

SB685

Measure Title: RELATING TO THE CONTRACTORS LICENSE BOARD.

Report Title: Contractors License Board; Members

Description: Alters the makeup of the contractors license board to include fifteen members, eight of which to have been engaged in contracting in the State for at least five years and seven of which shall be members of the public who are not licensed contractors.

Companion: HB770

Package: None

Current Referral: CPH

Introducer(s): KIDANI, Dela Cruz, Riviere, Shimabukuro

**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. 685, RELATING TO THE CONTRACTORS
LICENSE BOARD.**

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 on Senate Bill No. 685, which proposes to change the composition of the Board by increasing the number of Board members and changing the qualifications of each member.

The Board strongly opposes this measure for the following reasons.

1. Number and qualifications of Board members.

Currently, under Hawaii Revised Statutes section 444-3, there are thirteen (13) Board members: five (5) are general contractors, five (5) are specialty contractors, and three (3) are public members who are not contractors. This composition provides an equal number of general and specialty contractor Board members, with the addition of three noncontractors or public members. The current composition is balanced and has worked well for many years as industry, business, and consumer interests are all represented.

This bill proposes to raise the number of Board members from thirteen (13) to fifteen (15). More importantly, this bill proposes to change the qualifications of each Board member by reducing the contractor Board members from ten (10) to eight (8), and increasing the public members from three (3) to seven (7). In the past, the Board has opposed similar proposals for the following reasons.

The Board increasingly deals with complex scope of work questions that require the expertise and input from the people who are most familiar with the construction industry: the contractor Board members. This expertise is essential in order to conduct Board business. Reducing the number of contractor positions would reduce the broad scope of knowledge and expertise in the various trades that is provided by having ten (10) contractor members.

Additionally, in the past the Board felt that it was not necessary to increase the number of public members.

The Board believes that the current composition and number of Board members has worked well for several decades, and its dynamics should not be changed. The Board is unaware of any instance or situation where the public was harmed based on the current composition of the Board.

2. New requirements for specialty contractor Board members.

In addition to the above changes, this bill also proposes to restrict the specialty contractor Board members from holding a general contractor's license. This restriction is unreasonable and unnecessary.

More and more, the Board is finding that project owners are requiring a general contractor's license to bid on specialty projects. Although a specialty contractor's license is sufficient for the project, many project owners seem to want a general contractor on the project. In response to this, many specialty contractors have obtained or are in the process of obtaining their own general contractor's licenses to bid for specialty projects, even though their primary work is in a specialty classification. Because many specialty contractors have other types of contractor's licenses, including general contractor's licenses, it is unreasonable to require specialty contractor Board members to only have a specialty contractor's license.

Furthermore, there is no proof that a specialty contractor Board member who also holds a general contractor's license has been biased in favor of general contractors or harmed the public. All Board members, regardless of the types of contractor's licenses they hold, are committed to protecting the public, and have not evidenced any bias towards either specialty or general contractors. Board members are neutral in their decision-making because they wear their "consumer hats" during the meetings. Thus, this proposed amendment is unnecessary.

3. Requirements for public Board members.

This bill also prohibits public members from being a "relative" of a contractor Board member. The purpose of this amendment is unclear and seems excessive in light of the conflict of interest provisions of the State's Ethics Code in HRS chapter 84 (e.g., it is a conflict of interest if a board member takes official action that directly affects

a business or undertaking in which the board member, the board member's spouse, or board member's dependent child has a financial interest in). The proposed language includes persons in the term "relative" which greatly exceed those addressed by the Ethics Code. For this reason, the language is unwarranted.

4. Removal of contractor Board members.

The new proposed subsection (e) requires that any member whose license is revoked or suspended pursuant to HRS section 444-17 shall be removed from the Board. If this measure is passed, proposed subsection (e) should be amended to clearly indicate that removal from the Board should only occur when a license is revoked or suspended after a hearing in accordance with HRS chapter 91. This will ensure that the Board member in question has had his or her due process rights adjudicated before an impartial hearings officer (which results in a suspension or revocation of license by the Board) before being removed from the Board.

5. Compensation of Board members and reference to the definitions of the various contractor classifications.

The new proposed subsections (d) and (f) are not necessary because HRS section 436B-5 already addresses the compensation and reimbursement of travel expenses for board members, HRS chapter 444 already defines the various contractor license classifications, and HRS chapter 84 already addresses conflict of interest.

For these reasons, the Board respectfully requests that this measure be held.

Thank you for the opportunity to provide testimony in strong opposition to Senate Bill No. 685.

SAH - Subcontractors Association of Hawaii

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February 24, 2017

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

Presented By: Tim Lyons, President

Subject: S.B. 685 – RELATING TO THE CONTRACTORS LICENSE BOARD.

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and while we support the intent of this bill we cannot endorse it as it is written. 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

We believe that the intent of this bill is to establish a more level playing field between general contractors and subcontractors in matters pertaining to both at the Contractors License Board and, to that end we are in concert. We are however concerned that this bill goes too far.

