

NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

KEALI`I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION, 2013

MONDAY, MARCH 11, 2013  
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 633  
RELATING TO UNLICENSED CONTRACTING ACTIVITIES

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 Senate Bill No. 633, Relating To Unlicensed Contracting Activities. 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.

Senate Bill No. 633 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.

This Committee heard a similar bill, House Bill No. 153, and passed that bill out unamended. The House bill was not heard by the Committee on Finance and did not cross over to the Senate.

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. Senate Bill No. 633 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 Senate Bill No. 633. I will be happy to answer any questions that the members of the Committee may have.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 633 - RELATING TO UNLICENSED CONTRACTING ACTIVITIES

March 11, 2013

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

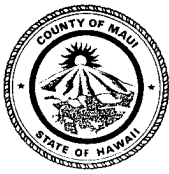
Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

SB 633, Relating to Unlicensed Contracting Activities, 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. This bill mirrors the provisions of HB 153, which this Committee previously passed.

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY 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 SB 633**

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



**ALAN M. ARAKAWA**  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# **POLICE DEPARTMENT**

## **COUNTY OF MAUI**

**55 MAHALANI STREET**  
**WAILUKU, HAWAII 96793**  
**(808) 244-6400**  
**FAX (808) 244-6411**



**GARY A. YABUTA**  
CHIEF OF POLICE

**CLAYTON N.Y.W. TOM**  
DEPUTY CHIEF OF POLICE

March 8, 2013

The Honorable Angus L.K. McKelvey, Chair  
and Members of the Committee on Consumer Protection & Commerce  
House of Representative  
Hawaii State Capitol  
Honolulu, HI 96813

RE: Senate Bill No. 633, RELATING TO UNLICENSED CONTRACTING  
ACTIVITIES

Dear Chair McKelvey and Members of the Committee:

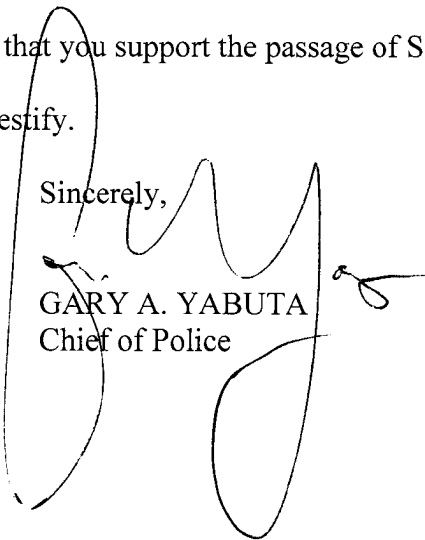
The Maui Police Department supports the passage of S.B. No. 633. The passage of this bill prohibits the value of any work done by an unlicensed contractor to be used as an offset for the value of the property calculated in unlicensed contractor fraud cases.

Our Prosecuting Attorney's Office has supported this bill to clarify the law regarding unlicensed contractors fraudulently conducting business in our community and, as such, we also believe in the merits of this clarification in the current law in order to prosecute this offense accordingly.

The Maui Police Department asks that you support the passage of S.B. No. 633.

Thank you for the opportunity to testify.

Sincerely,

  
**GARY A. YABUTA**  
Chief of Police



Testimony of  
The Pacific Resource Partnership

House Committee on Consumer Protection & Commerce  
Representative Angus L.K. McKelvey, Chair  
Representative Derek S.K. Kawakami, Vice Chair

SB 633 – Relating to Unlicensed Contracting Activities  
March 11, 2013  
2:00 pm  
Conference Room 325

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

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP **strongly supports** SB 633, Relating to Unlicensed Contracting Activities, which prohibits the value of any work done by an unlicensed contractor to be used as an offset for the value of the property calculated in unlicensed contractor fraud cases.

Under current law, victims of **unlicensed** contractors are left less than whole, as **licensed** law abiding contractors are rarely willing (for liability reasons) to take over a job and finish or cure another contractor's work particularly if the prior contractor was unlicensed.

This creates a situation for the homeowner that consists of one of the three choices below:

1. Hire a licensed contractor to finish the work, which will likely entail breaking down or removing all prior work of the unlicensed contractor before the new licensed contractor will take over the job.
2. Hire yet another unlicensed contractor to complete the work at the risk of yet again, being at the mercy of that new unlicensed contractor's potential lack of experience and/or integrity.

March 11, 2013

Testimony Supporting SB 633 – Relating to Unlicensed Contracting Activities

Page 2

3. Let the project languish uncompleted and in some cases, uninhabitable, leaving the homeowner virtually homeless.

Needless to say, under the current law, the first option is the most costly and onerous upon the homeowner and is the least likely option for the homeowner to choose. In a case such as this, homeowners victimized by unlicensed contractors are more likely to choose from one of the last two options of the three. Clearly, these last two options are not in the consumer's best interest.

For these reasons, we respectfully ask for your support on SB 633. Thank you for the opportunity to share our views on this important initiative with you.

# **BIA-HAWAII**

## **BUILDING INDUSTRY ASSOCIATION**

*"Building Better Communities"*

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Complete Construction Services Corp.

