



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

THURSDAY, JANUARY 29, 2009
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 627 – RELATING TO CONTRACTORS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND TO THE HONORABLE GLENN WAKAI, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 627, Relating to Contractors. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes House Bill No. 627.

House Bill No. 627 mandates the issuance of a citation and a cease and desist order when a RICO investigator determines that a person is acting in the capacity of, or engaging in the business of, a contractor without having a license in

good standing. House Bill No. 627 also prohibits a person to whom a citation has been issued from resuming the work until the person holds the license required to perform the work. Lastly, the bill amends the penalty provisions in unspecified amounts.

The issues raised in this bill have been heard in a number of prior legislative sessions in various forms. The Department appreciates the efforts of all parties to craft revisions to the existing law that will bolster the State's efforts to effectively address and combat unlicensed contracting activity. Last session, these issues were heard in the context of Senate Bill No. 2896. Senate Bill No. 2896 went to conference, and although a conference draft was under consideration, no conference draft could be agreed upon.

The Department opposes the bill in its current form for the following reasons:

1. A citation is not the appropriate enforcement tool in all instances of unlicensed activity. Unlicensed activity can be prosecuted criminally through the Attorney General's or Prosecutor's office, through a circuit court action (lawsuit), or through the citation process. The fact that a citation is not issued in every unlicensed activity investigation does not mean that the case is not prosecuted. Instead, many cases are prosecuted through a circuit court action. A circuit court action is used where, for example, we want to obtain a restitution judgment in favor of an affected consumer, since restitution is not available through a citation. In addition, sometimes we have to subpoena

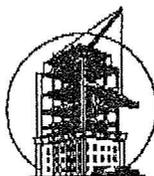
documents or obtain witness statements or otherwise obtain evidence that we would not be able to do in a citation situation. In fiscal year 2008, RICO obtained 95 court judgments for unlicensed contracting activity and obtained 17 contracting citation orders.

2. Citations are time-sensitive. After a citation is served, the person served has 20 days to request a hearing. If a hearing is requested, the hearing is held approximately 45 days after the citation is served. The State must be ready to prosecute at that time. For this reason, investigators generally rely on their own observations of unlicensed activity and their own interviews before issuing a citation to ensure that there is sufficient proof of the violation through their own testimony at the time of hearing. Where proof of unlicensed activity is based upon third party witness testimony or documents, investigators exercise discretion in determining whether to issue a citation or build a case for a circuit court enforcement action.
3. House Bill No. 627 amends the penalty provisions in subsection (j) by providing for a \$10,000 fine for any person who has been cited for unlicensed activity. However, this language is internally inconsistent with the fines that are set forth in Haw. Rev. Stat. §444-23(c) and would create confusion as to which fine provision applies. The Department also opposes this amendment because the fine amount may be deemed excessive.

Testimony on House Bill No. 627
January 29, 2009
Page 4

For these reasons, the Department opposes this bill as drafted.

Thank you for the opportunity to testify on House Bill No. 627. I will be happy to answer any questions that the members of the Committee may have.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

ENTRY PACIFIC DESIGN CENTER, STE. 215A • 580 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORWAKI

President

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

January 28, 2009

JOSEPH O'DONNELL

Vice President

Iron Workers Local 625

DAMIEN T. K. KIM

Financial Secretary

International Brotherhood of
Electrical Workers Local 1186

Honorable Representative Robert N. Herkes, Chair
Honorable Representative Glenn Wakai, Vice Chair
Members of the House Committee on Consumer Protection & Commerce
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

ARTHUR TOLENTINO

Treasurer

Sheet Metal Workers I.A. Local 283

RE: IN SUPPORT OF HB 627
RELATING TO CONTRACTORS
Hearing: Thursday, January 29, 2009, 2:00 p.m.

MALCOLM K. AHLO

Sergeant-At-Arms

Carpet, Linoleum, & Soft Tile
Local 1296

Dear Chair Herkes, Vice Chair Wakai and the House Committee on
Consumer Protection & Commerce:

REGINALD CASTANARES

Trustee

Plumbers & Fitters Local 676

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 126

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
Local 1944

The Council SUPPORTS the passage of HB627 that prohibits the
resumption of work for any person who is issued a citation for
operating without a contractor's license in good standing until a
hearing is conducted, and makes the issuance of citations and
cease and desist orders mandatory.

