



March 29, 2012

TO: HONORABLE SENATORS DAVID IGE, CHAIR, MICHELLE KIDANI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **SUPPORT WITH RECOMMENDED AMENDMENT TO H.B. 1295, HD3, SD1, 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 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. Effective 07/01/2112. (SD1)

HEARING

DATE: Thursday, March 29, 2012

TIME: 9:00 a.m.

PLACE: Conference Room 211

Dear Chair Ige, Vice Chair Kidani and Members of the Committee:

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 80<sup>th</sup> anniversary this year; GCA remains the largest construction association in the State of Hawaii whose mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in **support but proposes an amendment** to H.B. 1295, HD3, SD1, Relating to Business. We also understand that the Department of Commerce and Consumer Affairs may be suggesting some amendments, and we support their proposed changes **except the changes recommended in to §708-A(1)(a) as detailed below.**

**GCA recommends deleting the word “not” on Page 3, Line 5.**

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.

The deletion of “not” will ensure that one would not be prosecuted multiple times when working on one project covering more than one day without prior notification of his or her alleged unlicensed activity.

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 with a felony offense. The bill also establishes penal punishments for habitual unlicensed contracting activity and unlicensed contractor fraud.

GCA believes the current language in §708-A(1)(a) is important and should remain in place because it will add protections for previously licensed contractors who may have inadvertently failed to meet compliance under Chapter 444, HRS. We understand that DCCA may be suggesting language that will revert to the HD3 language for this particular section, however we would oppose such change. The intent of this language is to ensure that licensed contractors who are found to be working out of scope or with lapsed licenses due Chapter 444 requirements, like failure to timely file for renewal, transferred, failing to timely renew applicable insurance or other applicable requirements under Chapter 444, HRS, should not be considered practicing unlicensed activity.

Additionally, section §708-B(2) articulates that in order for a conviction to be valid, the unlicensed activity must continue for more than one day after a written warning was delivered to the alleged offender. This will ensure that a person is given fair warning as to his or her alleged unlicensed activity.

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. GCA believes it is important that the statute include safeguards to ensure that only those individuals who were never licensed under Chapter 444, HRS are considered unlicensed contractors.

The GCA supports H.B. 1295, HD3, SD1 and respectfully requests the recommended amendment.

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