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**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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**TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE HOUSE COMMITTEE
ON
LABOR & PUBLIC EMPLOYMENT
February 12, 2019, 10:00 AM**

**HB1293
RELATING TO PROCUREMENT**

Chair Johanson, Vice-Chair Eli and members of the committee, thank you for the opportunity to submit testimony on HB1293. The State Procurement Office's (SPO) opposes this bill which would require a contractor to use software to verify that hours billed for work under the contract that are performed on a computer are legitimate. The State Procurement Office submits concerns:

1. The bill fails to stipulate what resources the State will have in order to be able to access or verify the data collected or the expertise to determine if the data is fair and accurate. The federal government has two agencies with the infrastructure and resources dedicated to monitoring contracts – they do not have this above system. Rather, the federal government audit contractor's cost accounting system to verify their accounting of such items like alcohol and overhead for only those contractors who hold cost-type contracts. The State has no such infrastructure.
2. Software may validate computer activity, but the bill erroneously presumes that automatic verification software will determine the effectiveness or efficiency of the contractor. A contractor can work any number of hours, which does not ensure the performance is satisfactory or accordance to the scope of work. Solicitation and resulting contract should have processes and procedures, including key performance indicators (KPIs) and detailed deliverables, in place to track performance, which could in turn verify and validate hours billed. Ultimately, it is the agency's contract administrator's responsibility to verify the work done by the contract is valid and the number of hours billed are accurate. If the contractor fails to perform, it is the agency's responsibility to take corrective action for any deficiencies or terminate if appropriate.
3. The kind of work burden this would put on government buyers as well as the contractor community would be exorbitant and the value-added return minimal.

Thank you.



TransparentBusiness

February 11, 2019

Representative Aaron Johanson, Chair
Representative Stacelynn Eli, Vice-Chair
House Committee on Labor & Public Employment

Subject: Testimony is Strong Support to HB1293 – Would Save Hawaii Millions of Dollars with Zero Cost to the State

Dear Chair Johanson, Vice-Chair Eli and Members of the Committee:

My name is Kenneth D Arredondo and I represent TransparentBusiness Inc. as their Chief Revenue Officer and a member of the Board of Directors. TransparentBusiness is a Delaware Corporation with its headquarters in New York City.

Thank you, Chair Johanson and all the members of the committee, for this opportunity to submit this testimony for the record in support of HB1293, a bill that addresses automatic verification of hours worked on a computer and billed to the state of Hawaii. This legislation can help save the state millions of dollars.

By Eliminating Payments for Unverified Hours, HB1293 Would Cut Overbilling

HB1293 protects the Hawaii from overbilling. For example, when the State orders tangible items, there's an absolute expectation that the vendor would keep, at its own expense, detailed record of how many units have been supplied. Until recently, there had been no reliable way to similarly verify billing for professional services. The state had to rely upon self-certification of billable hours by contractors and, unfortunately, some contractors take advantage of lack of verification and rob their government clients blind.

In one case, the City of New York was recently over billed and eventually recovered \$500 million on a single \$73 million fixed cost IT contract. What is so revealing about this gross overbilling was that it was only discovered because a whistleblower came forward. Like Hawaii, New York City did not have a system to identify overbilling. Unfortunately, there are not enough auditors, budget or time to stop overbilling without automatic verification software as contemplated by HB1293. Now, numerous companies offer such software.

HB1293 recognizes the availability of appropriate solutions and requires the government contractor, NOT THE STATE OF HAWAII, to purchase and use software that can automatically verify hours worked on a computer and billed under a state contract. The bill only applies to hours billed to the state. It does not apply to state employees, only contractors.

HB1293 Requires Software to Meet Several Key Parameters Needed for Visibility, Transparency and to Ensure Automatic Verification of Billable Hours

HB1293 requires contractors to use software that meets several key parameters needed to ensure the state of Hawaii will have visibility and automatic verification of computer based billable hours. The software must:

- provide real time visibility to data provided by the software;
- take screenshots of work progress every three minutes, and track the number of keystrokes and mouse clicks, while making them available to the agency;
- provide real-time cost status of tasks;
- protect privacy or confidential business information;
- allow the state to provide feedback in real time to ongoing projects and tasks;
- requires storing any data collected by the software for seven years.