RICHARD TACCHERE

Glaziers, Architectural Metal &
Glassworkers Local Union 1889

Thank you for the opportunity to submit this testimony in support
of HB627.

VAUGHN CHONG

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

Sincerely,

GARY AYCOCK

Boilermakers, Ironship Builders
Local 827

W. Hong/dg

William "Buzz" Hong
Executive Director

LYNN KINNEY

District Council 50
Painters & Allied Trades
Local 1791

WBH/dg

KALANI MAHOE

Operating Engineers Local 3

EDWARD SEBRESOS

International Assoc. of
Insulation & Frost Insulators
Allied Workers Local 132

Skilled Craftsmanship Makes the Difference.

IRON WORKERS STABILIZATION FUND

Fax: 586-6221- Vice Chair Glenn Wakai

January 28, 2009

Hon. Robert N. Herkes, Chair
House Consumer Protection & Commerce
State Capitol - Room 320
Honolulu, HI 96813

Iron Workers Stabilization Fund – T. George Paris, Managing Director

Hearing Date – January 29, 2009, 2:00 p.m.

Support of HB 627, Relating to Contractors

As this committee is well aware, numerous bills have been introduced in prior sessions attempting to curtail *unlicensed* contracting activity. In gist, there are 3 different categories of unlicensed activities.

1. The first pertains to an individual or entity that is *absolutely unlicensed*, either as a general contractor or a specialty contractor.
2. The second pertains to a *licensed* general or specialty contractor that undertakes specialty work for which it is not licensed.
3. The third pertains to a *licensed* general or specialty contractor that falls out of compliance with the insurance and bonding requirements found in HRS Chapters 444 and 436B.

HRS section 444-9, entitled Licenses required, states:

“No person within the purview of this chapter shall act, or assume to act, or advertise, as general engineering contractor, general building contractor, or specialty contractor without a license previously obtained under and in compliance with this chapter and the rules and regulations of the contractors license board.”

The language found in HRS section 444-9 is *clear and unambiguous*. Any person or entity that does not possess a general contracting license is *prohibited* from performing any general contracting work. And, any person or entity that does not possess a specialty contracting license in a particular specialty is *prohibited* from performing any work in that specialty.

94-497 UKEE STREET ■ WAIPAHU, HAWAII 96797 ■ (808) 671-4344



-2-

In the now well-known Okada Trucking case decided by the Hawaii Supreme Court in 2002, our high court in defining HRS section 444-9 clearly set forth as follows:

" . . . pursuant to HRS section 444-9, a general engineering or building contractor is prohibited from undertaking any work, solely or as part of larger project, that would require it to act as a specialty contractor in an area in which the general contractor was not licensed to operate. . . ."

Reading HRS section 444-9 together with the above language from the Okada Trucking case, there can be no doubt that a general building contractor is *prohibited* from undertaking *any* specialty work for which it is not licensed. The same prohibition should hold true for a specialty contractor attempting to undertake work in another specialty for which it is not licensed.

HRS Section 444-11.1, entitled *Requirements to maintain license*, clearly sets forth that any licensed contractor must maintain in full force the following: workers' compensation insurance, liability insurance and a bond. Subsection (b) of this section states:

"Failure, refusal, or neglect of any licensed contractor to maintain in full force and effect, the applicable workers' compensation insurance, liability insurance, or bond shall cause the automatic forfeiture of the license of the contractor effective as of the date of expiration or cancellation of the contractor's workers' compensation insurance, liability insurance, or bond."

In addition, HRS Chapter 436B, entitled *Professional and Vocational Licensing Act* also contains a similar provision as HRS Section 444-11.1 quoted above. HRS Section 436B-13, entitled *Renewal of License*, contains the following language in subsection (c):

"The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement provided by law, shall cause the license to be automatically forfeited."

Here, again, the law is abundantly clear. Any licensed general or specialty contractor that causes its insurance or bonding requirements to lapse will have its license *automatically forfeited*.