This bill establishes a residency requirement for Board members. The Board already requires RME's to be in residency while a project is on-going but a Board member who is not consistently in state cannot attend meetings and perhaps should be removed.

This bill also says that a subcontractor representative cannot hold a general engineering or general building contractors license. There are some subcontractors in the state who actually hold a general building contractors license although they primarily act as a subcontractor. They hold the "B" contractors license either because of past work experience or because they have found that on occasion they need to bid as a general contractor however it is only on rare occasions and in more than the majority of time they act as subcontractors. We find that there have been several subcontractor representatives on the Board who have served in subcontractor positions and have had general contractor licenses who have served the subcontracting community well and we would hate to see that prevented in the future.

Additionally, this bill also calls for (Subsection e on page 2) a violation of 444-17 becomes grounds for removal from the Board. 444-17 includes a wide variety of offenses some of which might be serious enough to constitute grounds for removal but others clearly are not. As an example, it includes any violation of the labor law. So a contractor who did not have someone with a first aid certificate or someone with a complete first aid kit in their office or the proper notice posted would technically be cited for violation of a labor law however that would constitute grounds for removal

from the Contractors License Board? Or, in other cases perhaps it was a violation of the Little Davis Bacon law but it was something so minor to be a bookkeeping transposition error that resulted in a \$100.00 or less underpayment. Contractors have routinely complained about the Disclosure of Lien Rights statement and the Contractors License Board has routinely fined contractors who have not included this Disclosure of Lien Rights \$100.00, \$500.00 and even \$1000.00 fines for failing to attach that piece of paper to their contracts and for that we are going to remove them from the Board (444-17(12))? Or even in the instance where a contractor has let their workers compensation insurance policy lapse by one (1) day but then successfully reinstated it, this would be a violation of labor law and subject to 444-17(16). In short, while we don't think the Board Members should be people who violate the law, just like traffic violations, there are serious ones and there are not so serious ones and for some offenses we issue a \$50.00 citation and for other offenses we take away their license. The same should apply in this instance.

In conclusion, while we support any attempts to assist subcontractors and create a more level playing field for them at the Contractors License Board, we fail to see how the current 5 (five) – 5 (five) balance of general contractor, subcontractor seats is improved or threatened by changing it to a 4 (four) – 4 (four) balance.

Based on that, and while we appreciate the effort, we do not support this bill as it is currently written.

Thank you.

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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: **OPPOSED TO S.B. 685, RELATING TO LABOR.** Alters the makeup of the contractors license board to include fifteen members, eight of which to have been engaged in contracting in the State for at least five years and seven of which shall be members of the public who are not licensed contractors.

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 (GCA) is an organization comprised of over 500 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 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 is in opposition to S.B. 685, Relating to Contractors License Board because it proposes to amend the members of the Board and does not provide a rational basis as to why such change is necessary. The Contractors License Board is a longstanding and well-respected board that works diligently on issues affecting the construction industry.

S.B. 685 proposes to increase the number of members on the Contractors License Board (Board) from 13 to 15 and require that members shall be residents for at least five years, among other amendments related to restrictions on who can serve. The Board is established under Chapter 444, Hawaii Revised Statute (HRS) are responsible, among other things, to grant licenses to contractors, adopt and amend rules affecting construction contractors, suspend or revoke licenses, educate, ensure administration of testing, order summary suspension of licensees, and issue informal nonbinding interpretations of inquiries.

The current balance of general contractors, specialty contractors and public members required under the statute has worked well with a balanced composition from each island represented insuring varied viewpoints and experience to properly evaluate each applicant's request for a contractor's license and all requests that come before the Board.

The license application evaluation insures that the applicant has the education, work experience, and background to provide the work in a safe and workman like manner if granted a license. The GCA believes that the current balance of general contractors and subcontractors on the Board is important because they have the background and expertise to determine if a candidate for a particular license is qualified. The current composition of the public members of the Board can assist in evaluating each license applicant's education and work experience and insures that the views and interests of the general public are adequately protected.

In comparison, the Board of Electricians and Plumbers established under Chapter 448-E, HRS, is charged with reviewing and granting licenses to electricians and plumbers, required to perform work in the state of Hawaii. This seven member board is composed of two licensed electricians, two licensed plumbers and three public members, no specialty or general contractor is represented on the board. Both boards are charged with the responsibility of granting licenses and their composition of experience and knowledge represented insures only qualified applicants are granted licenses.

The GCA urges the committee to retain the current statute for appointing members to the Contractors License Board and request deferral of S.B. 685. Thank you for this opportunity to present our views on this very important measure.