HB1293 Is Not a New Mandate: It Tightens Procurement Accounting Requirements that Contractors are Already Mandated to Meet

Contractors already are required to produce timesheets, calendars and other supporting data to verify their billable hours on a computer, should they be audited regarding their contract with the State of Hawaii. All HB1293 does is to change the practice of unreliable manual entry time keeping of all billable hours worked on a computer to automatic verification time keeping of all billable hours worked on a computer.

Moreover, the software will help contractors to save money in excess of the cost of using the software. For example, if a contractor employee were to spend just 15 minutes, twice a week reconstructing their billable hours for the week, that time is worth \$50 per week when billing at \$100 an hour, or \$2500 per year. Automatic verification software will record all computer-based work automatically and save the contractor time currently spent on manual reporting.

There is a growing number of the companies providing suitable automated verification software. TransparentBusiness is just one of the available options and it is available from ADP, a AAA-rated Fortune 500 company, a component of the NASDAQ and S&P indexes.

Automatic Verification Does Not Reduce Data Security

AVS can be hosted in two ways: first, on certified servers. TransparentBusiness uses Amazon World Servers, the same company that Congress allows to store data of the Central Intelligence Agency and the Department of Defense. Second, AVS can be installed behind any contractor's firewall using their own security. Additionally, AVS vendors will have no access to the screenshots captured by the automatic verification software, when the contractor requests data storage on their own servers or Cloud account.

HB1293 and the Freedom of Information Act

While the data remains available to Hawaii for 7 years under HB1293, the data is owned by the contractor and is financial accounting data, not subject to freedom of information laws (exemption 4), further protecting contractor confidential business information and trade secrets. Nevertheless, as is true under procurement contracts across the nation and by HB1293, the state continues to be able to get this accounting data upon request.

PRIVACY: Automatic Verification Software Protects User Privacy and Confidential Business Information

AVS can use several means to ensure user privacy.

- Our platform has a “user controlled” timer that the user turns on when billing begins and turns off when billing ends.
- Every three minutes, the timer reminds the user that they have billed another three minutes and gives them a chance to turn off the timer and eliminate that three-minute increment, if their current activity is not billable.
- The timer also turns off after six minutes of nonuse, allowing the user to step away without worries.
- The timer also allows the user to go into and edit their “diary” of billable hours to ensure all hours displayed are directed to the correct client or to eliminate accidental screen shots that represent time wasters.
- Customer Data, CBI Protection and User Privacy and the use of Blurred Screenshots: this allows screenshots for work done on client identified productive applications (such as a company intranet) to be blurred out to keep customer information private, comply with HIPAA, protect confidential business information, and keep employee information private. For example, if an insurance company has an “intranet” where employees deal with customer data, any screen shot taken while the employee has that screen open on the desktop can be blurred to protect customer data.

TransparentBusiness Supports HB1293

TransparentBusiness supports the passage of HB1293 with its visionary approach to making more efficient and cost effective the procurement of computer-based government services paid for by billable hours and believes our proposed amendments will help ensure no unintended consequences arise in implementation.

This bill can save Hawaii millions of dollars from overbilling at no risk and no cost to the state.

‘No risk’ because it is offered through ADP and all the protections of that \$60 billion market cap company and the due diligence for new technology products meeting the requirements of its 650,000 customers.

‘No Cost’, because contractors bear the cost of compliance, as a it’s always the case with cost of accounting and billing verification. Moreover, the cost to many contractors will be negative, as discussed above.

About TransparentBusiness

Transparent Business, Inc., developed its cloud based automatic verification software as an in-house tool to manage IT professionals from all over the world. The system has gone through four full upgrades and numerous improvements. In 2016, TransparentBusiness won the prestigious Citigroup award for “Top People Management Solution.” At that time, the board determined that the platform had commercial attraction and soon began marketing it.

TransparentBusiness has several partners, such as Cisco, Microsoft, HP, Google, Facebook and ADP. ADP is marketing TransparentBusiness to its 650,000 clients and contractors meeting the

requirements of HB 1293 use of automatic verification software, if they choose to work with TransparentBusiness, will purchase the software through ADP. ADP also has ensured that TransparentBusiness meets all of the new software due diligence and security requirements of its clients.

TransparentBusiness software solution is easy to use and makes every minute of billable time automatically verifiable. The software takes a screen shot every three minutes and keeps track of keystrokes and mouse events, recording all the information in the cloud or behind a contractor's firewall, where Hawaii has real time visibility into every project, phase or task.

Our clients tell us their experience with TransparentBusiness gains a 15 to 40% improvement in individual contractor productivity through the elimination of time wasters, like online shopping and banking, games, YouTube videos, snap chat or and Facebook.

Respectfully submitted,

Kenneth D. Arredondo
CRO and a Member of the Board
TransparentBusiness, Inc.
www.TransparentBusiness.com



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 10, 2019

House Committee on Labor & Public Employment

Hearing: Tuesday, February 12, 2019, 10:00 am, Conference Room 309

Subject: Testimony in Strong Opposition
HB1293, Relating to Procurement

Honorable Representatives Aaron Johanson, Chair; Stacelynn Eli, Vice Chair; and Committee Members:

The Limtiaco Consulting Group (TLCG) is a local civil and environmental engineering firm and is proud to be voted one of Hawaii's Best Places to Work and is consistently one of the top engineering firms according to Pacific Business News. TLCG is an active member of the American Council of Engineering Companies of Hawaii and other professional engineering organizations. TLCG principals believe it is important to give back to the communities we serve through beneficial engineering projects and meaningful volunteerism.

TLCG strongly opposes HB1293. This "Automatic verification software" bill will require firms that provide professional services to the State in excess of \$100,000 to install computer tracking software. Our company would be impacted.

This bill is flawed in many ways; however, the biggest threat is non-compliance with the strict cyber and information security requirements in accordance with government and private contracts. Contractual non-compliance is grounds for termination and will threaten all future contracts. Needless to say, we will lose our business if we lose our government and private clients.

Tracking software will also put our company at risk for cyber and information security breaches created by this tracking software. Tracking software essentially creates an unwanted portal to our computer server and our most sensitive client, company, and employee data.

Thank you for this opportunity to submit testimony. Please feel free to contact me if you have any questions.

Sincerely,
The Limtiaco Consulting Group, Inc.


John H. Katahira, P.E.
President

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 11, 2019

House Committee on Labor & Public Employment

Hearing Date: Tuesday, February 12, 10:00 a.m., Conference Room 309

Subject: STRONG OPPOSITION – HB 1293, Relating to Procurement

Dear Chair Johanson, Vice-Chair Eli, and Members of the Committee:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 60 engineering consulting firms with over 1,500 employees throughout Hawaii. ACEC firms help the national economy and public welfare through the design of safe and effective infrastructure projects for Federal, State and County governments.

ACEC has become aware of a company “Transparent Business” that has retained lobbyists in many states to push their business tracking software. The preamble to HB 1293 states, “... there is difficulty in verifying hours worked on computers for government contracts. The purpose of this Act is to establish a secure and transparent process to verify hours worked on computers for government contracts to prevent abuse and overbilling.” These bills would require every professional or technical services firm working for any governmental body in the State to “use software to verify that hours billed for work under the contract that are performed on a computer are legitimate.”

ACECH has significant concerns about these bills. We believe these systems would significantly increase the cost of providing infrastructure design services for government agencies, a cost that would be passed on to our clients and the taxpayers and may provide a significant potential security risk. Moreover, tracking software will not yield accurate results. We offer the following comments and observations:

- For design professional services, the concept of tracking computer usage/activity doesn't come close to capturing all the effort that goes into engineering and design. Even our staff who spend much of their day at computers, such as CAD drafters and researchers, aren't working on their computers every minute that is chargeable to a job. There are team discussions, meetings with the client, field work, testing, non-computer analysis, quality assurance reviews, etc. Therefore, tracking keystrokes for the purposes of “verifying hours worked on... government contracts” is an inadequate approach to judge the effort on contracts. What's the point of tracking only part of the effort? The software would only add bureaucracy and additional costs that would have to be borne by the government and taxpayers.

