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

TO THE HOUSE COMMITTEE ON
JUDICIARY

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2014

TUESDAY, FEBRUARY 18, 2014
2:00 P.M.

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

TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE SHARON E. HAR, 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.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Tuesday, February 18, 2014
2:00 p.m.

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

TO THE HONORABLE KARL RHOADS, 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 House Bill No. 1639.



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

THOMAS CATHCART
Executive Board

JAMES DRUMGOLD JR.
Executive Board

LEIMOMI JOHNSON
Executive Board

MARK MAGUSARA
Auditor

MARK TRAVALINO
Auditor

JOSEPH YAW
Auditor

LEUMA L. LEATUMAUGA
Sergeant-At-Arms

February 18, 2014

Honorable Karl Rhoads, Chair
Honorable Sharon Har, Vice Chair
Members of the Judiciary Committee

RE: **HB 1639** RELATING TO UNLICENSED CONTRACTOR FRAUD.

DATE: Tuesday, February 18, 2014

TIME: 2:00 p.m.

PLACE: Conference Room 325

Support

Dear Chair Rhoads, Vice Chair Har and members of the Judiciary Committee:

The Hawaii Laborers' Union Local 368 supports bill HB1639 with the hope that enforcement will be strengthened to discourage or deny fraudulent contractors from operating in Hawaii.

Thank you for the opportunity to submit this testimony.

Sincerely,

Al Lardizabal
Government Relations

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

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TESTIMONY
ON
HB 1639 - RELATING TO UNLICENSED CONTRACTOR FRAUD
February 18, 2014

The Honorable Karl Rhoads
Chair
The Honorable Sharon E. Har
Vice Chair
and Members of the House Committee on Judiciary

Chair Rhoads, Vice Chair Har 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.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai`i

February 18, 2014

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

Chair Rhoads, Vice-Chair Har, members of the House Committee on Judiciary, 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.

LATE

HB1639

Submitted on: 2/17/2014

Testimony for JUD on Feb 18, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Justin F. Kollar	County of Kauai Office of the Prosecuting Attorney	Support	No

Comments: Joining in the reasons stated by the Honolulu Prosecutor.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1639

A BILL FOR AN ACT RELATING TO UNLICENSED
CONTRACTOR FRAUD

HOUSE COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair

LATE TESTIMONY

Tuesday, February 18, 2014, 2:00 PM
State Capitol, Conference Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Members of the House Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 1639.

The purpose of this measure is 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 .

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 the state of mind may be formed after the unlicensed contractor receives payment.

The Office of the Prosecuting Attorney of the County of Hawai'i supports the passage of House Bill No. 1639. Thank you for the opportunity to testify on this matter.

Respectfully,

Mitchell D. Roth
Prosecuting Attorney
County of Hawai'i