



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

FEBRUARY 25, 2014, 2:00 PM

HB 2442 - RELATING TO STATE CONTRACTS

Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the committee, thank you for the opportunity to submit testimony on HB2442.

The SPO strongly opposes this bill and the changes made to Section 103D-702, Hawaii Revised Statutes. The SPO is specifically opposed to mandating debarment and also eliminating suspension, which is a first step in the debarment process. Removing a Chief Procurement Officer's (CPO) ability to suspend a contractor and mandating debarment denies both the purchasing agency and contractor due process.

Notwithstanding SPO's opposition to the bill as a whole, the bill's changes to the code effectuates ambiguity where statute states on Page 1, line 3-5, "After reasonable notice to the person involved and reasonable opportunity for that person to be heard..." if the decision to debar has been mandated. It also contradicts the language on page 1, line 12 to 13, "...and not for the purpose of punishment".

Mandatory debarment denies CPOs the opportunity to gather evidence, pursue investigations and legal proceedings before a determination is made that immediate action is necessary to protect the interest of the government. Agencies should be given the opportunity to consider the credibility of the information, corroborating evidence, and assessment of all relative documentation. Additionally, the proposed bill is not in alignment with the majority of the States (includes but not limited to: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Washington, West Virginia, Wisconsin) or the Federal Acquisition Regulations (FAR), Subpart 9.407(a), which states "The suspending official *may*, in the public interest, suspend a contractor for any of the causes in 9.407-2."

The SPO recognizes the intent of the bill, which would mandate debarment in those situations where conviction for criminal offense determined by Federal or State anti-trust has already been administered. However, debarment should not be mandatory in all situations, as it denies both the purchasing agency and contractor due process. Debarment should remain under the authority and decision of the CPO as currently exists in Section 103D-702, Hawaii Revised Statutes which is also in alignment with Federal Acquisition Regulations (FAR). FAR Subpart 9.406.1 states "It is the debarring official's responsibility to determine whether debarment is in the Government's interest." Pursuant to Hawaii Administrative Rules, Section 3-126, Subchapter 2, specific procedures exist once probable cause for debarment exists which include:

- Notice of Suspension for the period it takes to complete an investigation into possible debarment.
- Investigation into debarment, including consulting with the AG and the purchasing agency.
- Notice of Intent to Debar, giving the contractor reasons for the debarment.
- Review by the contractor and its legal counsel if requested.
- Final written determination by the CPO recommending a course of action, taking into consideration oral arguments and consultation with AG and purchasing agency.
- Right of the contractor to commence an administrative proceeding under subchapter 5, chapter 3-126, HAR.
- Debarment effective upon issuance and receipt of the final decision by the person or firm.
- CPO notification to the State Procurement Office (SPO) of the action, including a copy of the decision to debar or suspend. The SPO shall issue an updated list of persons or firms debarred and suspended to all governmental bodies and post on website.
- Upon notification of a debarment or suspension action from the SPO, a CPO shall make a written determination whether to allow the debarred or suspended person or firm to continue performance on any contract awarded prior to the effective date of the debarment or suspension.

Mandatory debarment would require immediate work stoppage. This means additional monies to pay the incumbent closing costs, and additional monies and resources to resolicit. In the meantime, a vital program(s) could be at risk.

Mandatory debarment would necessitate additional resources. Initially, it would involve a legislative appropriation of \$265,000 (outsourcing and travel expenses) to determine the impact mandatory debarment would have on all State and County government entities and the business community. No infrastructure exists to verify that a vendor has committed a criminal offense, or convicted under state or federal statutes relating to a business' lack of integrity or honesty or any of the other causes for debarment. SPO is concerned with the enforcement of mandatory debarment. SPO does not have the resources to validate with the Judiciary, Departments of Labor and Industrial Relations, Commerce and Consumer Affairs, and any other compliance agencies that may be involved.

Thank you.

February 24, 2014

House Committee on Finance

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

**Subject: TESTIMONY IN OPPOSITION to HB 2442, Relating to State Contracts
Hearing: Tuesday, February 25, 2:00 p.m., Conference Room 308**

Dear Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers. We are opposed to modifications to the State Debarment Rules and we believe the existing statute provides adequate protection of the government and Hawaii's citizens. We believe that contractors that break the rules should be held accountable, and the existing statute provides for debarment or suspension for certain acts.

