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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-SEVENTH STATE LEGISLATURE  
REGULAR SESSION, 2013

WEDNESDAY, JANUARY 30, 2013  
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 153  
RELATING TO UNLICENSED CONTRACTING ACTIVITY

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 153, Relating To Unlicensed Contracting Activity. My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony in support of the bill.

House Bill No. 153 amends §708-8305, Hawaii Revised Statutes ("HRS"), to clarify that the value of work performed by an unlicensed contractor shall not offset the value of the property for purposes of determining unlicensed contractor

fraud in the first and second degrees. Section 708-8305, HRS, was enacted last year as part of Act 244 and represented the collaborative work of the Unlicensed Contractor Law Enforcement Task Force. RICO was a member of the Task Force. Act 244 added an existing misdemeanor unlicensed contracting offense to the Penal Code and created new offenses for habitual unlicensed contracting activity and unlicensed contractor fraud.

Section 708-8305, HRS, was not intended to allow the value of an unlicensed contractor's work to offset the value of the property in determining the degree of unlicensed contractor offenses. House Bill No. 153 makes it clear that no such offset shall be applied. For these reasons, RICO supports this bill.

Thank you for this opportunity to testify on House Bill No. 153. I will be happy to answer any questions that the members of the Committee may have.



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TESTIMONY  
ON  
HB 153 - RELATING TO UNLICENSED CONTRACTING ACTIVITY

January 30, 2013

The Honorable Angus L. K. McKelvey  
Chair  
The Honorable Derek S. K. Kawakami  
Vice Chair  
and Members  
House Committee on Consumer Protection & Commerce

Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

HB 153, Relating to Unlicensed Contracting Activity, proposes to clarify the new unlicensed contracting activity statutes past last year. The bill seeks to clarify that the value of any work done by an unlicensed contractor cannot be used as an offset to calculate the value paid or lost by a victim.

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We were the only office to actively prosecute unlicensed contracting cases under the previous law. Last month, one of these cases went before the Hawaii Supreme Court. Although we are still waiting for a decision, some of the justices did indicate that the work done by the unlicensed contractor should serve as an offset to the calculation of value. While that was under the old law, the new law is also open for similar questioning.

It is our position that a contract by an unlicensed contractor is illegal, and allowing an unlicensed contractor to use the value of work done as an offset allows the unlicensed contractor to receive gain from the illegal contract. Further, allowing work done to be an offset would lead to a "battle of the experts" when trying to calculating the value of work done, and justice would not be served for the victims. We ask that the committee PASS HB 153

Thank you very much for the opportunity to provide testimony on this bill.