

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
Finance
February 22, 2017 3:00 PM

HB 573 HD 1
PROCUREMENT; BID SHOPPING; BID PEDDLING
RELATING TO PROCUREMENT

Chair Luke, Vice-Chair Cullen, and members of the committee, thank you for the opportunity to submit testimony on HB 573 HD1. The State Procurement Office's (SPO) comments are as follows:

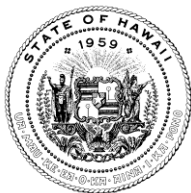
There are two reasons why the expected effect of the implementation of this bill may not be achieved: First, there are other ways to procure besides competitive sealed bidding, which will continue to be at risk for bid peddling, as well as several public bodies and agencies that are completely exempt from the law. Second, based on our review of the culture within the construction industry, it may be rare to receive a complaint in this area, as subcontractors would have to weigh the consequences from within the market, ultimately leaving no way to conduct oversight over this issue.

Also, the 'scope of work' referred to on page 2, lines 14 through 18 is generally referred to as the scope for the entire contract in which several subcontractors may be required, particularly for large jobs.

Lastly, in section (h) pages 4 through 6 it states: "...It is the bidder or substituted subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling did not occur..."

It is unclear how that shall be accomplished and to whom it shall be proven.

Thank you.



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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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 HOUSE COMMITTEE
ON
FINANCE

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

WEDNESDAY, FEBRUARY 22, 2017
3:00 P.M.

TESTIMONY ON HOUSE BILL NO. 573 H.D.1
RELATING TO PROCUREMENT

TO THE HONORABLE SYLVIA LUKE, CHAIR,
AND TO THE HONORABLE TY J.K. CULLEN, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 573 H.D.1, Relating to Procurement. 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 comments on this bill.

House Bill No. 573 H.D.1 prohibits the substitution of a listed subcontractor in furtherance of bid shopping or bid peddling, but allows for the substitution of a listed subcontractor for the following reasons: (1) refusal of a listed subcontractor

to sign a contract; (2) bankruptcy or insolvency of a listed subcontractor; (3) inability of the listed subcontractor to perform the proposed contract; (4) inability of the listed subcontractor to retain necessary license, bonding, insurance, or other statutory requirements; (5) where a listed subcontractor is barred from participating in the project by court order or summary judgement, including debarment from a purchasing or enforcement agency; or (6) inability or refusal of the listed subcontractor to meet the contractual requirements or agreements of the bidder.

The bill also prohibits a bidder from listing more than one subcontractor for each scope of work specified, unless subcontractors vary with bid alternates.

House Bill No. 573 H.D.1 contradicts the Contractors License Board's ("Board") longstanding interpretation and policy that a person must be licensed as a contractor at the time of a bid submission and that the license must be current and appropriate for the type of work the contractor is to perform. As the enforcement arm for the Board and in deference to the Board's policy, RICO expresses serious concerns that authorizing subcontractors to submit bids without a current, active, and appropriate license undermines the Board's authority and allows unlicensed contractors to engage in licensed contracting activity.

RICO currently investigates and prosecutes general and subcontractors who submit bid proposals without an appropriate or current license and believes House Bill No. 573 H.D.1 undermines those enforcement efforts by allowing subcontractors to participate in the bid process without either a necessary license or the ability to perform the contract.

Testimony on House Bill No. 573 H.D.1

February 22, 2017

Page 3

Thank you for the opportunity to testify on House Bill No. 573 H.D.1. I will be happy to answer any questions the Committee may have.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Wednesday, February 22, 2017
3:00 p.m.

TESTIMONY ON HOUSE BILL NO. 573, H.D. 1, RELATING TO PROCUREMENT.

TO THE HONORABLE SYLVIA LUKE, 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 House Bill No. 573, H.D. 1, which proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process.

This bill proposes to prohibit the prime contractor from substituting a listed subcontractor; and allows a prime contractor to substitute a listed subcontractor for various reasons (including but not limited to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project).

The Board reviewed this bill at its February 17, 2017 meeting. After careful consideration, the Board is concerned with the proposed language that allows a prime contractor to substitute a listed subcontractor due to the inability of the listed subcontractor to perform the requirements of the proposed contract or the project.

