires a contractor's license under chapter 444 and is not licensed as a contractor under chapter 444 when the person engages in the activity; and
 - (b) With intent to defraud, engages in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
- (2) Unlicensed contractor fraud is a class B felony if the total value of all moneys and any assets of value paid or lost by the victims pursuant to the same scheme, plan, or representation, is \$20,000 or greater.
- (3) Unlicensed contractor fraud is a class C felony if the total value of all moneys and any assets of value paid or lost by the victims pursuant to the same scheme, plan, or representation, is less than \$20,000.

Subsection (1) does not adequately define the offense and, therefore, does not provide sufficient notice of the prohibited conduct. The offense requires that the person engage in any activity that requires a contractor's license while not licensed, but it does not require a nexus between that activity and the "act, practice, or course of business that operates or would operate as a fraud or deceit upon another person." The bill does not require that the "activity" in subsection (1)(a) be related to the "act, practice, or course of business" in subsection (1)(b).

The offense prohibits an act that "operates or would operate as a fraud or deceit upon another person." The phrase "would operate" is not clear. What is the difference between an act that operates as a fraud or deceit, and one that "would operate" as a fraud or deceit? Is one that "would operate" be an act that does not operate as a fraud or deceit, but would do so under certain unspecified conditions?

The vague and generic terms "fraud" and "deceit" are presented in the alternative (i.e., "operate as a fraud or deceit"), and therefore presumably mean different things. But neither term is defined and we are left to speculate as to their intended meaning. "Fraud" is commonly defined as deceit or trickery perpetrated for profit or to gain an unfair advantage. "Deceit" is commonly defined as deception or trickery. Accordingly, the prohibited conduct could simply be an act that operates as a trick on another.

Although subsections (2) and (3) anticipate that money or assets will be paid or lost by victims in the commission of the offense of unlicensed contractor fraud, the offense does not require that to occur. The bill does not clearly prohibit conduct that involves obtaining or exerting control over the property of another.

The Department is also concerned that subsections (2) and (3) create two different grades for the same offense, a class B and a class C felony, all under one statutory section. Because the two grades of the offense fall under one statutory section, it may create confusion and make it difficult to distinguish between the two grades of the offense in the Hawaii Criminal Justice Information System, which tracks the criminal histories of offenders.

In addition to its concerns about the offense of unlicensed contractor fraud, the Department also recommends a few specific amendments.

On page 2, at line 22, the comma after "verdict" should be replaced by the word "or" so that phrase reads, "judgment on the verdict or a finding of guilt."

On page 3, at lines 1 and 4, the word "shall" should be replaced by the word "must." "Shall" is normally used for a mandated action. In this case, however, the word is referencing a required or mandatory status or condition of the prior convictions. Therefore, the word "must" is more accurate and appropriate.

As previously noted, the Department has worked closely with the Department of the Prosecuting Attorney, City and County of Honolulu, as well as the Department of Commerce and Consumer Affairs, to address these concerns, and we have jointly prepared a proposed S.D. 2 that is attached for your review and consideration.

Please note that the proposed S.D. 2 adopts the three grades of unlicensed contractor fraud offenses that were previously included in H.D. 3, including a class A felony, for losses of \$100,000 or more, a class B felony, for losses of \$5,000 or more but less than \$100,000, and a class C felony, for losses of less than \$5,000. The S.D. 1 amended these provisions to create just two classes of felony, a class B felony, for losses of \$20,000 or more, and a class C felony, for losses less than \$20,000. We recommend following the felony offense scheme proposed by H.D. 3 because we need a strong deterrent and response to the serious unlicensed contractor fraud offenses currently being committed, which can cause great financial harm to victims. The felony offense scheme in the current S.D. 1 is similar to the existing offenses of theft in the first and second degrees. But because of the great potential for unlicensed contractor fraud to cause serious harm, we are recommending a stronger offense scheme for those offenses. While making that recommendation, we appreciate the amendments made in S.D. 1 and note that it would be

easy to amend S.D. 2 to replace the felony offense scheme of S.D. 1. The Department is more concerned with how the unlicensed contractor fraud offense is worded and defined.

We appreciate the opportunity to share our concerns and recommendations with you, and respectfully recommend that the Committee make the suggested amendments.

