

Honolulu, Hawaii

MAR 23 2012

RE: H.B. No. 1295
H.D. 3
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committees on Judiciary and Labor and Commerce and
Consumer Protection, to which was referred H.B. No. 1295, H.D. 3,
entitled:

"A BILL FOR AN ACT RELATING TO BUSINESS,"

beg leave to report as follows:

The purpose and intent of this measure is to address the
problem of unlicensed contracting by:

- (1) Amending the Penal Code to establish criminal offenses and penalties for unlicensed contracting activity, habitual unlicensed contracting activity, and unlicensed contractor fraud;
- (2) Excluding penal offenses for a first instance involving the inadvertent failure of a licensee to renew a previously existing license;
- (3) Establishing an affirmative defense if the unlicensed activity performed by a licensed contractor falls outside the scope of the contractor's license; and
- (4) Amending section 486B-27, Hawaii Revised Statutes, to conform to the new criminal unlicensed contracting offenses established in the Penal Code.



Your Committees received testimony in support of this measure from the Department of Labor and Industrial Relations; Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs; Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs; Department of the Prosecuting Attorney of the City and County of Honolulu; General Contractors Association of Hawaii; Subcontractors Association of Hawaii; William C. Loeffler Construction, Inc.; Maui Contractors Association; Hawaii Island Contractors' Association; Alan Shintani, Inc.; Building Industry Association of Hawaii; Laborers' International Union of North America Local 368; Complete Construction Services; The Pacific Resources Partnership; HPS Construction Services, Ltd.; and one private individual. The Department of the Attorney General submitted comments.

Your Committees find that instances of unlicensed contracting range from persons with experience who ultimately work toward and obtain licensure, to persons with little or no experience who most likely would not qualify for licensure, and to those with little or no intention to complete work for monies received. This measure seeks to effectively deter a range of unlicensed contracting activity.

Your Committees further find that this measure is the product of the task force that was created pursuant to H.C.R. No. 286, H.D. 1 (2011), to facilitate better enforcement of unlicensed contracting activity. The task force created a subgroup called the Law Enforcement Small Working Group. The working group found that although unlicensed activity is a misdemeanor under existing law, enforcement would be enhanced if there were specific sections added to the Penal Code that established criminal offenses for unlicensed contracting activity, habitual unlicensed contracting activity, and unlicensed contractor fraud.

Your Committees note that this measure is intended to address egregious unlicensed contracting activity, including chronic and repeat unlicensed contracting activity. This measure is not intended to cover inadvertent oversights by licensees in complying with the licensing law.

While your Committees appreciate the efforts of the task force and stakeholders, your Committees recognize that this measure is still a work in progress. The Department of the Attorney General raised several concerns regarding the language in



this measure. Thus, your Committees urge the stakeholders to continue discussions to streamline the language in this measure as it moves to the Committee on Ways and Means.

Accordingly, your Committees have amended this measure by:

- (1) Adopting the amendments proposed by the General Contractors Association of Hawaii that:
 - (A) Clarify under the offense of unlicensed contracting activity that such activities are exempt if performed by a previously licensed contractor who inadvertently failed to maintain licensing requirements under chapter 444, Hawaii Revised Statutes, rather than to apply to only first-time offenders; and
 - (B) Address the instances of multiple offenses for the same job by clarifying that the same unlicensed activity that continues for more than one day should be considered a single conviction unless written notice is given and the unlicensed activity continues;
- (2) Amending the monetary penalty values associated with unlicensed contractor fraud by:
 - (A) Deleting language that established unlicensed contractor fraud as a class A felony if the total value of all monies and assets paid or lost by the victim is \$100,000 or more;
 - (B) Establishing unlicensed contractor fraud as a class B felony if the total value of all monies and assets paid or lost by the victim is \$20,000 or greater; and
 - (C) Establishing unlicensed contractor fraud as a class C felony if the total value of all monies and assets paid or lost by the victim is less than \$20,000; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

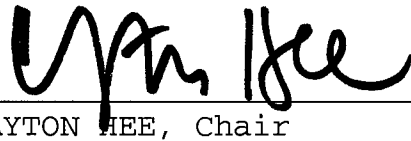


As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 1295, H.D. 3, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 1295, H.D. 3, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Labor and Commerce and Consumer
Protection,



ROSALYN H. BAKER, Chair



CLAYTON HEE, Chair



Record of Votes
Committee on Judiciary and Labor
JDL

*Only one measure per Record of Votes

The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 1295 HD 3	Committee Referral: JDL/CPN, WAM	Date: 03-22-12		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
GALUTERIA, Brickwood	✓			
GREEN, M.D., Josh				✓
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama				✓
SLOM, Sam				✓
TOTAL	4	0	0	3
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
Distribution: <div style="display: flex; justify-content: space-between; font-size: small;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

*Only one measure per Record of Votes