This bill seeks to remove certain mitigating factors that may be considered by the chief procurement officer in making the determination for suspension or debarment. These mitigating factors, such as reporting the violation before investigation by the government, cooperating with the government, and taking appropriate disciplinary action against the involved individuals, seem reasonable and should remain in place. We can think of a situation where one person in a firm behaves improperly without awareness of others in the firm; it seems reasonable for the chief procurement officer to be able to consider appropriate mitigating measures taken by the firm.

We appreciate the continuing efforts of your committees and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in Hold this bill

Sincerely,
Coalition of Hawaii Engineering & Architectural Professionals
Lester H. Fukuda, P.E., FACEC

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 25, 2014

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO AND AARON JOHANSON, VICE CHAIRS AND HOUSE COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION TO H.B. 2442, HD1. RELATING TO TATE CONTRACTS.**
Requires the Chief Procurement Officer to debar an offerer for up to three years for certain crimes, contract violations, or ethical violations. Effective July 1, 2014. (HB2442 HD1)

HEARING

DATE: Tuesday, February 25, 2014

TIME: 2:00 p.m.

PLACE: Capitol Room 308

Dear Chair Luke, Vice Chairs Nishimoto, Johanson and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's 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.

The GCA **is opposed** to the passage of H.B. 2442, HD1, Relating to State Contracts. The GCA believes that the current statutes authorizing the chief procurement officer to debar individuals and companies, from being awarded state contracts provides adequate protection for the public and governmental interests. The current statutes require the chief procurement officer to consult with user agencies prior to proceeding with action to debar insuring that current performance past history is given close scrutiny prior to actual debarment.

The GCA is also concerned that the proposed new language is too unclear how and what evidence the Chief Procurement Officer must consider reaching a determination whether a contractor has deliberately failed to meet the terms of his contract.

In the event that a contractor is debarred and the contract is terminated. How and who will carry out the existing requirements of the contract? If the contract is not terminated immediately, will any options to extend the contract be permitted?

The GCA believes that the Chief Procurement Officer should be granted wide discretion to investigate and consult with user agencies and to consider the potential adverse impacts any

debarment will have on the public rather than making debarment an absolute requirement upon a finding of violation of contracts provisions enumerated in the proposed amendment.

For the above reasons the GCA recommends that H.B.2442, HD1 be held by the committee.



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 24, 2014

House Committee on Finance

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling
Johanson, Vice Chairs; and Members of the House Committee on Finance

**Subject: TESTIMONY IN OPPOSITION to HB 2442 HD1,
Relating to State Contracts**

Hearing: Tuesday, February 25, 2:00 p.m., Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The American Council of Engineering Companies of Hawaii (ACECH) represents about 70 member firms with over 1,300 employees throughout Hawaii. ACECH's member firms are comprised of engineers who are at the forefront of their particular disciplines, and who have specialized experience in the geography, resources, and design requirements of Hawaii and the Pacific region. Projects designed by design professionals directly affect the quality of the water we drink and the food we eat; the safety of our buildings, highways, bridges, and infrastructure; and the quality of the environment in which we work and play.

ACECH opposes this bill because we believe the existing statute provides adequate protection of the government and Hawaii's citizens. We believe that contractors that break the rules should be held accountable, and the existing statute provides for debarment or suspension for certain acts.

However, the bill seeks to remove certain mitigating factors that may be considered by the chief procurement officer in making the determination for suspension or debarment. These mitigating factors, such as reporting the violation before investigation by the government, cooperating with the government, and taking appropriate disciplinary action against the involved individuals, seem reasonable and should remain in place. We can think of a situation where one person in a firm behaves improperly without awareness of others in the firm; it seems reasonable for the chief procurement officer to be able to consider appropriate mitigating measures taken by the firm.

We appreciate the opportunity to testify on this matter, and respectfully request that you hold this bill.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

Beverly Ishii-Nakayama, P.E.
President

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COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Scott Nishimoto, Vice Chair

Rep. Aaron Ling Johanson, Vice Chair

Tuesday, February 25, 2014

2:00 p.m.