A BILL FOR AN ACT

RELATING TO BUSINESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . UNLICENSED CONTRACTING OFFENSES

§708-A Unlicensed contracting activity. (1) A person commits the offense of unlicensed contracting activity if the person:

- (a) Engages in any activity that requires a contractor's license under chapter 444 and is not a licensed contractor when engaging in the activity, other than a circumstance of an instance involving a previously licensed contractor who inadvertently failed to maintain licensing requirements under chapter 444; or
- (b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) Unlicensed contracting activity is a misdemeanor.

(3) Each day the violation of this section continues shall constitute a distinct and separate offense.

(4) It is an affirmative defense under this section that the offense consisted of unlicensed activity performed by a licensed contractor outside the scope of the contractor's license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

§708-B Habitual unlicensed contracting activity; felony.

(1) A person commits the offense of habitual unlicensed contracting activity if the person has had two or more convictions within ten years, preceding the time of the conduct for which the person is charged, for unlicensed contracting activity in violation of section 436B-27 or 708-A, and:

- (a) Engages in any activity for which a contractor's license is required under chapter 444, and is not licensed as a contractor under chapter 444 when engaging in the activity; or
- (b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) A conviction for purposes of this section is a judgment on a verdict or a finding of guilt, or a judgment on a

plea of guilty or nolo contendere. The convictions must have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the convictions must not have been expunged by pardon, reversed, or set aside. However, it shall not be considered only one conviction if the same unlicensed activity continues for more than one day, unless written notice was given and the unlicensed activity continues.

(3) Habitual unlicensed contracting activity is a class C felony.

(4) It is an affirmative defense under this section that the offense consisted of unlicensed activity performed by a licensed contractor outside the scope of the contractor's license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

§708-C Unlicensed contractor fraud. (1) A person commits the offense of unlicensed contractor fraud if the person engages in any activity that requires a contractor's license under chapter 444 and is not licensed as a contractor under chapter 444 when the person engages in the activity, and while engaged in the activity, the person obtains, or exerts control over, the property of another, by deception, with intent to deprive the other of the property.

(2) For purposes of this section, "deception" is as defined in section 708-800, and includes, but is not limited to, deception as to the person's status as a licensed contractor or as to permits required to engage in the activity.

§708-D Unlicensed contractor fraud in the first degree.

(1) A person commits the offense of unlicensed contractor fraud in the first degree if the person commits unlicensed contractor fraud and obtains, or exerts control over property, the value of which is \$100,000 or more.

(2) Unlicensed contractor fraud in the first degree is a class A felony.

§708-E Unlicensed contractor fraud in the second degree.

(1) A person commits the offense of unlicensed contractor fraud in the second degree if the person commits unlicensed contractor fraud and obtains, or exerts control over property, the value of which is \$5,000 or more, but less than \$100,000.

(2) Unlicensed contractor fraud in the second degree is a class B felony.

§708-F Unlicensed contractor fraud in the third degree.

(1) A person commits the offense of unlicensed contractor fraud in the third degree if the person commits unlicensed contractor fraud and obtains, or exerts control over property, the value of which is less than \$5,000.

(2) Unlicensed contractor fraud in the third degree is a class C felony.

§708-G Unlicensed contractor fraud; valuation of property.

For purposes of unlicensed contractor fraud, the value of the property is as defined in section 708-801, but shall include the total value of all moneys and any assets of value paid or lost by the victim or victims pursuant to the same scheme or course of conduct."

SECTION 2. Section 436B-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a circumstance of first instance involving the inadvertent failure to renew a previously existing license, shall be guilty of a misdemeanor [~~and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both,~~] and each [~~day's violation~~] day of unlicensed activity shall be deemed a separate offense."

SECTION 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

Report Title:

Unlicensed Contracting Offenses

Description:

Establishes unlicensed contracting activity as a misdemeanor offense; establishes habitual unlicensed contracting activity and unlicensed contractor frauds as felonies. Requires that each day of unlicensed contracting activity be deemed a distinct and separate offense under certain conditions. Exempts a previously licensed licensee who inadvertently fails to maintain licensing requirements from the newly created offenses. Establishes monetary penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent..



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DIRECTOR

AUDREY HIDANO
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March 29, 2012

To: The Honorable David Ige, Chair,
The Honorable Michelle N. Kidani, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Thursday, March 29, 2012
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: HB1295 HD3SD1 RELATING TO BUSINESS

The Department of Labor and Industrial Relations (DLIR) strongly supports HB1295HD3SD1 RELATING TO BUSINESS, which establishes criminal sanctions for unlicensed contracting activity. DLIR participated in the Unlicensed Contractor Law Enforcement Task Force pursuant to HCR286HD1 (SLH, 2011). DLIR believes a nexus exists between unlicensed contractor activity and attempts to avoid labor law regulation and enforcement.

