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DARWIN L.D. CHING
DIRECTOR

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**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 2, 2009

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Tuesday, March 3, 2009
Time: 1:00 p.m.
Place: Conference Room 308
State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Re: H.B. 1289 HD1, Relating to Procurement

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1289 HD 1 proposes to amend Section 103D-310, HRS, to require all offerors and subcontractors for construction contracts with a total estimated contract value of \$100,000 or more, to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding.

In determining whether the offeror or subcontractor is participating in a bona fide apprenticeship program, the procurement officer shall consider the following:

- (1) Length of previous participation in apprenticeship program;
- (2) Credible number of apprentices enrolled in and the annual number of graduates of the apprenticeship program.

In House Draft 1 the committee clarified the amount of time a contractor or subcontractor must have previously participated in an apprenticeship program. The committee amended the measure by requiring the contractor or subcontractor to have participated in an apprenticeship program for a period of not less than six months in duration.

In addition, contractors and known subcontractors shall certify in writing on a monthly basis, their maintenance and participation in the apprenticeship program for the entire duration of their work on the project. Contractors who fail to comply shall be subject to various sanctions including cessation of work on the project, withholding of payment, and suspension from further offerings or awards under section 103D-302 and 103D-303.

II. CURRENT LAW

Chapter 103D currently does not require a bidder to participate in an apprenticeship program.

III. HOUSE BILL

The Department opposes this bill for the following reasons:

1. Apprenticeship programs are the original models for contextual learning by their provision of on-the-job training, supplemented by related education. Although they are valuable programs, their existence is highly dependent on the employer's ability to provide adequate supervision and training. If an employer is fully staffed with journey workers, or otherwise unable to provide the necessary supervision and training, the employer may not be able to hire additional workers as apprentices. Although employers are encouraged to participate in apprenticeship programs, it is partly a business decision, and therefore, the Department does not take a position regarding the proposed requirement for a bidder's participation in a state-approved apprenticeship program.
2. However, the Department does not support the criteria given for determining the validity of a bidder's participation, i.e., number of apprentices enrolled, number of graduates, because these figures are often highly dependent on factors outside of the contractor's control. For example, diminished demand for construction workers would lower the need for apprentices and/or lower the number of work hours that an apprentice could complete to meet graduation requirements for apprenticeship programs.

The Twenty-Fifth Legislature
Regular Session of 2009

HOUSE OF REPRESENTATIVES

Committee on Finance

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308

Tuesday, March 3, 2009; 1:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1289, HD1
RELATING TO PROCUREMENT**

The ILWU Local 142 supports H.B. 1289, HD1, which requires all offerors and subcontractors for construction contracts subject to the state procurement code to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding for a period of not less than six months.

When public monies are used, taxpayers will want the best value for their dollar. Apprenticeship programs will ensure that those working on public works projects are qualified and trained in their respective trade. A state-approved apprenticeship program will provide workers with the knowledge of the trade and help them develop the skills required for the trade on the job.

The ILWU urges passage of H.B. 1289, HD1. Thank you for considering our testimony.

Testimony In Support of HB1289 HD1
Relating to Procurement

By

Al Lardizabal, Director of Government Relations
Laborers' International Union of North America Local 368

To the

Committee on Finance

Tuesday, March 3, 2009, 1:00 p.m.

Conference Room 308

State Capitol

Chair Marcus R. Oshiro; Vice Chair Marilyn B. Lee and Members of the
Committee:

The Laborers Union strongly supports the requirement that all offerors and subcontractors for construction projects subject to state procurement code, maintain or participate in a bona fide, state-approved apprentice program at the time of general bidding for a period of not less than 6 months.

This bill could serve to help prevent accidents and major construction down time caused by untrained or undisciplined workers who are not proficient or cognizant of safety practices and rules. Construction work is a very dangerous vocation. Workers who are not skilled or are unable to take the physical and mental strain on the job should not be allowed on the site. Apprentice programs screen out these types of individuals at the initial assessment period and over the two year period of the program.

Thank you for the opportunity to submit this testimony.

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HONOLULU, HI 96819
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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 1, 2009

TO: THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR
AND MEMBERS OF THE COMMITTEE ON FINANCE

SUBJECT: H.B. 1289, HD1, RELATING TO PROCUREMENT

NOTICE OF HEARING

DATE: Tuesday, March 03, 2009
TIME: 1:00 P.M.
PLACE: Conference Room 308

Dear Chair Oshiro and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (560) general contractors, subcontractors, and construction related firms, **opposes** the passage of H.B. 1289, HD1, Relating to Procurement.

Some examples of the vagueness of the bill are.

