

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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DEPUTY DIRECTOR

March 25, 2010

The Honorable Marcus R. Oshiro
and Members
House Committee on Finance
The Twenty-Fifth State Legislature
State Capitol
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Oshiro and Members:

Subject: SB2840 SD2 HD1

The Department of Design and Construction (DDC) agrees with the intent of SB2840 SD2 HD1 to create opportunities for the local construction industry and remedy the effects of non-resident employment on public works projects. However we have the following reservations regarding the bill. We find the term "resident" as defined in the bill too general and vague to monitor accurately, rendering the bill unenforceable. Adding an ambiguous layer of contract compliance could result in construction delays, contract cancellations and a lapse of funding.

Further, we concur with the City Department of Budget and Fiscal Services' testimony submitted earlier to the House Committees on Labor and on Economic Revitalization, Business, and Military Affairs, that the bill would create opportunities for vendors to protest the contract award, delay the execution of the contract, increase project costs, and be an administrative nightmare for the contracting officer.

Thank you for the opportunity to testify.

Very truly yours,


Craig I. Nishimura, P.E.
Director

CN/MR:lm

The Twenty-Fifth Legislature
Regular Session of 2010

HOUSE OF REPRESENTATIVES

Committee on Finance

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

LATE TESTIMONY

State Capitol, Conference Room 308
Thursday, March 25, 2010; 10:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2840, SD2, HD1 RELATING TO PUBLIC PROCUREMENT

The ILWU Local 142 supports S.B. 2840, SD2, HD1, which requires at least 80% of workers on construction procurements to be Hawaii residents and provides sanctions for noncompliance, including temporary suspension of contract work, payment withholding, disqualification from the project, recovery of contract payments and disbarment or suspension.

At first glance, this bill may appear unconstitutional because it provides for preference in hiring to Hawaii residents. However, we are informed by the testimony of Professor Jon Van Dyke of the William S. Richardson School of Law at the University of Hawaii that federal case law exists to allow for such preference if it is "substantially related to the important government goal of reducing unemployment."

Clearly, this measure will help to ease the burgeoning unemployment among construction workers. Labor unions report that more than half of their members are "on the bench," meaning that they are waiting to be referred for work. Many may still be receiving unemployment benefits, but some may have exhausted those benefits and are desperate for work.

At the same time, the State is issuing construction contracts to companies that bring workers into the state to complete the contracted work--as if no qualified workers are available in Hawaii! This is a travesty of justice.

If Hawaii taxpayers are paying for public works projects, Hawaii workers should be doing the work. It makes no sense to provide contracts to a company that hires offshore workers, pays for their travel and living expenses, and lets them contribute taxes elsewhere. As much as possible, Hawaii taxes should be used to support working men and women who live in Hawaii and will, in turn, support our own economy.

The ILWU urges passage of S.B. 2840, SD2, HD1. Thank you for the opportunity to testify on this matter.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 24, 2010

TO: THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR AND MEMBERS OF THE COMMITTEE ON FINANCE

SUBJECT: S.B.2840, SD2 HD1 RELATING TO PUBLIC PROCUREMENT.

NOTICE OF HEARING

DATE: Thursday, March 25, 2010
TIME: 10:00 A.M.
PLACE: Conference Room 308

LATE TESTIMONY

Dear Chair and members of the Committee:

The General Contractors Association (GCA), is an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms.

We would like to offer the following comments on SB 2840, SD2 HD1:

- 1) The eighty per cent requirement is determined by dividing the total number of hours worked on a contract by residents, by the total number of hours worked by all employees of the contractor and subcontractor in the performance of the contract. Therefore, it would be difficult if not impossible for the contractor to certify under oath compliance with this chapter on a monthly basis when the total numbers will not be known until the end of the contract.
- 2) It will be an added burden on the contractor and State to track the hours throughout the duration of the project.
- 3) Temporary suspensions, withholding of payments, and disqualification of contractor or sub contractor from further work on the project at hand for non-compliance are problematic as compliance will not be known until the completion of the project.
- 4) It will be problematic for contractors to be held responsible for subcontractor compliance since:
 1. There is no time during any HRS Section 103D-302 construction bid (low bid solicitation) to ascertain how each of the lowest bidding subcontractors will be manning the job to calculate compliance with the overall 80% residency requirement.
 2. The contractor has no authority over the employment practices of their subcontractors during the progress of the work to ensure the overall compliance requirement is met.

- 5) The definition of a resident will be difficult to ascertain as it delves into a person's intent to make Hawaii the person's primary residence which can lead to protracted litigation and consequent payment delays.
- 6) The bill, if passed, may be considered unconstitutional despite Professor Jon Van Dyke's testimony to the contrary as pointed out by the Attorney General's testimony. Even if the current form survives the constitutional challenge today, when the economy improves and the economic basis of favoring Hawaii workers over those out-of-state workers is no longer there, the law may not survive a constitutional challenge then.

These provisions will lead to increased project costs, bid protests and delays in executing contracts. All of these will not be in the best interest of the public or the residents who would like to work on these projects that will be delayed by bid protests or cancelled due to lack or lapse of funds.