

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 7:45 PM
To: HAWtestimony
Cc: Ken_Conklin@yahoo.com
Subject: Testimony for HB2090 on 2/8/2012 8:30:00 AM

Testimony for HAW 2/8/2012 8:30:00 AM HB2090

Conference room: 329
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Kenneth R. Conklin, Ph.D.
Organization: Individual
E-mail: Ken_Conklin@yahoo.com
Submitted on: 1/30/2012

Comments:

HB2090 proposes to give a five percent bid preference in government contracting to companies owned by ethnic Hawaiians. Really?

The 14th Amendment of the U.S. Constitution requires that federal and state governments must treat all persons equally under the law regardless of race.

The specific topic of this bill is contracting. The U.S. Supreme Court ruled in Adarand Constructors vs. Peña that it is unconstitutional for the government to give bidding preferences to contracting companies based on the race of the company's owners.

Please do not be misled by the demeaning stereotype that ethnic Hawaiians are poor, downtrodden, disadvantaged. Some are, many are not. One of the largest and wealthiest contractors in Hawaii, the Dawson Group, is owned by ethnic Hawaiians. Dawson Group got wealthy and powerful by competing in the marketplace without any need for a bidding preference. Dawson Group would be the prime beneficiary of HB2090. Why should they get such a preference now? As a matter of fact, the Dawson Group specializes in highway signs and guardrails, which was the same business as the Adarand Constructors company that was the focus of the Supreme Court decision!

In case there was any doubt that the proposed preference in HB2090 is racial, take note that the bill proposes to have certification of Native Hawaiian companies done by the koko kops at the State of Hawaii's official agency of racism, the Office of Hawaiian Affairs.

Please toss this bill in the dumpster, and let the dumpster be hauled away by whatever trash hauling company has been successful in winning the contract through fair competition on a level playing field.

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 3:05 PM
To: HAWtestimony
Cc: bfspurchasing@honolulu.gov
Subject: Testimony for HB2090 on 2/8/2012 8:30:00 AM
Attachments: C&C of Honolulu Testimony HB No. 2090.pdf

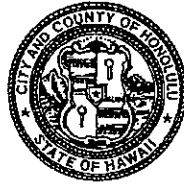
Testimony for HAW 2/8/2012 8:30:00 AM HB2090

Conference room: 329
Testifier position: Oppose
Testifier will be present: No
Submitted by: Michael Hansen
Organization: City & County of Honolulu
E-mail: bfspurchasing@honolulu.gov
Submitted on: 2/6/2012

Comments:

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

NELSON H. KOYANAGI, JR.
DEPUTY DIRECTOR

TESTIMONY OF MICHAEL R. HANSEN, DIRECTOR
DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

Rep. Faye Hanohano, Chair,
Rep. Chris Lee, Vice Chair,
and Members of Committee on
Hawaiian Affairs
House of Representatives
The Twenty-Sixth State Legislature
State Capitol
Honolulu, Hawaii 96813

Subject: HAW Hearing - February 8, 2012 at 8:30 a.m. HST
House Bill No. 2090 Relating to Native Hawaiian Businesses

Dear Chair Hanohano, Vice Chair Lee and Members:

Thank you for the opportunity to testify on H.B. 2090. The City & County of Honolulu understands the intent of the bill which is to foster the development and growth of native Hawaiian-owned businesses through a 5% bid preference for native Hawaiian businesses certified by OHA.

However, in general, the City opposes any type of bid preference. Bid preferences lead to higher costs for goods, services and construction projects. Section 1 of this bill may result in contract prices to the public that are up to five percent higher.

Thank you.