DLIR joined in the Small Working Group on Information Sharing and developed several Memorandums of Agreement with the other departments as part of the overall effort to reduce unlicensed contracting and the avoidance of labor laws. HB1295HD3SD1 is a product of the Small Working Group on Enforcement. The proposal establishes criminal offenses for unlicensed contractor activity, including chronic and repeat unlicensed contracting activity, and unlicensed fraud. The proposal excludes penal offenses involving the inadvertent failure of a licensee to renew a previously existing license.

DLIR believes establishing criminal offenses for unlicensed contracting will serve as both an effective deterrent to unlicensed contracting activity and attempts to circumvent labor laws. Therefore, the department strongly supports this proposal and supports the amendments requested by DCCA.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
DIRECTOR

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

TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

THURSDAY, MARCH 29, 2012
9:00 A.M.

WRITTEN TESTIMONY ONLY
HOUSE BILL NO. 1295 H.D.3 S.D.1
RELATING TO BUSINESS

TO THE HONORABLE DAVID Y. IGE, CHAIR,
AND TO THE HONORABLE MICHELLE N. KIDANI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

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.3 S.D.1, 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 supports this bill, subject to several amendments contained in an attached proposed Senate Draft 2.

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.3 S.D.1 is largely the result of that Group's collaborative efforts.

RICO supports House Bill No. 1295 H.D.3 S.D.1, subject to the following proposed amendments:

1) The bill at page 1, lines 8-13 provides that an inadvertent failure to maintain licensing requirements in chapter 444, Hawaii Revised Statutes ("HRS") by a person engaged in contracting without a license would not constitute the offense of unlicensed contracting. This language is overbroad and would excuse a licensee from maintaining all licensing requirements in chapter 444, HRS. As such, RICO prefers the language in the House Draft 3 of this bill as set forth on page 1 lines 10-13 of the House Draft 3.

2) RICO also is aware of concerns relating to the unlicensed contractor fraud section of the bill. Members of the Law Enforcement Small Working Group collaborated on amendments to the bill that would address these concerns. The Group proposes amendments to §708-C on page 3 and the addition of §§708-D, 708-E, 708-F and 708-G. These amendments are attached.

Testimony on House Bill No. 1295 H.D.3 S.D.1
March 29, 2012
Page 3

3) Lastly, RICO notes that the bill has a defective effective date and respectfully requests that the defective date be amended to July 1, 2012.

Thank you for this opportunity to submit written testimony on House Bill No. 1295 H.D.3 S.D.1. I will be happy to answer any questions that the members of the Committee may have.

A BILL FOR AN ACT

RELATING TO BUSINESS

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 708, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . UNLICENSED CONTRACTING OFFENSES**

5 **§708-A Unlicensed contracting activity.** (1) A person
6 commits the offense of unlicensed contracting activity if the
7 person:

- 8 (a) Engages in any activity that requires a contractor's
9 license under chapter 444 and is not a licensed
10 contractor when engaging in the activity, other than a
11 circumstance of ~~[an] first~~ instance involving ~~[a~~
12 ~~previously licensed contractor who inadvertently~~
13 ~~failed to maintain licensing requirements under~~
14 ~~chapter 444; the inadvertent failure to renew a~~
15 ~~previously existing license;~~ or
16 (b) Uses any word, title, or representation to induce the
17 false belief that the person is licensed under chapter
18 444 to engage in contracting activity.

1 (2) Unlicensed contracting activity is a misdemeanor.

2 (3) Each day the violation of this section continues shall
3 constitute a distinct and separate offense.

4 (4) It is an affirmative defense under this section that
5 the offense consisted of unlicensed activity performed by a
6 licensed contractor outside the scope of the contractor's
7 license. This defense shall not preclude any administrative or
8 civil enforcement action for the unlicensed activity.

9 **§708-B Habitual unlicensed contracting activity; felony.**

10 (1) A person commits the offense of habitual unlicensed
11 contracting activity if the person has had two or more
12 convictions within ten years, preceding the time of the conduct
13 for which the person is charged, for unlicensed contracting
14 activity in violation of section 436B-27 or 708-A, and:

15 (a) Engages in any activity for which a contractor's
16 license is required under chapter 444, and is not
17 licensed as a contractor under chapter 444 when
18 engaging in the activity; or

19 (b) Uses any word, title, or representation to induce the
20 false belief that the person is licensed under chapter
21 444 to engage in contracting activity.

