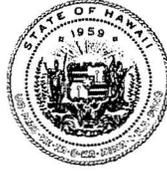


LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

**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. No. 826, SD1 - Relating to Public Works

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. No. 826, SD1 establishes a new part in the Wages and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes ("HRS") that limits employees who may work on public works to "regular employees" who work at least twenty hours a week, as defined in the Prepaid Health Care Act, section 393-3, HRS.

This new proposed provision also requires bidders on public works to maintain a State-certified apprenticeship program and projects over \$1 million use at least 15% of the man hours work performed by apprentices.

Penalties for violating the new part are temporary or permanent suspension from the project and all public works in addition to monetary penalties.

This Act is effective January 1, 2010.

II. CURRENT LAW

There is no restriction on who is eligible to work on a public work under the Wages and Hours of Employees on Public Works Law, Chapter 104, HRS.

III. HOUSE BILL

The Department opposes H.B. 842, H.D. 1 for the following reasons:

1. This measure limits who may be employed on public works to only those who are employed more than twenty hours a week. It would restrict both the general and specialty contractors that have small jobs to finish and does not take twenty hours to complete. This measure would negatively impact the State's ability to get qualified individuals on the job site. Many public works subject to Chapter 104 are jobs that require less than twenty hours on the job site.
2. Contractors who cannot hire independent contractors restrict the use of many small businesses such as owner-operators of trucks and heavy equipment, who do not have employees. This will negatively impact the State to get the best workers at the best price to bid and complete construction on public works.
3. The requirement under section 104-D, allowing only contractors with State-certified apprentice programs to bid on public works further limits the State's ability to have an open bidding process. Currently, the Workforce Development Division has over 18 certified apprentice programs. One associated with a merit-based organization and all others collective bargaining unit-based. This is an attempt to restrict bidding on public works to only those contractors who participate and have an apprentice in a certified apprenticeship program.
4. Under Chapter 104, HRS, foremen who work alongside other workers are included in the requirement to pay prevailing wages. However, in computing the "labor hours" calculation, the foremen are excluded, increasing the number of apprentices that will be required to work on the project site.
5. Standing House Committee Report 335 considers that requiring contractor employers to have an apprentice program to bid on state projects will stop "unscrupulous bidders and contractors to manipulate the system." However, requiring apprentice programs will only serve to exclude many bona fide contractors who employ only experienced workers. This does not "level the playing field" for everyone as HSCR 335 would have us believe—it puts the playing field on a plateau so that only larger union-based employees can participate.
6. The Department requests that the Finance Committee hold this measure as it will surely cost the State dearly to exclude from public works those employees that work more less 20 hours a week or qualified bidders on public works simply because they do not participate in an apprentice program.

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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. 826, HD1, RELATING TO PUBLIC WORKS

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 sixty (560) general contractors, subcontractors, and construction related firms, **opposes** the passage of H.B. 826, HD1, Relating to Public Works.

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. 826, HD1, Relating to Public Works, and recommends that this bill not be passed.

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



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #60 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

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

March 3, 2009

JOSEPH O'DONNELL

Vice President
Iron Workers Local 525

DAMIEN T. K. KIM

Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

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

ARTHUR TOLENTINO

Treasurer
Sheet Metal Workers L.A. Local 293

RE: IN SUPPORT OF HB 826, HD1
RELATING TO PUBLIC WORKS.

Hearing: Tuesday, March 3, 2009, 1:00 p.m., Conf. Room 308

MALCOLM K. AHLG

Sergeant-At-Arms
Carpet, Linoleum, & Soft Tile
Local 1298

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

FRANCIS CASTANARES

Plumber & Fitters 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 TOMBI

Elevator Constructors Local 126

The Council SUPPORTS the passage of HB 826, HD1 that establishes requirements for contractors who bid on state construction projects and establishes penalties for non-compliance with such requirements.

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
Local 1944

Thank you for the opportunity to submit this testimony in support of HB 826, HD1.

RICHARD TAGGERE

Staircase, Architectural Metal &
Welding Workers Local Union 1889

Sincerely,

AUGHN CHONG

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

W. Hong/dg

William "Buzz" Hong
Executive Director

ARY AYCOCK

Millwrights, Ironship Builders
Local 627

WBH/dg

YNN KIMNEY

Electrical Council 50
Electricians & Allied Trades
Local 1791

ALANI MAHDE

Structural Engineers Local 3

EDWARD SEBRESOS

General Assoc. of
Pipefitters & Insulators
Local 132



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 HB 826 HD1
RELATING TO PUBLIC WORKS**

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.

Under HB 826 HD1, our member contractors would only be qualified to bid on state projects if they maintain an apprenticeship program, even though there are currently no contractor-based, approved apprenticeship programs in the State, and even though contractors may be otherwise qualified to perform the work. The bill does not account for the fact that current, licensed journeymen employed by the firm may, in fact, have already graduated from an Apprenticeship Program, nor does it account for whether or not there is a the need for apprentices based on the nature or scope of the project.

The stipulation that all public works projects that cost one million dollars or more shall employ 15% of labor hours using apprentice-enrolled labor ignores the needs of the project in terms of either its expected quality or economic feasibility for contactors and taxpayer owners. In short, it interferes with the business processes of contracting that are designed to deliver, through a competitive bidding and profitable resources management process, the best return in value on the least expenditure of taxpayer dollars.

For these reasons, Associated Builders and Contractor of Hawaii opposes HB 826 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.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2009 3:30 PM
To: FINTestimony
Cc: khi@biahawaii.org
Subject: Testimony for HB826 on 3/3/2009 1:00:00 PM

Testimony for FIN 3/3/2009 1:00:00 PM HB826

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Karen T. Nakamura
Organization: BIA-Hawaii
Address: 1727 Dillingham Blvd. Honolulu, HI 96819
Phone: 847-4666, ext. 202
E-mail: khi@biahawaii.org
Submitted on: 2/28/2009

Comments: