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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION, 2013

WEDNESDAY, MARCH 27, 2013
4:45 P.M.

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

TO THE HONORABLE SYLVIA LUKE, CHAIR,
AND TO THE HONORABLE SCOTT Y. NISHIMOTO, 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.

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. The bill's fiscal impact, if any, is expected to be minimal. 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.



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TESTIMONY
ON
SB 633 - RELATING TO UNLICENSED CONTRACTING ACTIVITIES
March 27, 2013

The Honorable Sylvia Luke
Chair
The Honorable Scott Y. Nishimoto
The Honorable Aaron Ling Johanson
Vice Chairs
and Members
House Committee on Finance

Chair Luke, Vice Chairs Nishimoto and Johanson, 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. This past December, 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.



Testimony of
The Pacific Resource Partnership

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair

SB 633 – Relating to Unlicensed Contracting Activities
March 27, 2013
4:45 pm
Conference Room 308

Aloha Chair Luke, Vice Chairs Nishimoto and Johanson, 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.

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Testimony Supporting SB 633 – Relating to Unlicensed Contracting Activities

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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.