**President-Elect**

**Brian Adachi**  
BKA Builders, Inc.

**Vice President**

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Hunt Building Company, Ltd.

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**Scotty Anderson**

Pacific Rim Partners

**W. Bruce Barrett**

Castle & Cooke Homes Hawaii, Inc.

## **Testimony to the House Committee on Consumer Protection & Commerce**

**Monday, March 11, 2013**

**2:00 p.m.**

**State Capitol - Conference Room 325**

**RE: S.B. 633, RELATING TO UNLICENSED CONTRACTING ACTIVITIES**

Dear Chair McKelvey, Vice Chair Kawakami, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **supports** S.B. 633, which prohibits the value of any work done by an unlicensed contractor to be used as an offset for the value of the property calculated in unlicensed contractor fraud cases.

BIA-Hawaii strongly supports legislation that cracks down on unlicensed contractors, who are paid mostly in cash, thereby evading required costs in general excise tax, workers compensation, and insurance. The hiring of unlicensed individuals is both a disservice to the State and to the homeowner, who becomes extremely vulnerable in the event an injury to a worker occurs during the project.

We understand S.B. 633 clarifies that Section 708-8305, HRS, was not intended to include the value of an unlicensed contractor's work to offset the value of property in determining the degree of unlicensed contractor offenses. BIA-Hawaii concurs and, therefore, supports this measure.

Thank you for the opportunity to express our views on this matter.

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 11, 2013

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE DEREK KAWAKAMI, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

SUBJECT: **SUPPORT INTENT OF S.B. 633** RELATING TO UNLICENSED CONTRACTING ACTIVITIES. Prohibits the value of any work done by a unlicensed contractor to be used as an offset for the value of the property calculated in unlicensed contractor fraud cases.

### HEARING

DATE: Monday, March 11, 2013

TIME: 2:00 p.m.

PLACE: Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami and Members:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 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 supports the intent of S.B. 633, Relating to Unlicensed Contracting Activity, which proposes to amend Section 708-8305, Hawaii Revised Statutes, which was just enacted last session as Act 244 (2012). S.B. 633 proposes to clarify that the value of work performed by an unlicensed contractor shall not offset the value of the property for purposes of determining whether an act constitutes unlicensed contractor fraud and if so, in what degree.

This bill will further ensure that licensed contractors are performing work in compliance with state and county laws. Work done by an unlicensed contractor should not be valued as an asset for the owner – especially where the unlicensed activity was terminated before completion of the project. The owner does own the completed work – however, if another legitimately licensed contractor is to assume the remaining work in the contract, in most cases, it will cost more to complete. Also, the unfinished work by the unlicensed contractor cannot be guaranteed by the new contractor and often needs to be completely removed and redone by the new contractor.

For these reasons we respectfully support the intent of this measure. Thank you for the opportunity to present our views.





P.O. Box 757  
Kailua, HI 96734  
Ph. (808) 263-4900  
Fax (808) 263-5966  
[www.ccs-hawaii.com](http://www.ccs-hawaii.com)

March 9, 2013

**Testimony to the House Committee on Consumer Protection and Commerce**  
**Monday, March 11, 2013**  
**2:00 p.m.**  
**Capitol, Room 325**

**RE: S.B.633 Relating to Unlicensed Contracting Activities**

Dear Chair McKelvey, Vice-Chair Kawakami, and members of the Committee,

I am Greg Thielen, President and RME of Complete Construction Services. I am a Small Business Owner and have over 20 years experience in the Construction Industry. I am also the 2013 President of BIA Hawaii.

I am writing in **support** of SB633. We need to provide those agencies tasked with enforcing the laws the tools they need. SB633 will protect consumers from fraud as a result of unlicensed activity. It will prevent those breaking the law from using their illegitimate actions as their defense when facing fraud charges.

Thank you for the opportunity to provide this testimony in **support** of SB633.

Sincerely,

Greg Thielen  
President/RME

**CONTRACTORS ASSOCIATION OF KAUAI**

4231 Ahukini, Lihue, Kauai, Hawaii 96766  
Phone (808) 246-2662 Fax (808) 246-8642



March 10, 2013

Representative McKelvey, Representative Kawakami and Members of the House Committee on Consumer Protection and Commerce:

RE: SB 633, Relating to Unlicensed Contracting Activities

For nearly twenty years the Contractors Association of Kauai (CAK) has been trying to address a myriad of issues relating to unlicensed contracting activities with other construction trade associations. To date, this practice continues much to the detriment of those who are licensed, insured and pay their general excise taxes. The bill being championed by the Department of the Prosecuting Attorney for the County of Maui through SB 633 takes an approach that should garner the committee's interest and support. It is a very important first step to address the issue of unlicensed contracting.

The Contractors Association of Kauai SUPPORTS SB 633. It will provide tools for prosecutors. It will send a clear message of consequence to unlicensed contractors.

We strongly urge the committee to pass SB 633. Thank you very much for the opportunity to provide testimony on this bill and to lend our hundred members support for SB633.