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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 7, 2023
9:15 a.m.
Via Videoconference**

**On the following measure:
S.B. 499, RELATING TO PROFESSIONAL ENGINEERS, ARCHITECTS,
SURVEYORS AND LANDSCAPE ARCHITECTS**

Chair Keohokalole and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO), which is an agency within the Department of Commerce and Consumer Affairs (Department). RICO is charged with enforcing the licensing laws of various professional and trade industries in the State through the receipt, investigation and prosecution of, in this case, licensees who fall within the purview of the Board of Professional Engineers, Architects, Surveyors & Landscape Architects (EASLA Board). **RICO offers comments** on the measure based on the agency's enforcement authority, practices and/or daily operations. RICO defers to the EASLA Board's position on the measure's policy, administration, and implementation matters.

The bill's purpose is to amend the law that regulates EASLA licensees to specifically include convictions of crimes substantially related to the qualifications, functions, and duties of their profession, under certain conditions.

1. Provision is unnecessary. From an enforcement perspective, the first sentence of proposed section (b), which begins on page 1, line 14, is unnecessary. The Uniform Professional and Vocational Licensing Act is codified at Chapter 436B Hawaii Revised Statutes (HRS) applies to all professional and vocational licensees, including those regulated by the EASLA Board. Section 436B-19(14) of Chapter 436B HRS, therefore, already authorizes discipline for convictions that are related to the licensee's profession.

If the proponent of the measure is intending to expand the scope of convictions that may be subject to discipline by the EASLA Board, then the "substantially related" standard found at page 1, line 15 of the measure, accomplishes the intent by lowering the "directly related" standard that currently exists in HRS 436B-19(14).

2. Evidentiary proof is unnecessary. From an enforcement perspective, the second sentence of proposed section (b), which begins on page 2, line 1, is unnecessary too. Based on cases handled by RICO for decades now, a certified copy of the final judgment in the underlying criminal proceeding is in fact presumptive proof of a conviction.

3. Possible over-reach. RICO's jurisdiction is not criminal so we are not experts in the penal code or the extensive body of case law that has developed concerning the legality of convictions. But, we wish to note for the Committee that the third sentence of proposed section (b), which can be found on page 2, lines 4 - 7, could be contrary to the constitutional rights of accused persons to exercise a vigorous defense and hold the state to its burden of proof up until the proceedings end and a final judgment has entered.

4. Unintended consequence – restriction on relief. We note that inclusion of the terms "suspended or revoked" on page 2, line 10, is not necessary because both forms of discipline are already within the EASLA Board's authority and discretion per section (a) of HRS 464-10. See page 1, line 6 of the bill.

More importantly, using the terms “suspended or revoked” only, on page 2, line 10, could be interpreted as a limitation on RICO’s authority and discretion, as prosecutor, to recommend a variety or combination of sanctions should an EASLA licensee be convicted of a crime related to the profession. For example, licensees falling under the jurisdiction of the EASLA Board can be fined too or have their license conditioned to address the unique circumstances of a given case. In matters involving criminal convictions RICO has routinely recommended sanctions to licensing boards that are designed to complement a criminal judgment, such as ensuring that the licensee fulfills all terms of the final judgment in the criminal proceeding, including making full restitution to a victim, prior to being considered for future licensure. Such recommendation sanctions have almost always been approved and adopted by Boards when they issue final orders. The measure’s supposed limitation of sanctions to only suspensions or revocations, therefore, could prevent RICO from being able to even recommend to the EASLA Board a fine too, or other targeted and equitable conditions that may be warranted in a particular case.

5. Unintended consequence - delay in enforcement action. Page 2, lines 11 – 14 of the measure reads:

. . . when the time for appeal of the conviction has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is issued suspending the imposition of sentence, whichever occurs later . . .

This language could delay a prosecution by several years possibly in the event of an appealed conviction. In contrast, the license of a convicted person under HRS 436B-19(14), is immediately sanctionable upon proof of entry of a conviction only.

6. Unintended consequence – general confusion. Page 2, lines 15 – 18 is confusing in its reference to “any subsequent order granting” motions to “withdraw the plea or nolo contendere and enter a plea of not guilty, and “set aside the verdict,” and “dismiss the prosecution or indictment.” Such motions are typically filed and determined by a court before the final judgment is ever entered in a criminal proceeding.

Thank you for the opportunity to testify on this bill.

**Testimony of the Board of Professional Engineers, Architects, Surveyors, and
Landscape Architects**

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 7, 2023
9:15 a.m.
Via Videoconference**

**On the following measure:
S.B. 499, RELATING TO THE STATE BOARD OF PROFESSIONAL ENGINEERS,
ARCHITECTS, SURVEYORS, AND LANDSCAPE ARCHITECTS**

Chair Keohokalole and Members of the Committee:

My name is Sheena Choy, and I am the Executive Officer of the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects (Board). The Board appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) clarify that the conviction of a crime by a person holding a license to practice professional engineering, architecture, land surveying, or landscape architecture in the State, that is substantially related to the qualifications, functions, and duties of the licensee constitutes a ground for disciplinary action by the Board; and (2) allow the Board to suspend or revoke a convicted licensee's license or decline to reissue a license to a convicted licensee subject to certain conditions.

The Board appreciates the intent of this bill, but does not believe these amendments are necessary because it currently has the legal authority to take action against a licensee who has been convicted of a crime that is directly related to the qualifications, functions, or duties of the licensed profession or vocation pursuant to Hawaii Revised Statutes (HRS) section 436B-19, which states:

- (a) In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation.

Further, HRS section 436B-12 authorizes the Board to request court documents and affidavits from any parole officer, employer, or persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant public trust for individuals applying for a license who have had a prior conviction. This citation as well as the above-referenced citation allow the Board to make informed decisions, such as, whether a conviction is directly related to the profession.

Thank you for the opportunity to testify on this bill.



LATE

February 6, 2023

TO: Honorable Keohokalole, Chair
Committee on Commerce and Consumer Protection

FROM: Reid Mizue, AIA
President / Legislative Advocacy Committee Co-Chair
American Institute of Architects, Hawaii State Council

SUBJECT: **Re: Senate Bill 499**
Relating to Professional Engineers, Architects, Surveyors
and Landscape Architects.

The American Institute of Architects

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Dear Chair Keohokalole and Members of the Committee,

My name is Reid Mizue, President, AIA Hawaii Council submitting **COMMENT** on Senate Bill 499. Although we appreciate this bill bringing to light a recent issue related to indictments connected with City & County of Honolulu DPP, we feel that the measure is unnecessary given the Board of Professional Engineers, Architects, Surveyors, and Landscape Architects (EASLA) already possesses the legal authority per HRS to take action in regards to a licensed professional convicted of a crime.

The AIA is comprised of over 800 licensed architects and allied members Statewide and is particularly supportive of EASLA in this case, which meets regularly to diligently uphold and review the statuses of each licensed professional within their purview.

Our additional comment is related to Section 1.: (b) The conviction of a crime by a licensee that is substantially related to the qualifications, functions, and duties of the licensee constitutes a ground for disciplinary action by the board.

Whereas, the verbiage “*substantially related to...*” remains vague, regarding what crimes will constitute disciplinary action by the board. For example, in the past AIA has opposed bills related to non-payment of child-support resulting in suspension / revocation of licensure because licensure is a means towards livelihood. Thus without licensure a professional would then not be able to pay child-support.

Thank you for this opportunity to **COMMENT** on Senate Bill 499.
Sincerely,

Reid Mizue, AIA
American Institute of Architects, Hawaii State Council