IRON WORKERS STABILIZATION FUND

February 22, 2017

Rosalyn H. Baker, Chair
Commerce, Consumer Protection, and Health Committee
Room 230 - State Capitol
Honolulu, Hawaii 96813

Re: SB685, Relating to the Contractors License Board
Hearing Date - July 24, 2017, 9:30am
Conference Room - 229

Dear Chair Baker and Committee Members:

Presently, the Contractors License Board is made up of thirteen members, and broken down as follows:

- Five general engineering or general building contractors.
- Five specialty contractors.
- Three non-contractors.

At first, it may appear that this 13-member board is balanced and would represent and protect the interests of the public which is the cornerstone of HRS Chapter 444, relating to the Contractors License Board. However, in close analysis, the present 13-member board does not provide the protection to the general public as envisioned by the legislature when HRS 444 was initially formulated in 1957 as Act 305.

In practice, in more cases than not, the specialty contractors who sit on the board also possess general engineering or general building contractors licenses. This being the case, it would only be logical for these specialty contractors who sit on the board to exercise their powers as general contractors rather than specialty contractors on issues arising before the board. Reason - general contractors give jobs to specialty contractors.

As also envisioned by HRS Chapter 444, the three non-contractors are supposed to represent and protect the general public in terms of public safety. However, in practice, they are aligned with the general contractors. Of the present non-contractor members, one is with the laborers union and another with the carpenters union, both that are solidly aligned with general contractors based on long-standing industry practices. The third is vacant

We believe it is about time for the Contractors License Board to be equitably constituted to truly protect the general public in terms of public safety. The board should be controlled by members of the general public who do not have any affiliation with the construction industry.

IRON WORKERS STABILIZATION FUND



**HAWAII OPERATING ENGINEERS
INDUSTRY STABILIZATION FUND**



*Uniting our strengths and working together
for a better tomorrow.*

Affiliated AFL-CIO
OPEIU - 3 - AFL-CIO (3)

February 23, 2017

Honorable Rosalyn H. Baker, Chair
Honorable Clarence K. Nishihara, Vice Chair
Honorable Members of the Senate Committee on Commerce, Consumer Protection, and Health

RE: OPPOSITION TO S.B. 685, RELATING TO THE CONTRACTORS LICENSE BOARD

Dear Chair Baker and Vice Chair Nishihara and Members of the Committee,

I am Pane Meatoga III, the Community Liaison representing the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF). We are a labor management fund representing 4000 unionized members in the heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

Hawaii Operating Engineers Industry Stabilization Fund stands in **OPPOSITION** to Senate Bill SB685. This bill proposes alters the makeup of the contractors license board to include fifteen members, eight of which to have been engaged in contracting in the State for at least five years and seven of which shall be members of the public who are not licensed contractors.

The CLB's current membership of 5 General Contractors, 5 Specialty Contractors, and 3 Non-Contractors is fair and have worked well for years. The board requires a level of knowledge and expertise from its members in order to conduct board business efficiently. Lowering the number of Contractors from 10 to 8, and more than doubling the number of Non-Contractors from 3 to 7 could make it difficult to complete agenda items timely.

In addition, this bill essentially penalizes Specialty Contractors from serving on the CLB if they also held a General Contractors license. On certain projects, procuring agencies require a General Contracting license in order to bid on solicitations ...specifically projects that are predominantly specialty work contracts (ie: cooling schools, re-roofing, highway lighting, field turf, etc...). Many Specialty Contractors apply for a General Contractor's license for this reason alone.

Lastly, this bill asserts that there is or was a conflict of interest by a Non-Contractor member who is related to, or have a financial interest with a Contractor member on the CLB. I don't know any time in the CLB's history that this occurred. Board members are required to attend ethics training from the Hawaii State Ethics Commission. Such issues, should they arise are usually addressed with the board's Deputy Attorney General. This assertion is unfounded and this bill is not necessary.

For these reasons, we strongly oppose Senate Bill No. 685 and humbly ask that it is deferred.
Sincerely,

A handwritten signature in black ink that reads "Pane Meatoga III". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Pane Meatoga III
Community Liaison
Hawaii Operating Engineers Industry Stabilization Fund

Testimony of
Christopher Delaunay
Pacific Resource Partnership

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Clarence K. Nishihara, Vice Chair

Friday, February 24, 2017
9:30 A.M.
State Capitol – Room 229

Aloha Chair Baker, Vice Chair Nishihara, and members of the Committee:

We respectfully oppose SB 685 which alters the makeup of the Contractors License Board (CLB) to include fifteen members, eight of which to have been engaged in contracting in the State for at least five years and seven of which shall be members of the public who are not licensed contractors.

The current composition of the CLB has been in existence for at least 50 years and exists to protect consumers from unqualified and/or unscrupulous people who do contracting work. The CLB evaluates hundreds of license applications per month to determine if the applicant is qualified to take the test to be licensed in one of our 100 plus license categories. We need as many qualified contractor eyes looking at these as possible. Having an unbalanced board will not protect the public's health and safety.

Thank you for allowing us to voice our opinion and we respectfully request that this bill be held by the committee.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