Allowing this substitution implies that a subcontractor without the appropriate license classification may bid on a construction project. This would conflict with Hawaii Revised Statutes (“HRS”) chapter 444, which prohibits unlicensed contracting, and the Board has consistently determined that a contractor who submits a bid is holding

oneself out as being able to perform the work and acting as a contractor. Thus, at the time of bid, the entity must be licensed in the proper contractor classification(s) under HRS chapter 444.

This measure may have the unintended consequence of allowing unlicensed entities to bid as subcontractors and later, be substituted at the time of award with a licensed subcontractor. The Board opposes any such consequence as it is contrary to the current licensing law in HRS chapter 444.

Thank you for the opportunity to provide comments on House Bill No. 573,
H.D. 1.

IRONWORKERS STABILIZATION FUND

February 21, 2017

Sylvia Luke, Chair
Committee on Finance
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Luke and Members of the Committee on Finance:

Re: Support for HB 573 – Relating to Procurement

We are in strong support of HB 573, Relating to Procurement; that prohibits bid shopping and bid peddling.

The purpose of this bill strongly supports HRS Section 103D that the legislature has passed and the State of Hawaii has used to provide a fair and open process to bidding for public funded projects. We believe that it is in the best interest of the public that they know all the subcontractors and joint contractors for any jobs.

Additionally this bill will stop the general contractor to get a lower price from his subcontractor or get a new one. These savings are not going to go to the State, but give the general contractor a greater profit margin.

Consequently, we believe to modify the procurement law will jeopardize the integrity of the process.

We strongly support this measure for the working men and women of Hawaii. Thank you for your time and consideration.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

**TESTIMONY OF HAWAII LECET
CLYDE T. HAYASHI – DIRECTOR**

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, February 22, 2017
TIME: 3:00 P.M.
PLACE: Conference Room 308

TESTIMONY ON HOUSE BILL NO. 573 HD1, RELATING TO PROCUREMENT.

ALOHA COMMITTEE CHAIR SYLVIA LUKE, COMMITTEE VICE CHAIR TY CULLEN, AND MEMBERS ON FINANCE:

My name is Clyde T. Hayashi, and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify in SUPPORT of House Bill No. 573 HD1. This bill proposes to prohibit bid shopping and bid peddling for the competitive sealed bidding process. It also prohibits the bidder from listing more than one subcontractor for each scope of work identified, unless subcontractors vary with bid alternates; and allows a bidder to substitute a subcontractor under certain conditions.

Hawaii LECET believes this measure will help curb bid protests. We would like to recommend additional language that there will be no increases to the bidder's price should a subcontractor is substituted.

For this reason, we support House Bill No. 573 HD1 and looks forward to its passage.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 22, 2017

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY CULLEN, VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **SUPPORT INTENT OF H.B. 573, HD1 RELATING TO PROCUREMENT.**
Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Prohibits the bidder from listing more than one subcontractor for each scope of work identified, unless subcontractors vary with bid alternates. (HB573 HD1)

HEARING

DATE: February 22, 2017
TIME: 3:00 p.m.
PLACE: Capitol Room 309

Dear Chair Luke, Vice Chair Cullen and Members of the Committee,

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. 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 **supports the intent** H.B. 573, HD1, Relating to Procurement, which defines bid-shopping and bid-peddling and prohibits such practice, while also allowing for the substitution of subcontractors for reasons connected to the subcontractor's ability to perform the work. Current law under HRS, Section 103D-302(b) requires the bidding contractor to list all subcontractors and joint contractors and their scope of work to be employed on public works projects unless the prime contractor has the required specialty license or will do the work themselves. This measure as drafted in the HD1 version would differ from Washington's state's law, which this bill is partially modeled after, by shifting the burden to the bidder and the substituted subcontractor to defend by a preponderance of evidence that bid shopping or bid peddling did not occur. Washington State's law puts the burden on the party making such allegation, which appears proper if there is an allegation of bid-shopping or bid-peddling made.

Thank you for the opportunity to share our comments on this measure.

SAH - Subcontractors Association of Hawaii

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

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

February 22, 2017

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

Subject: H.B. 573, HD 1 - RELATING TO PROCUREMENT

Chair Luke 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, it has many problems. 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

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

First and foremost, it allows the general contractor to list more than one subcontractor for each scope of work if they have varying bid alternates. Since "bid alternates" is not defined, we would interpret it to have its common usage meaning which would be additives or deductions that a particular individual bidder may or may not be able to or want to perform on a particular job. As an example, if bids come in lower than budget then there may be an election to do more on the project. An example might be a painting contractor that is submitting a bid to paint a structure but excludes a small out building. An alternate would be to include it. "Alternates" should be defined and further clarified to say they are those which are included "in bid specifications" (page 2).

