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February 5, 2009

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor and Public Employment

Date: Friday, February 6, 2009  
Time: 8:30 a.m.  
Place: Conference Room 309  
State Capitol

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

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

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. 1289 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 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., length of previous participation, number of apprentices enrolled, and number of graduates. If duration is considered to be an essential criterion, it is recommended that the length of previous participation be defined in the law, e.g., 12 months, to avoid subjective judgments regarding adequacy of duration. It is also recommended that criteria involving numbers of apprentices and graduates be deleted because these figures are highly dependent on factors outside of the contractor's control, such as diminished demand for construction workers, which 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.

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

February 6, 2009

8:30 a.m.

Honorable Karl Rhoads, Chair  
Committee on Labor & Public Employment  
State Capitol, Room 309  
Honolulu, HI 96813

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

Chair Rhoads and Members of the Committee on Labor & Public Employment:

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, "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 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.

Thank your for the opportunity to express our views.

*Karen L. Nakamura*



**STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
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*Late Testimony*

WRITTEN TESTIMONY  
OF  
RUSS K. SAITO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEE  
ON  
LABOR & PUBLIC EMPLOYMENT  
ON  
February 6, 2009

H.B. 1289

RELATING TO PROCUREMENT

Chair Rhoads and members of the Committee, thank you for the opportunity to testify on H.B. 1289.

The Department of Accounting and General Services (DAGS) opposes H.B. 1289 because it will limit the number and type of construction contractors that can bid for DAGS construction projects and will unnecessarily increase the administration and/or oversight responsibilities of government contracting agencies.

There are currently over 18 State-certified apprentice programs. These are aimed at workforce development, and are certified by the Department of Labor and Industrial Relations. However, all of these programs, except one, are based on trade groups that have collectively bargained contracts. If solicitations of public works contracts are limited to contractors with certified apprentice programs, the State's ability to have an open bidding process would be jeopardized and bidding on public works projects would be restricted to only those companies that employ a "unionized labor workforce" and will

effectively eliminate the smaller and other construction firms that employ a “non-unionized labor workforce”.

Thank you for the opportunity to testify on this matter.