22 (2) A conviction for purposes of this section is a judgment
23 on a verdict or a finding of guilt, or a judgment on a plea of

1 guilty or nolo contendere. The convictions must have occurred on
2 separate dates and be for separate incidents on separate dates.
3 At the time of the instant offense, the convictions must not
4 have been expunged by pardon, reversed, or set aside. However,
5 it shall ~~[not]~~ be considered only one conviction if the same
6 unlicensed activity continues for more than one day, unless
7 written notice was given and the unlicensed activity continues.

8 (3) Habitual unlicensed contracting activity is a class C
9 felony.

10 (4) It is an affirmative defense under this section that
11 the offense consisted of unlicensed activity performed by a
12 licensed contractor outside the scope of the contractor's
13 license. This defense shall not preclude any administrative or
14 civil enforcement action for the unlicensed activity.

15 ~~[\$708-C Unlicensed contractor fraud. (1) A person commits~~
16 ~~the offense of unlicensed contractor fraud if the person:~~

17 ~~(a) Engages in any activity that requires a contractor's~~
18 ~~license under chapter 444 and is not licensed as a~~
19 ~~contractor under chapter 444 when the person engages~~
20 ~~in the activity; and~~

21 ~~(b) With intent to defraud, engages in an act, practice,~~
22 ~~or course of business that operates or would operate~~
23 ~~as a fraud or deceit upon another person.~~

1 ~~(2) Unlicensed contractor fraud is a class B felony if the~~
2 ~~total value of all moneys and any assets of value paid or lost~~
3 ~~by the victims pursuant to the same scheme, plan, or~~
4 ~~representation, is \$20,000 or greater.~~

5 ~~(3) Unlicensed contractor fraud is a class C felony if the~~
6 ~~total value of all moneys and any assets of value paid or lost~~
7 ~~by the victims pursuant to the same scheme, plan, or~~
8 ~~representation, is less than \$20,000."~~

9 **§708-C Unlicensed contractor fraud.** (1) A person commits
10 the offense of unlicensed contractor fraud if the person engages
11 in any activity that requires a contractor's license under
12 chapter 444 and is not licensed as a contractor under chapter
13 444 when the person engages in the activity, and while engaged
14 in the activity, the person obtains, or exerts control over, the
15 property of another, by deception, with intent to deprive the
16 other of the property.

17 (2) For purposes of this section, "deception" is as
18 defined in section 708-800, and includes, but is not limited to,
19 deception as to the person's status as a licensed contractor or
20 as to permits required to engage in the activity.

21 **§708-D Unlicensed contractor fraud in the first degree.**

22 (1) A person commits the offense of unlicensed contractor fraud
23 in the first degree if the person commits unlicensed contractor

1 fraud and obtains, or exerts control over property, the value of
2 which is \$100,000 or more.

3 (2) Unlicensed contractor fraud in the first degree is a
4 class A felony.

5 **§708-E Unlicensed contractor fraud in the second degree.**

6 (1) A person commits the offense of unlicensed contractor fraud
7 in the second degree if the person commits unlicensed contractor
8 fraud and obtains, or exerts control over property, the value of
9 which is \$5,000 or more, but less than \$100,000.

10 (2) Unlicensed contractor fraud in the second degree is a
11 class B felony.

12 **§708-F Unlicensed contractor fraud in the third degree.**

13 (1) A person commits the offense of unlicensed contractor fraud
14 in the third degree if the person commits unlicensed contractor
15 fraud and obtains, or exerts control over property, the value of
16 which is less than \$5,000.

17 (2) Unlicensed contractor fraud in the third degree is a
18 class C felony.

19 **§708-G Unlicensed contractor fraud; valuation of property.**

20 For purposes of unlicensed contractor fraud, the value of the
21 property is as defined in section 708-801, but shall include the
22 total value of all moneys and any assets of value paid or lost
23 by the victim or victims pursuant to the same scheme or course

1 of conduct."

2 SECTION 2. Section 436B-27, Hawaii Revised Statutes, is
3 amended by amending subsection (b) to read as follows:

4 "(b) Any person, who engages in an activity requiring a
5 license issued by the licensing authority and who fails to
6 obtain the required license, or who uses any word, title, or
7 representation to induce the false belief that the person is
8 licensed to engage in the activity, other than a circumstance of
9 first instance involving the inadvertent failure to renew a
10 previously existing license, shall be guilty of a misdemeanor
11 [~~and be subject to a fine of not more \$1,000 or imprisoned not~~
12 ~~more than one year, or both,~~] and each [~~day's violation~~] day of
13 unlicensed activity shall be deemed a separate offense."