1. "Regular employee" is defined under HRS Section 393-3 (Prepaid Health Care Law) as one who works more than 20 hours per week. Does this mean all employees of a contractor or only those that work on the Project? It also appears to prohibit the use of independent contractors or temporary workers even if prevailing wages are paid.
2. Apprenticeship Program. The provision that a Contractor shall maintain an apprenticeship program is very broad.
 - a. Does that mean you can't use a carpenter, maintenance worker, window cleaner, janitor, clerk, etc. unless your company has an apprenticeship program for that employee?
 - b. What about the small contractor who may just have himself or one or two skilled workers—must he maintain an apprenticeship program for his company even if he never hires apprentices?
 - c. What about the sole proprietor? What apprenticeship programs does he/she need to maintain?

d. What if you don't have a certified apprenticeship program because you use a licensed subcontractor or you don't have an agreement with every union, or it is a trade in which the Associated Builders and Contractors (ABC) does not have a State certified apprenticeship program. Does that mean you are not a qualified bidder and a protest can be filed?

e. The status of "employee" is vague because it's not limited to laborers and mechanics. Everyone must be a regular employee. Appears to imply cannot have independent contractors. What if you need temporary workers on a particular job?

f. Apprenticeship program is "vague" and broad and not appear to be confined to laborers and mechanics (which is in the prevailing wage statute). What about subcontractors hired to clean windows?

The GCA opposes the language of proposed Section 104-D Apprentice use on public works; requirements. This section requires that no less than fifteen per cent of labor hours on the project be performed by individuals enrolled in an apprenticeship program established under section 104-C. The State should not dictate the Contractors personnel makeup.

Section 104 of HRS relates to paying prevailing wages on public works projects. The GCA has no issue with this law. We are raising the issue of the advisability of adding a new section that would mean adding more costs to a public works project. The State cannot afford to have added costs to any of its projects.

The GCA is **opposed** to the passage of H.B. 1289, HD1, Relating to Procurement, and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this issue.



Hawaii Chapter

March 3rd, 2009

Testimony to be presented to the
House Committee on Finance
For hearing on Tuesday March 3rd, 2009, 1300, Room 308

by

Karl F. Borgstrom, President
ASSOCIATED BUILDERS & CONTRACTORS OF HAWAII

**IN OPPOSITION TO
HOUSE BILL 1289 HD1
RELATING TO PROCUREMENT**

Chair Oshiro and Members of the Committee:

The Associated Builders and Contractors is a professional trade association representing Merit Shop construction contractors, suppliers and service providers throughout the State of Hawaii. Our association sponsors the only independent, DLIR certified apprenticeship program in the State of Hawaii, and is proud of its tradition of supporting workforce development in the construction trades. However, we object to the concept of mandating apprenticeship participation as a criterion that qualifies a contractor to bid and perform work on a project.

HB 1289 HD1 would allow only contractors with State-certified apprentice programs to bid on public construction projects in the trade areas of the contracted work. ABC Hawaii's apprentice training program is a unified training program with the 4 basic trades recognized by the State of Hawaii as certified by DLIR.

Under HB 1289 HD1, our member contractors would only be qualified to bid on state projects that involved one of those trades – plumbing, painting, electrical, or carpentry – even though they may be otherwise qualified to perform the work, and only if they had apprentices enrolled in the ABC Apprenticeship Program. The bill does not account for the fact that current, licensed journeymen employed by the firm may, in fact, have already graduated from the Program, nor does it account for the need for apprentices based on the size or scope of the project.

Despite that certification by the DLIR, which provides a Statewide standard for qualifying apprenticeship programs, HB 1289 HD1 would insert another level of qualifications standards administered by any procurement officer on a project-by-project, contract-by-contract basis which would, in effect, defeat the purpose of having a "standard." In addition, both the additional administrative cost to the state and to the

contractors of reporting on a monthly basis will add to the costs of public projects. Such a requirement ignores the fact that apprentices enroll on a semester basis and their performance and completion of their programs is recorded annually.

In these difficult economic times, and particularly for small contractors, the cost of having to maintain an active involvement in the Apprentice Program, whether or not you are using apprentices, could be significant. In addition, mandating Apprentice Program participation has the effect of further limiting the number of qualified bidders competing on a project at a time when the State needs to increase competition to get the best return on its capital improvement investment dollars.

For these reasons, Associated Builders and Contractor of Hawaii opposes HB 1289 HD1.

Thank you for your consideration; should the need arise, ABC Hawaii will respond to any requests of the Committee for additional information regarding this matter.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

March 3, 2009

Honorable Marcus Oshiro, Chair
Committee on Finance
State Capitol, Room 308
Honolulu, HI 96813

RE: HB 1289, HD1 "Relating to Procurement (Apprentice Relief Bill)"

Chair Oshiro and Members of the Committee on Finance:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association (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 strongly opposed to HB 1289, HD1 "Relating to Procurement" (also referred to as the Apprenticeship Relief Bill) because of the increased burden it places upon Contractors and Subcontractors at a time when they can least afford it and at a time the State and County budgets for public works projects cannot withstand significant increases in costs and delays. While we believe in the value of having a well-trained workforce, this bill does not further that goal. The bill increases costs and delays procurement, yet serves no pressing public purpose. There are many meetings being held in the State Capitol to find solutions to the problem of delays in getting public works projects started.