Room 308

SUPPORT FOR HB 2490 - JUVENILE JUSTICE

Aloha Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 2490 HD1 enhances the juvenile justice system by concentrating secure bed space on serious juvenile offenders and strengthens disposition, adjustment, diversion, and services available for juvenile offenders to ensure family court judges, court staff, departmental staff, and service providers have the tools needed to keep youth safely and effectively in their communities. It increases interagency collaboration and establishes a temporary Juvenile Justice Oversight Advisory Council. Effective July 1, 2014

Community Alliance on Prisons supports this measure.

We have been working on adult justice issues for almost two decades. When we read Dr. Marilyn Brown's dissertation called *Motherhood on the Margins* (2003) that found 36% of the women on parole at the time of the research started in the juvenile justice system. This was a clarion call to Community Alliance on Prisons' and we started working on juvenile issues to shut off the pipeline of youth entering the adult system.

Representing Community Alliance on Prisons, I am a member of the Disproportionate Minority Contact Committee of the federally funded Juvenile Alternatives to Detention Initiative (JDAI); serve as an Advisory Board member to Films By Youth Inside (FYI), a program at HYCF that helps our youth tell their stories through production of short films they write, film, and for which serve as the cast and crew; serve on the Board of `Opio Haku Mo`olelo (Youth writing stories; youth making meaning); and assist a girl's filmmaking program called Making Media That Matters.

Research on better ways of addressing youthful offenses clearly shows that **incarcerating juveniles is not the most effective way of helping our youth** and does nothing to help us achieve better outcomes for all of our communities.

Neuroscientists, using advanced brain-scanning technology, are getting a better view of how the human brain develops than ever before. And what they've found is that in most people, **the prefrontal cortex and its links to other regions of the brain are not fully formed until age 25**—much later than anyone had realized. These areas are the seat of “executive decision making” — the parts of the brain that allow people to think through the likely consequences of an action, weigh the risks and benefits and stop themselves from acting on impulse. In other words, the stuff that makes you a mature person.¹

Brian Wilcox, a psychologist at the University of Nebraska said, “*There’s been a growing recognition that most of our earlier law in how we treat adolescents and young adults was chaotic and not tied to any empirical rationale. When many of these laws were established, there really wasn’t research on which they could be based.*”

It is no secret that Native Hawaiians, Samoans and Filipinos are over-represented in Hawai‘i’s justice system.² This is shameful and points to a real deficiency in our society. We *can* change this.

The Hawai‘i Juvenile Justice Working Group found that in 2012, 41% of youth were committed for nonviolent offenses. They also found that Hawai‘i’s violent offense arrest rates are below the national average and our property offense arrest rates are above the national average.

It is no surprise that property crime is above the national average when we know that 80% of the youth in the First Circuit are in need of substance abuse treatment and there is only one residential treatment facility to serve this desperate need.

Community Alliance on Prisons is so grateful that the bill includes a **reentry** plan for youth. This has been the weak link in the juvenile system, just as it has been in the adult system. We also support **instituting intermediate sanctions** for the most common probation violations as an important step in helping our youth understand the consequences of their actions.

Including **earned discharge** from probation is an important step in restoring hope to a youth who has broken the law. It gives youth something to focus on in order to reach their fullest potential. If a young person feels that there is no way out of the system, it can lead to more offenses as he or she may feel they have been labelled.

Adopting a **parole plan with services** is vital to successful reentry so that our youth achieve the results for which we all hope.

These elements are all so important. Please understand that if we don’t invest in our youth, we are all doomed. Let see each child in our communities as a precious gem. Let’s do everything we can to help them understand the facets of life and help them work through the rough spots. Be a mentor! Be a champion! Please support our keiki and youth by passing this bill.

Mahalo for the opportunity to testify.

“Children are the living messages we send to a time we will not see.”

John W. Whitehead, founder, Rutherford Institute

¹ **What is the Age of Responsibility?** By Alan Greenblatt, October 2009. <http://www.governing.com/node/4018>

² **Why So Many Hawaiian, Samoan And Filipino Youth In Justice System?** Civil Beat, By Chad Blair October 24, 2012. <http://www.civilbeat.com/articles/2012/10/24/17448-why-so-many-hawaiian-samoan-and-filipino-youth-in-justice-system/>