14 SECTION 3. In codifying the new sections added by section
15 1 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 4. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

1 SECTION 6. This Act shall take effect on [~~July 1, 2012.~~]

2 July 1, 2012.

3

4

Report Title:

Unlicensed Contracting Offenses

Description:

Establishes unlicensed contracting activity as a misdemeanor offense; establishes habitual unlicensed contracting activity and unlicensed contractor frauds as felonies. Requires that each day of unlicensed contracting activity be deemed a distinct and separate offense under certain conditions. Exempts a previously licensed licensee who inadvertently fails to maintain licensing requirements from the newly created offenses. Establishes monetary penalties.

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Testimony to Senate Committee on Ways and Means

Thursday, March 29, 2012

9:00 a.m.

Capitol Room 211

RE: H.B. 1295 HD3 SD1, Relating to Business

Good morning Chair Ige, Vice-Chair Kidani, and members of the Committee:

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 **strongly supports** H.B. 1295 HD3 SD1, which: (1) establishes unlicensed contracting activity as a misdemeanor offense; (2) establishes habitual unlicensed contracting activity and unlicensed contractor fraud as felonies; (3) requires that each day of unlicensed contracting activity be deemed a distinct and separate offense under certain conditions; (4) exempts a previously licensed licensee who inadvertently fails to maintain licensing requirements from the newly created offenses; and (5) establishes monetary penalties.

H.B. 1295 HD3 SD1 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.

Senator Ige, Chair
Committee on Ways and Means
March 29, 2012
HB 1295 HD3 SD1
BIA-Hawaii 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.

For the foregoing reasons, BIA-Hawaii **strongly supports** H.B. 1295 HD3 SD1.

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

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: greg@ccs-hawaii.com
Subject: Testimony for HB1295 on 3/29/2012 9:00:00 AM
Date: Wednesday, March 28, 2012 7:57:36 AM

Testimony for WAM 3/29/2012 9:00:00 AM HB1295

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Greg Thielen
Organization: Complete Construction Services
E-mail: greg@ccs-hawaii.com
Submitted on: 3/28/2012

Comments:

I am a small business owner with over 20 years experience in the construction industry. Unlicensed activity is at an all time high and is a cancer in our industry and our state. Please pass HB1295 to help turn the tide on this serious problem.



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

Senate Committee on Ways and Means
Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair

HB 1295, HD3, SD1 – Relating to Business
Thursday, March 29, 2012
9:00 am
Conference Room 211

Aloha Chair Ige, Vice Chair Kidani 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 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, HD3, SD1 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, HD3, SD1.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Thursday, March 29, 2012
9:00 a.m.

WRITTEN COMMENTS ONLY

COMMENTS ON HOUSE BILL NO. 1295, H.D.3, S.D.1, RELATING TO BUSINESS.

TO THE HONORABLE DAVID Y. IGE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Verna Oda, Executive Officer of the Contractors License Board ("Board"), Department of Commerce and Consumer Affairs. Thank you for the opportunity to submit comments on House Bill No. 1295, H.D.3, S.D.1, which establishes criminal sanctions for unlicensed contracting activity.

The Board supports the intent of this bill, but has concerns regarding the revisions to this bill that are reflected in the S.D.1 on page 1 lines 11-13. The S.D.1 creates an exemption for contractors who inadvertently fail to maintain the Board's licensing requirements.

The Board feels that this exemption is too broad, and that it would be difficult to prove whether or not the actions of the contractors were inadvertent. If the intent of this language is to address situations in which the contractor fails to notify the Board of their current insurance status, the Board does not consider the contractor to be unlicensed if the contractor can provide verification of continuous insurance coverage. However, if left as written, this exemption would allow contractors to claim that their loss of continuous insurance, their failure to renew their license for several years, or their failure to maintain any other licensing requirement was inadvertent and therefore not subject to the penalties of this chapter.

For these reasons, the Board is opposed to excluding all contractors who inadvertently failed to maintain the licensing requirements from the proposed penal sanctions, and prefers the language in the House Draft 3 of this bill as set forth on page 1 lines 10-13 of the H.D.3.

Thank you for the opportunity to submit written comments on House Bill No. 1295, H.D.3, S.D.1.