This bill would not be a solution to the basic problem of getting the economy on the road to recovery.

The bill is objectionable for many reasons. Here are only some of the reasons:

1. The bill does not require unions to open their apprenticeship programs to all comers. In effect, this will currently prevent most non-union contractors and subcontractors from bidding on public works projects until they can work through procedures in place under Chapter 372.
2. Chapter 372 is currently a voluntary program for registration of apprenticeship agreements but will become mandatory for all public works contracts exceeding \$100,000 and to subcontractors at any tier, no matter how small.

3. The bill requires the extra costs of an apprenticeship program even if no apprentices are required for the project. There is no exception for a sole proprietor or a small business of two or three owner employees).

4. Most significantly, it will automatically increase bid protests for non-compliance with these additional requirements since they are prerequisites to be eligible to bid on a public works project; i.e., the bidder will be disqualified even if they are the low bidder. It would make all public works projects subject to a Court challenge that could bring the entire proposed stimulus package public works projects to a halt.

We respectfully request that this bill be held.

Thank your for the opportunity to express our views.

A handwritten signature in cursive script that reads "Karen L. Nakamura".

Chief Executive Officer
BIA-Hawaii



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
CENTURY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-8893

NOLAN MORWAKI
President
Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement
Masons Local 630

March 3, 2009

JOSEPH O'DONNELL
Vice President
Iron Workers Local 625

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
Members of the House Committee on Finance
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

DAMIEN T. K. KIM
Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

ARTHUR TOLENTINO
Treasurer
Sheet Metal Workers I.A. Local 293

RE: IN SUPPORT OF HB 1289, HD1
RELATING TO PROCUREMENT.
Hearing: Tuesday, March 3, 2009, 1:00 p.m., Conf. Room 308

MALCOLM K. AHLO
Sergeant-At-Arms
Carpenters, Linoleum, & Soft Tile
Local 1296

Dear Chair Oshiro, Vice Chair Lee and the House Committee on Finance:

RONALD CASTANARES
Members & Filers Local 675

For the Record my name is Buzz Hong the Executive Director for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

THADDEUS TOMEI
Elevator Constructors Local 128

The Council **SUPPORTS** the passage of HB 1289, HD1 that requires all offerors and subcontractors for construction contracts subject to the state public procurement code, to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding for a period of not less than 6 months.

JOSEPH BAZEMORE
Drywall, Tapers, & Finishers
Local 1944

Thank you for the opportunity to submit this testimony in support of HB 1289, HD1.

RICHARD TACCERE
Glassers, Architectural Metal &
Glassworkers Local Union 1699

Sincerely,

LAUGHN CHONG
Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221

William "Buzz" Hong
Executive Director

MARY AYCOCK
Cabinetmakers, Ironship Builders
Local 627

WBH/dg

YVONNE KINNEY
District Council 66
Painters & Allied Trades
Local 1791

ALANI MAHDE
Consulting Engineers Local 3

EDWARD SEBRESOS
National Assoc. of
Electrical Insulators
and Workers Local 132



House of Representatives
Committee on Finance
March 3, 2009, Conference Room 308

Statement of the Hawaii Carpenters Union on H.B. 1289 Relating To Procurement

The Hawaii Carpenters Union strongly supports H.B. 1289, HD 1, with amendments. We need to: Maintain our capacity to construct public works, and a skilled work force for one of our main private sector economic engines. Advance education public policy, and the long standing public-private partnership of apprenticeship. Bolster worker safety.

Without increasing labor costs, the benefits of our public construction funds can be maximized by providing an incentive for apprenticeship training. The construction industry is suffering now, but not so long ago there was a clamor over a shortage of skilled construction workers, here and across the nation. All contractors should be encouraged to bear their share of meeting this industry need.

Apprenticeship is State policy, supported by Community College and other programs, and along with “pre-apprenticeship” programs in the State’s Construction academy, Department of Hawaiian Home Lands, and legislated funding for Building Industry Association facilities. This public-private partnership with existing apprenticeship programs does not require the employment of apprentices at all times.

Apprenticeship is an education and career option, in addition to that of seeking a college degree. It greatly advances construction safety training, thereby preventing human tragedy, furthering State policy, and reducing construction costs.

In the interest of a workable approach, we support the following amendments:

- Reduce the “requirement” that contractors bidding on public works be participants in an approved apprenticeship program, to a “preference” of 5%. With this amendment, no contractor will be prevented from bidding.
- Remove references to subcontractors, allowing flexibility for contractors and simplifying administration.
- Increase the minimum applicable contract value from \$100,000 to \$250,000.
- By amending Part X of chapter 103D, preferences, rather than 103D-310, only 103D-302 and 303 contracts will be affected, not sole source and other types of construction contracts.
- Technical amendments to conform apprenticeship language to chapter 372, making eligible an offeror that is a party to a registered apprenticeship agreement conforming to existing standards.

We urge the passage of H.B. 1289 with these amendments. Thank you for considering our testimony.