For emphasis, "the law is clear." One who is *absolutely unlicensed*, a *licensed* general or specialty contractor that undertakes specialty work for which it is not licensed, or a *licensed* general or specialty contractor that falls out of compliance with the insurance and bonding requirements found in HRS Chapter 444, are *prohibited* from undertaking any contracting work. This being the case, the *Cease and Desist* order called for in H.B. No. 627 should be made into law without any equivocation, and, the entity or person that is the subject of the order should be *prohibited* from undertaking any work until the proper license is obtained or reactivated through compliance with HRS Chapters 444 and 436B.

Based on the above, we respectfully submit that H.B. No. 627 be passed by this committee and sent to the Committee on Judiciary.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

January 28, 2009

TO: THE HONORABLE REPRESENTATIVE ROBERT N. HERKES, CHAIR AND
MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION AND
COMMERCE

SUBJECT: H.B. 627, RELATING TO CONTRACTORS

NOTICE OF HEARING

DATE: Thursday, January 29, 2009
TIME: 2:00 pm
PLACE: Conference Room 325

Dear Chair Herkes 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, **strongly opposes** the passage of H.B. 627, Relating to Contractors.

H.B. 627, Relating to Contractors, amends Section 444-10.5, to mandate the issuance of a citation to persons found to be working without the required contractors' license in good standing and that all work cease upon the issuance of a citation until a hearing is held on the citation. The requirement that all work cease upon the issuance of a citation may create a problem for the legitimately licensed contractor because the proposed changes fails to recognize cases where licenses may have expired due to failure of the contractor to attend to simple administrative requirements such as filing a proper certificate of insurance. The amendment may thereby result in unintended job delays and financial consequences for the contractor before being given an opportunity to contest the citation.

A major problem with the proposed amendment is that the citation of alleged unlicensed activity may not be resolved for several months during which time no work can be done by the alleged violator. The GCA believes that RICO should be given the discretion to determine when a citation should be issued as a stop and desist order is not appropriate in all situations.

The GCA is **strongly opposed** to the passage of H.B. 627, and recommends that this bill not be passed.

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

SAH - Subcontractors Association of Hawaii

820 Mililani Street, Suite 810, Honolulu, Hawaii 96813-2938

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

January 29, 2009

Testimony To: House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons, President

Subject: H.B. 627 - RELATING TO CONTRACTORS

Chair Herkes and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we generally support this bill.

The Subcontractors Association represents the following eight separate and distinct contracting associations who have combined their testimony in the interest of saving time and resources.

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

We have seen a proposed HD 1 from RICO and would prefer that version.

Thank you.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

January 29, 2009

Honorable Robert Herkes, Chair
Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: HB 627 "Relating to Contractors"

Contractors; License Requirements; Citations; Civil Penalties

Chair Herkes and Members of the Committee on Consumer Protection and Commerce:

I am Karen Nakamura, Executive Vice President and Chief Executive Officer 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 represents 500 member companies in the construction industry.

While BIA-Hawaii strongly supports the intent of HB627 to curtail unlicensed activity by builders, we **very strongly** support the Regulated Industries Complaints Office of DCCA in their efforts to enforce the law as they deem most practicable. The primary issue here is effective enforcement of the law.

BIA-Hawaii has had the opportunity to review RICO's testimony on HB627 and we agree with their proposed amendments to HB627. As RICO's testimony indicates, mandating the issuance of citations in all cases may not be helpful to the consumer because restitution is not available through the citation route.

BIA-Hawaii requests that the Committee give serious and favorable consideration to the proposed amendments offered by RICO. We reiterate that stopping unlicensed activity by builders is one of BIA-Hawaii's priorities; however, the best way to effectuate this goal is to work with our enforcement agency, the Regulated Industries Complaints Office, giving them the discretion on how to do their jobs effectively. As well-intentioned as HB627 is, there may be unintended consequences resulting from the passage of this bill in its present form. RICO must have the flexibility in dealing with each case brought to them.

Thank you for the opportunity to provide our comments to you.



EVP/CEO
BIA-Hawaii