

TESTIMONY

SB 687

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

BARBARA A. ANNIS
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**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES**
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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
LABOR
ON
February 5, 2009
S.B. 687

RELATING TO PROCUREMENT

Chair Takamine and members of the Committee, thank you for the opportunity to testify before you on S.B. 687.

The Department of Accounting and General Services (DAGS) opposes S.B. 687 because it will limit the number and type of construction contractors that can bid for DAGS construction projects greater than \$1,000,000 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.

Testimony in **Support** of
SB687 Relating to Procurement

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

To the Senate Committee on Labor
Thursday, February 5, 2009, 2:45 p.m.
Room 224, State Capitol

Honorable Dwight Takamine, Chair; Honorable Brian t. Taniguchi, Vice
Chair and Members of the Committee:

The Laborers' Union **supports** SB687 regarding responsible contractor bidding on state construction projects. This bill is a Hawaii Building Trades Council submission.

Government agencies¹ in other jurisdictions have similar concerns as Hawaii does in ensuring that contractors will be selected based upon demonstrated ability to provide high quality services and thereby enhance the value of government property, as evidenced by their record of compliance with applicable statues and payment of fair compensation and benefits to workers, as well as their experience, reputation, responsiveness, fees and dependability. We believe that a fairly compensated and trained workforce, and a company that complies with the laws, delivers a higher quality of service and product to government.

States have separate responsible contractor laws similar to federal requirements that a company's compliance with labor, environmental, and health and safety laws is relevant to the "responsibility" determination. This express move to acknowledge the importance of compliance with laws to the responsibility determination demonstrates the growing consensus that a company's respect for law is critical to a determination of whether it is a reliable partner on public contracts.

¹ Ohio Public Employees Retirement System, federal government agencies, (POGO) Project On Government Oversight; City of Worcester, Massachusetts; City of Somerville, Massachusetts; California, Delaware, New Jersey, Oregon, New York, Michigan etc.

At the outset, we state that Hawaii contractors by and large, are responsible contractors. This is a small community. The reputation and performance of a local business is crucial to its success. It is when there is an influx of non-Hawaii companies that have little or no record of performing on government contracts in Hawaii that creates concerns. The owners are in foreign countries or other states and will move to where the projects are with the intent of making a profit and moving on. At times they will “import” workers who will work for substandard wages and benefits and not complain out of fear. Often times too, workers will be misclassified so as to acquire the lower wages. And when enforcement is lacking, this practice continues.

This is a major reason the federal government has amended Federal Acquisition Rules (FAR) and imposed an anti-scofflaw rule² to make it clear to businesses that there are consequences for breaking the law. And the consequence is that a law breaker can not do further business with government.

In these “perilous economic times” where dozens of economic stimulus construction projects will induce unknown contractors to bid for Hawaii projects, the bidder’s background, experience and performance require scrutiny and closer examination. There is a well known axiom, “You get what you pay for”. The lowest bid is not always necessarily the “best” bid. And in the rush to put out economic stimulus projects as fast as the system will allow, time is limited to check out the bidders.

The bill essentially states the need to show proof of workers’ compensation insurance, medical insurance, apprenticeship program, comply with prevailing wages, provide a neutral process for resolving work-related issues, be appropriately licensed and commit to employing a percentage of qualified Hawaii residents.

Thank you for the opportunity to present this testimony.

² 41U.S.C. 253b (“shall award a contract ... to the responsible source”; 403(7) (D) “Responsible source” is defined by statute as, inter alia, a prospective contractor who “has a satisfactory record of integrity and business ethics.”

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 4, 2009

TO: THE HONORABLE SENATOR DWIGHT Y. TAKAMINE, CHAIR AND
MEMBERS OF THE COMMITTEE ON LABOR

SUBJECT: S.B. 687, RELATING TO PROCUREMENT

NOTICE OF HEARING

DATE: Thursday, February 05, 2009
TIME: 2:45 P.M.
PLACE: Conference Room 224

Dear Chair Takamine and Members of the Committee on Labor:

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 S.B. 687, Relating to Procurement.

The bill proposes to enact a new chapter in the Hawaii Revised Statutes to be called the Responsible Construction Contractor Law. The GCA believes many of the provisions proposed in the bill are already adequately covered in the existing statutes. Other provisions that are proposed are not practical, such as maintaining and participating in apprenticeship programs, because many small contractors do not have a workforce that would sustain an apprentice.

The proposed bill is unnecessary and duplicates many other provisions of the procurement statutes. Therefore, the GCA does not recommend that this bill be favorably considered.

The GCA is **opposed** to the passage of S.B. 687, Relating to Procurement, and recommends that this bill not be passed.