We are very much concerned with the leeway that is granted to a prime contractor to further the possible game playing that can go on when it comes to sublisting. That is a major reason why we find ourselves somewhat confused by this bill because in Section 1 (lines 1 – 3) it notes that there exists the "unscrupulous practice of bid-shopping and bid-peddling" in the Hawaii's construction industry yet the wording regarding alternates seems to open up that door and allow for exactly more game playing by unscrupulous prime contractors.

The second subject matter that this bill provides for appears on page 4 (line 19) regarding a prohibition on bid-shopping. This provision is self-defeating. First of all, it is virtually unprovable and in order to prove it you would have to have the cooperation of the general contractor who did the bid-shopping, the second subcontractor who participated in the shopping and the victim subcontractor who was harmed. We submit to you that this is just not going to happen. The subcontractor that presses this issue is not likely to successfully receive another job from that general contractor or for that matter from any other general contractor once it is known that he is the kind of subcontractor that takes that kind of action.

Additionally, on page 5 and 6, there are six (6) reasons why substitutions can be made. We disagree and highly recommend deletion of items 3, 4 and 6 because all three (3) of those can be subject to undue pressure from the general contractor to the subcontractor causing one of those three (3) reasons to be exercised. In the first instance, if the listed subcontractor is not able to perform the requirements of the contract all they have to do is exercise Reason #1 which is a refusal to sign the contract; otherwise, we fear pressure from the prime contractor for items in the contract between the subcontractor and the general contractor that the subcontractor cannot perform merely for the purpose of getting rid of the subcontractor in order to go to the next bidder.

As it relates to the fourth item we fail to understand why a listed subcontractor would not have the proper license, bonding or insurance because if they did they should not have bid the project and if they did not have it, the general contractor should not have listed them. This gives total freedom to the general contractor to list anybody they choose at the time of bid knowing full well the individual is not licensed or cannot obtain the bonding merely so they can substitute that subcontractor later on.

Lastly, as it relates to item 6 where the subcontractor is unable or refuses to meet the contractual requirements we would suggest additional language that would provide that these requirements are consistent with the terms and written understandings of the parties at the time of bid otherwise again we could have additional unrealistic conditions placed upon the subcontractor in an effort to substitute and go to the next bidder.

Again, we would like to close merely by saying that while we appreciate all the language regarding bid-peddling and bid-shopping and the prohibition on those actions, it is only what we would have to call "feel good legislation" because it cannot be exercised. As the bill notes, the State of Washington

supposedly has such a prohibition however, as we have noted, we have contacted our counterparts in the State of Washington and it is sad to say that none of them were even aware of this prohibition much less could we find anyone who had ever used it, again because it is unworkable. You can't expect parties who need to do business with each other to be going after monetary damages from the very party that they need business from. Hawaii is just too small for that kind of action. This is not to say that bid-shopping and bid-peddling does not go on now, it does, however it is constrained and it is limited because of the subcontractor listing clause and we urge this Committee to refrain from making adjustments to that law, one that seems to be working quite well.

Thank you.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

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February 22, 2017

To: House Committee Finance
Honorable Chairman Sylvia Luke & Vice Chairman Ty Cullen

From: Al Itamoto, Executive Director
Electrical Contractors Association of Hawaii
National Electrical Contractors Association, Hawaii Chapter

Subject: HB 1229, HD1 Relating to Procurement

Notice of Hearing

Date: Wednesday, February 22, 2017
Time: 3:00 PM
Place: Conference Room 308
State Capitol
415 South Beretania Street

Dear Chair Johanson and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH **strongly opposes** the intent and purpose of HB 1229, HD1 that requires public procurement construction bids to list subcontractors and joint contractors only for contracts in excess of a specific (currently unlisted) value. This bill targets the smaller contractors whose bids normally are lesser in value of the total project. The majority of electrical contractors and other subcontractors are small businesses and will only bid on projects within their capabilities. Placing an arbitrary amount will eliminate many of these contractors from bidding as a subcontractor without the protection of the sublisting. Eliminating the sublisting requirement would encourage the unethical practice of bid shopping and bid peddling much to the detriment of our contractors and only enriches the bidding contractor and not the State or tax payers. All bids should require the sublisting to ensure that bid shopping or bid peddling do not occur.