- Tracking software may result in direct non-compliance with information and cyber security requirements per federal, state, county and private contracts. Existing contracts may be terminated and future contracts will be threatened. Firms may also be required to pay for damages due to security breaches caused by the tracking software.
- The rigorous selection process for professional services, called Qualification Based Selection or QBS, includes a review of past performance and quality of work. Agencies can choose to not award work to a professional firm they feel may have overcharged the government. Further, after selection of the most qualified firm, the government and the firm enter negotiations on scope of services and fees. If the agency believes that the firm's fees are unreasonable, they may end negotiations and move on to negotiate with the next qualified firm. In this process, the government can adequately scrutinize the professional's fees.
- Agencies closely scrutinize professional services cost proposals and have a good understanding of the effort necessary for the work product. Most contracts are conducted on a lump sum basis and there is no mechanism for a firm to charge excess hours. Only if additional services are added would the additional fees be negotiated, and the agency can readily scrutinize the proposed additional fees.
- For projects conducted on a time-and-expense basis, typically because the scope of work is programmatic or not fully defined, there is usually a "not-to-exceed budget" and additional fees are incurred only for a negotiated additional scope of work. Project audits look at supporting documentation provided with invoices, such as employee timesheets, to compare and account for hourly billings.
- Project management and oversight also includes project milestones, deadlines for deliverables, status meetings, scrutiny of invoices, and other agency supervision of contractor work.
- Many of our firms conduct work for Federal agencies, and regular FAR overhead audits look at accounting systems, time keeping, etc. to evaluate accuracy and adequacy of internal controls.
- We note that the company pushing this legislation across the country is owned by a Russian national and many of their top executives are nationals of Russia or other foreign countries. Many of our firms do work for the military and use of software from a company with Russian ties may require two separate computer systems, including separate servers. This situation would result in inefficiencies of managing separate systems and double costs for computer infrastructure. These costs would be passed on to taxpayers as part of the additional overhead for doing work for the government.
- We believe requiring this software could unreasonably burden our small local firms. Some of them may not be able to afford the software or duplicate computer systems and may no longer be able to do work for the government if these systems are required.

In summary, ACECH believes this legislation is being pushed by a single firm solely motivated by the profit it could receive by getting states to require this software of all their professional and technical service providers and is not in the best interest of government agencies in Hawai'i. The many operational and security issues identified above are deeply concerning, and the product is being pushed to address a problem that simply doesn't exist. We believe the proposed systems are unnecessary to adequately safeguard the financial resources of the State, would add costs and bureaucracy to the execution of contracts, and delay the completion essential infrastructure projects. Nationally, ACEC has defeated similar bills in several states.



ACEC

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February 11, 2019

Page 3 of 3

Please contact us if you have any questions about our testimony on HB1293.

Respectfully submitted,



Sean Sugai, PE
President, ACECH



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/12/2019
Time: 10:00 AM
Location: 309
Committee: House Labor & Public
Employment

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 1293 RELATING TO PROCUREMENT.

Purpose of Bill: Requires a contractor to procure and use software to verify hours billed and automatically gather verification data for work performed under a contract with a governmental body in excess of \$100,000.

Department's Position:

The Department of Education (Department) appreciates the intent of HB 1293 to hold contractors accountable for work performed on a computer. However, the Department opposes the measure and has strong concerns with the method proposed to track contractor work.

Although the measure states the software must “protect all private or confidential data pertaining to individuals pursuant to applicable state and federal law,” section 2(c) cites, “The data collected by this software shall be considered accounting records and belong to the contractor. The contractor shall store, or contract with another to store, data collected by the software for a period of seven years and provide access to the contracting governmental body or state auditor upon request.”

