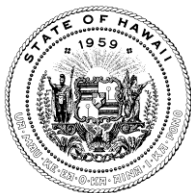


SB1130

Measure Title: RELATING TO LICENSING.
Report Title: Unlicensed Activity; Citation; Contractor
Description: Requires an investigator to issue a citation to any person acting in the capacity of or engaging in the business of a contractor within the State without having a required license.
Companion: [HB378](#)
Package: None
Current Referral: CPH
Introducer(s): K. RHOADS, KEITH-AGARAN



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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P.O. BOX 541
HONOLULU, HAWAII 96809
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE
ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

FRIDAY, FEBRUARY 24, 2017
9:30 A.M.

TESTIMONY ON SENATE BILL NO. 1130
RELATING TO LICENSING

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 1130, Relating to Licensing. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers testimony in opposition to this bill.

Senate Bill No. 1130 requires an investigator to issue citations to persons whom the investigator determines to be acting in the capacity of or engaging in the business of a contractor without a license.

Under current law, RICO may either issue a citation to an individual engaged in unlicensed contracting or file a civil action in Circuit Court for unlicensed contracting. If RICO issues a citation, fines for a first offense can be issued for \$2,500 or 40% of the contract price, with minimum fines increasing for second and third offenses. If RICO pursues a civil action, court remedies include (1) permanent injunctions prohibiting future unlicensed activity, (2) civil fines ranging from \$2,500 or 40% of the contract price for a first offense, with minimum fines increasing for second and third offenses, (3) enhanced fines when elderly persons are targeted, (4) enhanced fines for contracting work following an emergency or natural disaster, and (5) orders disconnecting telephone numbers used in advertisements and listings.

Whether RICO issues a citation or files a civil action depends on information obtained during the investigation. Information can include copies of contracts, specifications, and change orders, building permit records, proof of payments made, and information about prior offenses. Additional interviews of property owners, employees, and subcontractors may also be required. Information is rarely available at the project site.

RICO is concerned that issuing a citation in every instance of unlicensed contracting activity, as Senate Bill No. 1130 requires, would limit RICO's ability to conduct further investigation before issuing a citation, the result of which would be the imposition of the minimum \$2,500 fine being assessed in virtually every case. More importantly, RICO believes this bill would preclude it from filing a civil action to address unlicensed contracting. It is RICO's understanding, based on the

doctrine of res judicata, that issuing an administrative citation and filing a court action are two separate and exclusive remedies to address the same unlicensed conduct. As such, requiring RICO to issue a citation in all instances of unlicensed contractor activity would effectively bar RICO from filing any court action to permanently enjoin unlicensed conduct or to seek higher fines than the fines available through the citation process.

While RICO appreciates efforts to enhance enforcement tools available to us, we believe Senate Bill No. 1130 unintentionally restricts RICO's enforcement in this important area and we respectfully request the bill be held.

Thank you for the opportunity to testify on Senate Bill No. 1130. I will be happy to answer any questions the Committee may have.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Friday, February 24, 2017
9:30 a.m.

TESTIMONY ON SENATE BILL NO. 1130, RELATING TO LICENSING.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, Chairperson of the Contractors License Board (“Board”) Legislative Committee. Thank you for the opportunity to testify in opposition to Senate Bill No. 1130, which proposes to require an investigator to issue a citation to any person acting in the capacity of or engaging in the business of a contractor within the State without having a required license.

The Board supports RICO’s enforcement efforts and opposes this measure because it restricts RICO’s enforcement of unlicensed activity by taking away the investigator’s ability to determine the most effective way to conduct the investigation.

Thank you for the opportunity to provide testimony in opposition to Senate Bill No. 1130.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 24, 2017

Testimony To: Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1130 - RELATING TO LICENSING

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we are very reluctant to support this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

As we read this bill it converts the investigator's discretionary power to mandatory action for issuing a citation. It is not for a lack of faith in the RICO investigators that we are concerned, but rather that unlicensed activity is a legal question with a variety of issues surrounding it and often times the question as to whether someone should be issued a citation varies with the circumstances at hand as well as historical circumstances on that individual.

In short, we don't think that requiring the issuance of a citation as opposed to allowing for it is the proper way to go.

Thank you.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 24, 2017

TO: HONORABLE ROSALYN BAKER, CHAIR HONORABLE CLARENCE NISHIHARA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

SUBJECT: **COMMENTS REGARDING TO S.B. 1130, RELATING TO LABOR.** Requires an investigator to issue a citation to any person acting in the capacity of or engaging in the business of a contractor within the State without having a required license.

HEARING

DATE: February 24, 2017
TIME: 9:30 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Nishihara and Committee Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred 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.

GCA has comments regarding S.B. 1130, Relating to Licensing, which would **require** an investigator of the Regulated Industry Complaints Office (RICO) to issue a citation on any individual or firm acting as a contractor without obtaining a contractor's license as pursuant to Chapter 444, HRS. Furthermore, S.B. 1130 would require RICO to issue such a citation immediately upon a finding that the contractor has violated the statutory requirements of the Chapter.

The GCA is concerned with S.B. 1130, as it removes any discretion on the part of RICO to investigate and administer its authority. The focus of RICO should be to insure compliance and corrective action where warranted. RICO reserves the right to take necessary punitive action as appropriate. RICO should also be granted some discretion on a case by case basis whether to issue a citation.

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

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

February 18, 2017

The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair
and members
Senate Committee on Commerce, Consumer Protection, and Health
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Strong Support for SB1130, Relating to Licensing

Dear Chair Baker, Vice Chair Nishihara, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support SB1130**, which would require an investigator to issue a citation to any person acting in the capacity of or engaging in the business of a contractor within the State without having a required license.

The Hawai'i Construction Alliance has been extremely concerned by the increasing problem of unscrupulous employers not following laws designed to protect the health and safety of Hawai'i workers, including licensing. As was discovered on multiple major jobsites in Ala Moana and Waikiki over the past two years, unlicensed activity is far too abundant in our community.

Currently, HRS §444-10.5 allows an investigator discretion into whether to issue a citation to persons acting as a contractor without a proper license. We believe that in cases of unlicensed activity, such persons should be automatically issued a citation.

We note that HRS §444-10.5 already includes remedies to object to a citation, including a process to request a hearing from the DLIR director, and an appeals process to circuit court.

Mahalo,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org