Based on the above, ECAH **strongly opposes** the passage of HB 1229, HD1 and encourage this committee to kill this bill.

Thank you for the opportunity to provide testimony on this issue.



1088 BISHOP STREET #408
HONOLULU, HI 96813
PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email

February 21, 2017

LATE

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice-Chair
House of Representatives Committee on Finance
The Twenty-Ninth Legislature, Regular Session of 2017

Chair Luke, Vice Chair Cullen, and Members of the Committee:

SUBJECT: HB573 HD1 Relating to Procurement

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii.

The Association for which I speak is **opposed** to HB573 HD1.

This bill would prohibit bid shopping or bid peddling and also implements various reasons a listed subcontractor may be substituted.

While we appreciate the intent of this bill to allow subcontractors to recover damages for bid shopping by a prime bidder, we believe there is no legally verifiable method for either party to substantiate that the practice of bid shopping had occurred. In fact, this provision may ultimately result in frivolous accusations, distrust amongst contractors, and significant procurement delays. We also believe this change will degrade the integrity of the procurement process and ultimately increase bid challenges.

Further, the proposed reasons to substitute a listed subcontractor are too vague and should be clarified. Generally, we believe that the proposed substitutions should only be considered for situations that occur after bid closing and should not be allowed for reasons that were existing on the bid due date. This is needed to prevent an unscrupulous bidder from knowingly listing subcontractors who are non-compliant on the bid due date just so that the bidder can have a reason to shop the prices of other subcontractors.

Proposed items (1), (3) and (6), are especially ominous in that it creates situations where the bidder may intentionally include contractual terms that are impossible for the subcontractor to accept or may add scope requirements that the listed subcontractors are unable to perform, as a way for the bidder to substitute another subcontractor after shopping the bids.

In summary, we feel the language of this bill is too vague and creates significant potential for bid shopping by unscrupulous bidders.

We therefore respectfully urge the committee to hold this bill.

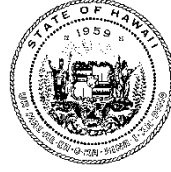
Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director

LATE

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON FINANCE
ON
WEDNESDAY, FEBRUARY 22, 2017
3:00 P.M.
CONFERENCE ROOM 308

H.B. 573, H.D. 1

RELATING TO PROCUREMENT.

Chair Luke, Vice Chair Cullen, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 573, H.D. 1.

The Department of Accounting and General Services (DAGS) appreciates the intent of the bill, and recognizes the complicated issues related to the construction procurement process as it relates to subcontractor bids, and unintended consequences that result from subcontractor listings. DAGS supports the measure's proposed provision that would disallow subcontractors from recovering damages from the State for violations relating to subcontractor listings.

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

FIN-Jo

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 4:37 PM
To: FINTestimony
Cc: raechele.a.joyo@hawaii.gov
Subject: Submitted testimony for HB573 on Feb 22, 2017 15:00PM

HB573

Submitted on: 2/21/2017

Testimony for FIN on Feb 22, 2017 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Roderick Becker	Dept. of Accounting and General Services	Comments Only	Yes

Comments: See attached.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 4:37 PM
To: FINTestimony
Cc: raechele.a.joyo@hawaii.gov
Subject: Submitted testimony for HB573 on Feb 22, 2017 15:00PM



HB573

Submitted on: 2/21/2017

Testimony for FIN on Feb 22, 2017 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Roderick Becker	Dept. of Accounting and General Services	Comments Only	Yes

Comments: See attached.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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BIA-HAWAII

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THE VOICE OF THE CONSTRUCTION INDUSTRY

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WAIPAHU, HAWAII 96797

LATE

Testimony to the House Committee on Finance February 22, 2017 3:00 pm Conference Room 308

RE: HB 573 HD1 – Relating to Procurement

Chair Luke, Vice-Chair Cullen, and members of the committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is in support of H.B. 573 HD1, which would prohibit bid-shopping and bid-peddling in the competitive sealed bidding process. As a matter of fairness in the bidding process, we are in support of legislation that prevents bid-shopping and bid-peddling.

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