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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, 2014

MONDAY, JANUARY 27, 2014
2:10 P.M.

TESTIMONY ON HOUSE BILL NO. 1639
RELATING TO UNLICENSED CONTRACTOR FRAUD

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. 1639, Relating to Unlicensed Contractor Fraud. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony in support of this bill.

House Bill No. 1639 amends §708-8302, Hawaii Revised Statutes ("HRS"), to clarify that the "intent to deprive" under the offense of unlicensed contractor fraud may be formed before or after a person obtains or exerts control over the

property of another. The bill provides additional guidance for enforcement of the offense of unlicensed contractor fraud by specifying when the "intent to deprive" may be formed.

As background, §708-8302, HRS, was enacted in 2012 as part of Act 244 and represents 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. RICO supports House Bill No. 1639 because it will assist law enforcement efforts to prosecute the offense of unlicensed contractor fraud.

Thank you for this opportunity to testify on House Bill No. 1639. I will be happy to answer any questions that the members of the Committee may have.

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THE HONORABLE ANGUS MCKELVEY, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i

January 27, 2014

RE: H.B. 1639; RELATING TO UNLICENSED CONTRACTOR FRAUD.

Chair McKelvey, Vice-Chair Kawakami, members of the House Committee on Consumer Protection & Commerce, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, in **strong support** of H.B. 1639. The purpose of this bill is to clarify that “intent to deprive” may be formed before or after a perpetrator obtains control over a victim’s property, for purposes of the Unlicensed Contractor Fraud statute.

Section 708-8302, Hawaii Revised Statutes, defines Unlicensed Contractor Fraud using two “terms of art”: “deception,” and “intent to deprive.” When this statute was enacted in 2012, it included a definition of “deception” in subsection (2), such that: “Deception, as defined in section 708-800, includes deception as to a person’s status as a licensed contractor or as to permits required to engage in the activity.” However, the statute does not include a definition of “intent to deprive.”

Current language of the Unlicensed Contractor Fraud statute requires that the perpetrator’s intent to deprive exist “while engaged” in unlicensed contractor activities. Yet it is unclear from the statute whether that intent must also exist *before* the perpetrator obtains control over the victim’s property. The proposed definition removes that ambiguity by clarifying that the intent to deprive may be formed before or after the perpetrator obtains control over the victim’s property, provided that the perpetrator is engaged in unlicensed contractor activities at that time.

The proposed definition is consistent with the recent Hawaii Supreme Court case, State v. Atwood, which recognized that an “intent to deprive” could be formed before or after the perpetrator obtained control over the victim’s money. See Atwood, 129 Hawaii 414, 421, 301 P. 3d 1255, 1662 (2013). The Court further held that a breach of contract, accompanied by an intent to deprive, was sufficient to establish criminal liability. See Atwood, 129 Hawaii at 420, 1261.

For the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, strongly supports H.B. 1639. Thank you for the opportunity to testify on this matter.



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TESTIMONY
ON
HB 1639 - RELATING TO UNLICENSED CONTRACTOR FRAUD
January 27, 2014

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

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

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 1639, Relating to Unlicensed Contractor Fraud. HB 1639 proposes clarification of the offense of Unlicensed Contractor Fraud by specified that "intent to deprive" may be formed before or after the person obtains or exerts control over the property of another.

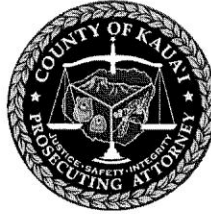
HB 1639 will make clear that an unlicensed contractor need not have the required state of mind to deprive another of their property before obtaining or exerting control over property, but may the state of mind may be formed after the unlicensed contractor receives payment. This will help to address the very serious issue of unlicensed contracting activity, something that the Legislature has always created strong laws to address.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committee PASS HB 1639.

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

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

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**TESTIMONY IN SUPPORT OF
HB 1639 - RELATING TO UNLICENSED CONTRACTOR FRAUD**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Consumer Protection and Commerce
January 27, 2014

The Honorable Angus L. K. McKelvey
Chair

The Honorable Derek S. K. Kawakami
Vice Chair

and Members of the House Committee on Consumer Protection and Commerce

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

The Office of the Prosecuting Attorney, County of Kauai, SUPPORTS HB 1639, Relating to Unlicensed Contractor Fraud. HB 1639 proposes clarification of the offense of Unlicensed Contractor Fraud by specified that "intent to deprive" may be formed before or after the person obtains or exerts control over the property of another.

HB 1639 will make clear that an unlicensed contractor need not have the required state of mind to deprive another of their property before obtaining or exerting control over property, but may the state of mind may be formed after the unlicensed contractor receives payment. This will help to address the very serious issue of unlicensed contracting activity, something that the Legislature has always created strong laws to address.

Accordingly, the Office of the Prosecuting Attorney, County of Kauai, SUPPORTS the passage of this bill. We ask that the committee PASS HB 1639.

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

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar". The signature is fluid and cursive, with a large initial "J" and "K".

Justin F. Kollar
Prosecuting Attorney

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Monday, January 27, 2014
2:10 p.m.

**TESTIMONY ON HOUSE BILL NO. 1639, RELATING TO UNLICENSED
CONTRACTORS.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, Chair of the Contractors License Board's Legislative Committee. Thank you for the opportunity to testify in support of House Bill No. 1639, which proposes to clarify the offense of unlicensed contractor fraud by specifying that the "intent to deprive" may be formed before or after the person obtains or exerts control over the property of another. The Contractors License Board supports this measure as it provides consumer protection by enhancing the prosecution of unlicensed contractor fraud.

Thank you for allowing us the opportunity to testify on this bill.