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

IRONWORKERS STABILIZATION FUND

Honorable Senator Takamine, Chair
Members of the Senate Committee on Labor
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN SUPPORT OF SB687, RELATING TO PROCUREMENT
Hearing: Thursday, February 5, 2009

Dear Chair Takamine, and the Senate Committee on Labor:

The Ironworkers Stabilization Fund Local 625 SUPPORTS the passage of SB687, which amends HRS section 103 of awarding contracts for public construction projects.

We believe this bill will assist in stopping contractors who have been violating the state laws and who have been awarded state contracts over contractors who comply with the state labor laws. We believe that the passage of this bill is only the first step in preventing violations in the construction field. We would like this and strong enforcement to go hand in hand. The Ironworkers Union feels it is imperative during this tough economic time to give the working men and women of Hawaii the break they deserve to make a decent wage.

As such, we know that with passage of this bill and others to cease all unlicensed activity in the workplace will go a long way in helping those who are following the law.

Thank you for the opportunity to submit this testimony in support of SB 687



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

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February 3, 2009

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

JOSEPH O'DONNELL
Vice President
Iron Workers Local 625

DAMIEN T. K. KIM
Financial Secretary
International Brotherhood of
Electrical Workers Local 1188

ARTHUR TOLENTINO
Treasurer
Sheet Metal Workers I.A. Local 283

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

REGINALD CASTANARES
Trustee
Lumbers & Fitters Local 676

HADDEUS TOMEI
Elevator Constructors Local 126

JOSEPH BAZEMORE
Drywall, Tapers, & Finishers
Local 1944

CHARL TACGERE
Carpenters, Architectural Metal &
Crewworkers Local Union 1889

LUIGI CHONG
Roofers, Waterproofers & Allied
Trades United Union of Roofers
Local 221

FRY AYGOCK
Ironworkers, Ironship Builders
Local 627

W. KINNEY
Local Council 50
Painters & Allied Trades
Local 1791

JANI MAHOE
Mechanical Engineering Local 3

WARD SEBRESOS
National Assoc. of
Insulators & Frost Insulators
Local 132

Honorable Senator Dwight Y. Takamine, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Labor
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT OF SB 687**
Relating to Procurement
Hearing: Thursday, February 5, 2009, 2:45 p.m.

Dear Chair Takamine, Vice Chair Taniguchi and the Senate Committee
on Labor:

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.

The Council SUPPORTS the passage of SB687 which enacts the
responsible construction contractor law for government
procurements of construction projects.

A bidder's background, experience, and performance is crucial to
their success and the success of the project. SB687 declares the
need to show proof of workers' compensation and medical
insurance, apprenticeship program, comply with prevailing wages,
provide a neutral process for resolving work-related issues, be
appropriately licensed, and commit to employing a percentage of
qualified Hawaii residents.

Thank you for the opportunity to submit this testimony in support
of SB687.

Sincerely,

William "Buzz" Hong
Executive Director



February 5, 2009

Senator Dwight Takamine, Chair
Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB687 "Relating to Procurement"

Enacts the Responsible Contractor Law for government procurements of construction projects.

Chair Takamine and Members of the Committee on Labor:

I am Karen Nakamura, 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 is strongly opposed to SB687, "Relating to Procurement" (also referred to as the Responsible Contractor Law" for the following reasons:

1. The "exemption by collective bargaining agreement" for union contractors is illegal and unconstitutional. The statute will only apply to non-union contractors.
2. The bill is objectionable because it requires a bona fide Apprenticeship Program, but
 - a. it does not require the unions to open their apprenticeship programs to everyone,
 - b. it requires an apprenticeship program even if no apprentices are required for the project, and
 - c. it does not expedite and provide for the state certification of individual company apprenticeship programs
3. The bill requires journeyman/apprenticeship ratios that will be dictated by the unions rather than by efficiency and cost effectiveness. This will result in increased costs to the State and to the Counties.
4. The bill also imposes health and medical insurance requirements which would be preempted by ERISA.
5. The bill also requires a vague and ambiguous "fair and neutral process for resolving work-related issues" which may mean a requirement for an employment agreement with a "grievance" procedure".

6. It requires “certification under oath” on a monthly basis, and subjects the employer to penalties of perjury. This would be unreasonably burdensome to a small contractor and subcontractor. It subjects a contractor to withholding of payments, suspension or debarment.
7. 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.

BIA-Hawaii requests that this bill be held.

Thank you for the opportunity to share our views with you.



Executive Vice President & Chief Executive Officer
BIA-Hawaii

EDWIN D. HILL
International President

LINDELL K. LEE
International
Secretary-Treasurer

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS®



The Senate
Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Hearing: Thursday February 5, 2009
Time: 2:45 p.m.
Place: Conference Room 224

Testimony of the International Brotherhood of Electrical Workers (IBEW)

Re: S.B 687 Relating To Procurement

S.B 687 would help ensure that tax payer dollars are only spent on contractors who "play by the rules" and who are in strict compliance with all State laws and requirements.