Data collected by keystroke, mouse event, and/or screenshot may capture confidential and personally identifiable information of the contracting governmental body. For the Department, that would likely include student information that is protected under the Federal Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA), and the USDA’s National School Lunch Program - all of which have specific data sharing and/or data release requirements that may be bypassed if the data collected by the software is considered “accounting records” with ownership residing with the contractor. This tracking method creates the additional security risk of having another repository of confidential and personally identifiable information which could be compromised.

In addition, the measure addresses only the hours a contractors spends on a computer, which may not be representative of all of the work being performed under a contract. As such, this is not a comprehensive method to measure contractor performance and hours billed. The measure also does not take into account contracts that are billed by deliverables rather than on an hourly basis, and does not specifically address work that a contractor may have subcontractors perform.

Lastly, section 2(d) states, “The contractor shall not charge the governmental body or the auditor for access or use of the work verification software, or for access to or

retrievals of data collected by the software.” However, the measure does not specifically prohibit the contractor from passing on the cost of the procured software and the efforts to obtain it (if such software is not easily obtained) to the governmental body, as well as any other costs which could be incurred for the contractor’s use of the software and storage of the data collected.

The Department appreciates the opportunity to provide testimony on this measure.

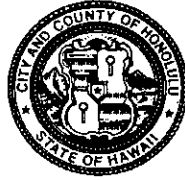
The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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LATE

KIRK CALDWELL
MAYOR



ROBERT J. KRONING, P.E.
DIRECTOR

MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 11, 2019

The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
and Members of the Committee on Labor & Public Employment

House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Eli, and Members:

SUBJECT: House Bill No. 1293, Relating to Procurement

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 1293, the purpose of which is to "to establish a secure and transparent process to verify hours worked on computers for government contracts to prevent abuse and overbilling." Section 2 (b) of the bill specifies that "A contract subject to this section shall require a contractor to use software to verify that hours billed for work under the contract that are performed on a computer are legitimate," "...Automatically gather verification data of state-funded activity by tracking total keystroke and mouse event frequency and taking a screenshot at least once every three minutes;" and other specific requirements.

This bill is unnecessary and would impose excessive regulation on the management of professional and technical services contracts in excess of \$100,000.

Computers are only one tool used by professional engineering and architectural consultants to produce the studies and designs for which they are contracted. The use of computers represents only a fraction of their billable professional work. Many of the required tasks, such as review of hardcopy documents, in-person and telephone communications, preparation of hand sketches, field investigations, etc. are performed without the use of a computer. Verifying computer time devoted to a specific contract would be meaningless and would not be worth the cost of the software nor the time

required by the government project manager to review the data produced by the software.

DDC primarily administers professional services and construction contracts and typically has approximately 280 active professional services contracts under management at any given time. The proposed requirement for automatic verification software would present a number of disadvantages to consultants providing professional services and would discourage consulting firms, especially small firms, from participating in government contracts for several reasons, including the following:

- The cost of the proposed software would be added to the consultant's overhead and would be difficult to recover.
- The proposed software would be seen as excessive oversight of the consultant's activities.
- The proposed software would propagate attitudes of fear and mistrust.

Professional services consultants are selected on their (1) experience and professional qualifications; (2) past performance on projects of similar scope; (3) capacity to accomplish the work in the required time; and (4) any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts. If selection committees for professional and technical services do their job, firms that have performed poorly or appeared to overbill for computer work would not be selected for future contracts. This motivates consulting firms to bill fairly without the need for automatic verification software in order to be considered favorably for future contracts.

DDC completes written evaluations at the conclusion of each professional services contract, which is made available to selection committees for consideration on future professional services contracts. This is a much more effective and practical way to motivate fair billing by consultants than the proposed automatic verification software.

Based on the above considerations, DDC respectfully **opposes** House Bill No. 1293.

Thank you for the opportunity to express our opposition to this bill.

Very truly yours,



Robert J. Kroning, P.E.
Director