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 3:27 PM
To: HAWtestimony
Cc: wbillingsley@honolulu.gov
Subject: Testimony for HB2090 on 2/8/2012 8:30:00 AM
Attachments: HB2090_HAW.PDF

Testimony for HAW 2/8/2012 8:30:00 AM HB2090

Conference room: 329
Testifier position: Oppose
Testifier will be present: No
Submitted by: Walter Billingsley
Organization: C&C of Honolulu, Dept of Design & Construction
E-mail: wbillingsley@honolulu.gov
Submitted on: 2/6/2012

Comments:

**DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

PETER B. CARLISLE
MAYOR



LORI M.K. KAHIKINA, P.E.
DIRECTOR

CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

February 6, 2012

The Honorable Faye P. Hanohano, Chair
and Members
House Committee on Hawaiian Affairs
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hanohano and Members:

Subject: House Bill No. 2090, Relating to Native Hawaiian Businesses

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 2090 in its current form.

DDC has no objection to the apparent intent of the bill, which would be to provide an advantage for Native Hawaiian-owned business. However, as written, the bill does not appear to limit the types of expenditure of public funds for services that it would apply to. It proposes to require that, "In any expenditure of public funds for services to be provided by business, a five per cent bid preference shall be given to native Hawaiian businesses that are certified by the Office of Hawaiian affairs."

The bill's stated application is extremely broad and would apparently include contracts with professional service providers. Contracts for professional services are required by law to be awarded on the basis of qualifications, not on a low-bid basis (see Hawaii Revised Statutes §103D-304, attached).

The bill does not address how the preference will be enforced.

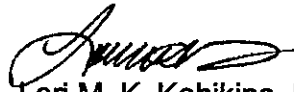
DDC's goal is to execute its many capital improvement projects as expeditiously and efficiently as possible, thus providing the greatest value for taxpayer dollars. Application of the proposed requirement needs to be more clearly defined so that it will not negatively impact the City's capital improvement projects by increasing project costs, paperwork requirements, and the duration of time required to execute projects.

The Honorable Faye P. Hanohano, Chair
and Members
February 6, 2012
Page 2

For these reasons DDC respectfully **opposes** HB 2090 in its current form.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lori M. K. Kahikina".

Lori M. K. Kahikina, P.E.
Director

Enclosure

cleel - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 3:41 PM
To: HAWtestimony
Cc: wbillingsley@honolulu.gov
Subject: Testimony for HB2090 on 2/8/2012 8:30:00 AM
Attachments: HB2090_HAW.PDF

Testimony for HAW 2/8/2012 8:30:00 AM HB2090

Conference room: 329
Testifier position: Oppose
Testifier will be present: No
Submitted by: Walter Billingsley
Organization: C&C of Honolulu, Dept of Design & Construction
E-mail: wbillingsley@honolulu.gov
Submitted on: 2/6/2012

Comments:

This testimony letter is a replacement for one submitted earlier today. The letter is the same, but the original submittal did not include the attachment, which this one has.

**DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR



LORI M.K. KAHIKINA, P.E.
DIRECTOR

CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

February 6, 2012

The Honorable Faye P. Hanohano, Chair
and Members

House Committee on Hawaiian Affairs
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hanohano and Members:

Subject: House Bill No. 2090, Relating to Native Hawaiian Businesses

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The bill does not address how the preference will be enforced.

DDC's goal is to execute its many capital improvement projects as expeditiously and efficiently as possible, thus providing the greatest value for taxpayer dollars. Application of the proposed requirement needs to be more clearly defined so that it will not negatively impact the City's capital improvement projects by increasing project costs, paperwork requirements, and the duration of time required to execute projects.

§103D-304 Procurement of professional services. (a) Professional services shall be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or this section; provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or section 103D-307. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices shall be given if:

- (1) The response to the initial notice is inadequate;
- (2) The response to the initial notice does not result in adequate representation of available sources;
- (3) New needs for professional services arise; or
- (4) Rules adopted by the policy board so specify.

The chief procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements by filing a new statement prior to the date designated for submission.

(c) The head of the purchasing agency shall designate a review committee consisting of a minimum of three persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. In designating the members of the review committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of the review committee established under this section shall be placed in the contract file.

The committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a list of qualified persons to provide these services. Persons included on the list of qualified persons may amend their statements of qualifications as necessary or appropriate. Persons shall immediately inform the head of the purchasing agency of any change in information furnished which would disqualify the person from being considered for a contract award.

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The selection committee shall be comprised of a minimum of three persons with sufficient education, training, and licenses or credentials in the area of the services required. In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of a selection committee established under this section shall be placed in the contract file.

(e) The selection criteria employed in descending order of

importance shall be:

- (1) Experience and professional qualifications relevant to the project type;
- (2) Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies;
- (3) Capacity to accomplish the work in the required time; and
- (4) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

(f) The selection committee shall evaluate the submissions of persons on the list prepared pursuant to subsection (c) and any other pertinent information which may be available to the agency, against the selection criteria. The committee may conduct confidential discussions with any person who is included on the list prepared pursuant to subsection (c) regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from the competing professional service offerors.

(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause.

(h) The head of the purchasing agency or designee shall negotiate a contract with the first ranked person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. The contract file shall include documentation from the head of the purchasing agency, or designee, to support selection of other than the first ranked or next ranked person. Failing accord with the second ranked person, negotiations with the next ranked person on the list shall commence. If a contract at a fair and reasonable price cannot be negotiated, the selection committee may be asked to submit a minimum of three additional persons for the head of the purchasing agency to resume negotiations in the same manner provided in this subsection. Negotiations shall be conducted confidentially.

(i) Contracts awarded under this section for \$5,000 or more shall be posted electronically within seven days of the contract award by the chief procurement officer or designee and shall remain posted for at least one year. Information to be posted shall include, but not be limited to:

- (1) The names of the persons submitted under subsection (g);

- (2) The name of the person or organization receiving the award;
- (3) The dollar amount of the contract;
- (4) The name of the head of the purchasing agency or designee making the selection; and
- (5) Any relationship of the principals to the official making the award.

(j) Contracts for professional services of less than the limits in section 103D-305, may be negotiated by the head of the purchasing agency, or designee, with at least any two persons on the list of qualified persons established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection (h), with ranking based on the selection criteria of subsection (e) as determined by the head of the agency.

(k) In cases of awards made under this section, nonselected professional service providers may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed. [L Sp 1993, c 8, pt of §2; am L 1995, c 178, §10; am L 1997, c 21, §1 and c 352, §7; am L 2000, c 141, §1; am L 2003, c 52, §5; am L 2004, c 216, §1]

Note

L 1997, c 352, §23 purports to amend this section.

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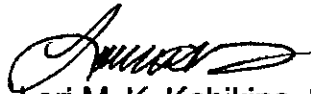
[Next](#)

The Honorable Faye P. Hanohano, Chair
and Members
February 6, 2012
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For these reasons DDC respectfully **opposes** HB 2090 in its current form.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lori M. K. Kahikina". The signature is fluid and cursive, with a prominent initial "L" and a long, sweeping underline.

Lori M. K. Kahikina, P.E.
Director

Enclosure

clee1 - Lina

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 07, 2012 7:58 AM
To: HAWtestimony
Cc: crystalkpaul@yahoo.com
Subject: Testimony for HB2090 on 2/8/2012 8:30:00 AM

Testimony for HAW 2/8/2012 8:30:00 AM HB2090

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Crystal Kia Paul
Organization: Individual
E-mail: crystalkpaul@yahoo.com
Submitted on: 2/7/2012

Comments:

Honorable Chair Hanohano,

I am in support of this bill to give Native Hawaiians an equal opportunity to show off their skills, talent and knowledge in businesses that have been traditionally anglo male dominated.

I ask that the Office of Hawaiian Affairs will do all they can to solicit all Native Hawaiian Businesses to support this initiative by being fair and supportive to all in our community. We have many in our community that have amazing skills, talents and knowledge that may never apply because they are intimidated by how the process works whether it's local or state government.

Thank you so much for your time.