The IBEW strongly supports this measure.

The Hawaii unionized construction industry takes great pride in ensuring that our workers are properly paid, highly trained, extremely productive and receive a superior standard of safety training. We believe that the state laws and requirements are there to protect our citizens and to ensure the highest level of safety and workmanship and that these laws should always be followed and obeyed.

Unfortunately, we are seeing more and more unscrupulous contractors come in this state who have a total disregard for our laws, rules and regulations. They blatantly violate established provisions putting Hawaii's citizens at risk and making a mockery of our safety, consumer and worker protections.

This is a serious moral, health and safety issue for all of Hawaii and should not be tolerated any longer.

S.B 687 takes the first step in correcting this problem by ensuring that not one penny of tax payer money goes to any of these irresponsible, law-breaking contractors.

You can and should put an end to this injustice with the quick passage of S.B 687.

Thank you for the opportunity to provide testimony.

**Harold J. Dias, Jr
IBEW, International Representative**

The Twenty-Fifth Legislature
Regular Session of 2009

THE SENATE
Committee on Labor
Sen. Dwight Y. Takamine, Chair
Sen. Brian T. Taniguchi, Vice Chair

State Capitol, Conference Room 224
Thursday, February 5, 2009; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 687
RELATING TO PROCUREMENT**

The ILWU Local 142 supports S.B. 687, which enacts the responsible construction contractor law for government procurements of construction projects.

With a stalled economy, all eyes are turning to public works projects in the near term to revitalize the economy. Construction in the private sector is stagnating as companies find it more and more difficult to secure financing for their projects. S.B. 687 will provide for fairness in the competitive bid process, keep construction jobs in the hands of legal Hawaii residents, and ensure that construction workers are paid prevailing wages and receive good benefits. Responsible contractors should have no problem with this bill.

The ILWU urges passage of S.B. 687. Thank you for considering our testimony.

Senator Dwight Takamine, Chair
Committee on Labor
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: SB687 “Relating to Procurement”

Enacts the Responsible Contractor Law for government procurements of construction projects.

Hearing date: February 5, 2009

Time: 2:45 p.m.

Place: Conference Room 224.

Chair Takamine, Vice-Chair Taniguchi and Members of the Committee on Labor:

I am Roy Ogawa, an attorney and small businessperson.

I am strongly opposed to SB687, “Relating to Procurement” (also referred to as the Responsible Contractor Law”) because of the increased burden that it places upon Contractors and Subcontractors at a time when they can least afford it and at a time when the budget for Public Works Projects cannot withstand significant increases in costs and delays. The bill increases costs and delays procurement yet serves no pressing public purpose.

1. The “exemption by collective bargaining agreement” is nonsensical since Chapter 89 relates to Public Employers and Public Employees. However, it appears to have been drafted to exempt collective bargaining agreements in general thereby allowing union contractors to exempt themselves from the statute which would be illegal and unconstitutional as the statute would only apply to non-union contractors.

2. The bill is objectionable because it requires a “bona fide” Apprenticeship Program.

a. Chapter 372 on Apprenticeship is currently a voluntary program which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to any subcontracts exceeding only \$25,000. Most Public Works projects will have at least some subcontracts which will exceed \$25,000. The Okada Trucking case and its ramifications regarding subcontract work has brought this to light in significant disputes over its application.

b. It does not require the 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.

c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project, and

d. It does not expedite and provide for the state registration of individual company apprenticeship programs. I am not aware of any single employer apprenticeship agreement that has been approved.

3. As written, the bill will require journeyman/apprenticeship ratios that will be dictated by the current collective bargaining agreements/signatory agreements rather than by efficiency and cost effectiveness. This will result in a significant increase in costs to the State and to the Counties.

4. The bill also imposes additional health and medical insurance requirements which could be pre-empted by ERISA and 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.

5. The bill also requires a vague and ambiguous “fair and neutral process for resolving work-related issues” which may require an employment agreement with a “grievance procedure” which is not spelled out in the proposed legislation.

6. It requires “certification under oath” on a *monthly basis*, and subjects the employer to penalties of perjury if the certification is incorrect. There is no knowledge, intent or recklessness requirement. This would be unreasonably burdensome to a contractor and subcontractor. The penalties are significant even if the error is inadvertent. It subjects a contractor to withholding of payments, suspension or even debarment.

7. 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.

I respectfully request that this bill be held.

Thank you for the opportunity to share my insights with you.

/s/ Roy Ogawa