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**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 4, 2016

To: The Honorable Mark M. Nakashima, Chair
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 5, 2016
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2457 Relating to Procurement

I. OVERVIEW OF PROPOSED LEGISLATION

HB 2457 proposes to a new section to chapter 103, Hawaii Revised Statutes (HRS), to establish an earned credit certificate that contractors could use for a five percent bid preference by meeting certain apprenticeship requirements on a public works project. The contractor and subcontractors must maintain accurate records for a period of at least three years. The director may adopt rules pursuant to chapter 91, HRS, pertaining to the administration and enforcement of this section.

HB2457 also requires bidders on public works projects to list each type of classification they will use on the certified payroll as part of the bid offered to a contracting agency.

DLIR supports incentives for participation in apprenticeship programs and offers comments regarding the impact to the department below. DLIR notes that chapter 103, HRS, is under the jurisdiction of the Department of Accounting and General Services (DAGS).

II. CURRENT LAW

Chapter 103, HRS, currently has a five percent bidding preference for contractors that are a party to a registered apprenticeship agreement and must furnish proof

as part of the sealed bid. DLIR's role in the law is to publish on its website the approved apprenticeship agreements.

III. COMMENTS ON THE HOUSE BILL

DLIR notes DAGS has jurisdiction over chapter 103 and offers the following comments for the Committee's consideration:

SECTION 1

- The department notes that the bill would create a significant, administrative burden to the department as drafted.
- The proposed new section of chapter 103 (a) and (b) reads in part, "or graduated from an apprenticeship," would not incentivize utilization of apprentices, because graduates' hours (Journey workers) would equally count towards the ten percent of hours. Inclusion of graduates would make it cumbersome for the contractor to secure certification from administrators of the relevant registered apprenticeship agreement(s) as to which laborers and mechanics completed apprenticeship over past decades.
- DLIR would not be in a position to issue any earned credit certificate. The contracting agency conducts the "...contract close-out procedure..." referred to in (b), and would be in a position to directly issue an earned credit certificate based on documentation provided by the contractor choosing to seek a certificate.
- For 103-55.6, HRS, DLIR provides a list of registered apprenticeship agreements for the information of contracting agencies. That list would be utilized for section 1 of the proposal.
- Since the credit can only be used by a bidder for a future public works construction project, it should be specified that it is the original bidder on the completed contract that is eligible for an earned credit certificate.
- The bill states that the Director of DLIR may undertake rulemaking in the proposed 103 (e), however, the Director does not have jurisdiction over rulemaking for chapter 103.

SECTION 2

- Although DLIR does not have jurisdiction over chapter 103, the department supports the proposed clarification to 103-55.6 to the extent it will improve implementation of the intent to incentivize apprenticeship.
- The amendment to subsection 103-55.6(c) causes confusion by meaning department of labor and industrial relations, by "...the department..." which is not the relevant department to chapter 103. The phrase "... that is recognized in accordance with the department in their wager rate schedule bulletin..." is unnecessary, and deleting it will address the confusion.

- Should a bidder not be in compliance with the relevant apprentice to journey worker ratio, they should no longer be allowed to be a party to a registered apprenticeship agreement, and the administrator of the that agreement should not certify that they are a party. The discovery and/or determination of non-compliance is a process in itself, which is not conducive to use as proposed in the bill.

8DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

LATE

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT
ON
FEBRUARY 5, 2016

H.B. 2457

RELATING TO PROCUREMENT

Chair Nakashima and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2457.

The Department of Accounting and General Services (DAGS) opposes Section 1 of this measure and offers the following comment:

We oppose the change and based on the findings of the Procurement Task Force, with a vote of 10-2 (ten (10) to repeal, one (1) to modify, and one (1) for no change), we recommend repealing the apprenticeship credit in its entirety.

Thank you for the opportunity to submit written testimony on this matter.

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Website: www.gcahawaii.org



GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

February 5, 2016

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT
KEOHOKALOLE, VICE CHAIR, HOUSE COMMITTEE ON LABOR AND PUBLIC
EMPLOYMENT

SUBJECT: **OPPOSITION TO H.B. 2457, RELATING TO PROCUREMENT.** Establishes an
earned credit certificate for contractors in public works projects who meet certain
apprenticeship requirements. Clarifies information that a bidder must disclose in
a competitive sealed bid for public works projects.

HEARING

DATE: Friday, February 5, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 309

LATE

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. 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.

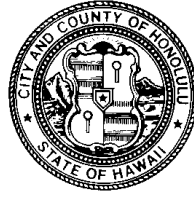
GCA **opposes** H.B. 2457, Relating to Procurement, which proposes to establish an earned credit certificate for contractors in public works projects under certain requirements. This measure is a flawed attempt to fix Section 103-55.6 of the Hawaii Revised Statutes, commonly known as "Act 17." Under current law, Act 17 offers a bid preference for public works contracts having an estimated value of not less than \$250,000 if the bidder is a party to an apprenticeship agreement registered with the state. The original intent of Act 17 was to incentivize the use of apprenticeship programs certified by the State to ensure a highly trained workforce. However, the implementation of Act 17 has caused problems regarding how each agency accounts for a prime bidder's participation in an apprenticeship program.

Pursuant to Senate Concurrent Resolution 92, Senate Draft 2 of the 2013 Regular Session a Task Force was formed to study procurement in public works construction and how to increase its efficiency. One area that was studied was Act 17 and the bid preference it permits. The Task Force identified inconsistencies in the application of the preference between agencies which have caused confusion and concern on part of the contractors. In fact, when a vote was taken among Task Force members as to their position on Act 17 the vote reflected ten (10) to repeal, one (1) to modify, and one (1) for no change, therefore the Task Force, whose report was just released yesterday recommends repeal. This proposed measure would not resolve the areas of inconsistencies, and could instead make it more complex to administer, monitor and execute.

For these reasons we request this measure be deferred. Thank you for the opportunity to share our opposition to H.B. 2457.

LATE

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE SENATE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
February 5, 2016, Conference Room 309

House Bill No. 2457, "Relating to Procurement"

Position: IN OPPOSITION

TO: The Honorable Rep. Mark M. Nakashima, Chair
and Members of the Committee on Labor & Public Employment

The Department of Budget and Fiscal Services, City and County of Honolulu, **opposes** House Bill No. 2457, Relating to Procurement.

In general, any bid preference will promote inefficiencies in the State's Procurement Code and will prevent the City from awarding to the offeror who provides the best value. Bid preferences will require additional time and resources for review, and analysis. Bid preferences increase the chances of a protest or complaint. Bid preferences increase costs to the City.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfs purchasing@honolulu.gov.