



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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**The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means**

**Testimony by
Hawaii Government Employees Association
February 23, 2010**

**S.B. 2840, S.D. 1 – RELATING TO
PUBLIC PROCUREMENT**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2840, S.D. 1 which requires at least 80% of workers on public works contracts and construction procurements to be Hawaii residents. This measure seeks to positively impact our state's record-high unemployment by creating jobs for Hawaii residents and in turn stimulate our local economy.

HGEA knows intimately the dampening effect layoffs and cutbacks have on the economy. Our members have been impacted by layoffs, wage reductions and increased living expenses, especially higher medical premiums -- spending less in the community and saving if they can. We are sharing in the pain of this recession, as are their families and our local community. Our people need work.

Furthermore, some may forget that HGEA members are taxpayers, too. Our taxes should help support our local economy. If there are jobs that are outside the scope of duties of existing government employees, such as for these large public construction projects, the tax dollars that are used to pay for the work should be thoughtfully directed to help heal our economy. In these economic times, that direction is simple, jobs for Hawaii's people, keeping our tax dollars at home, is the right way to support our economy.

Thank you for the opportunity to testify in support of S.B. 2840, S.D. 1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

The Twenty-Fifth Legislature
Regular Session of 2010

THE SENATE

Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

State Capitol, Conference Room 211
Tuesday, February 23, 2010; 10:10 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2840, SD1
RELATING TO PUBLIC PROCUREMENT**

The ILWU Local 142 supports S.B. 2840, SD1, which requires at least 80% of workers on certain public works and construction procurements to be Hawaii residents.

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. 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 public works 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.

If Hawaii taxpayers are paying for public works projects, Hawaii workers should be doing the work. It makes no sense to pay a company that hires offshore workers, pays for their travel and living expenses, and lets them contribute taxes elsewhere. As much as possible, our 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, SD1. Thank you for the opportunity to testify on this matter.

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Feb. 22, 2010

Senator Donna Mercado Kim
Chair, Senate Committee on Ways and Means
Representative Marcus Oshiro
Chair, House Committee on Finance
Hawai'i State Legislature

Subject: H.B. 2736 and S.B. 2840 Relating to Public Procurement

Dear Chairs Kim and Oshiro:

I am writing with regard to the testimony submitted by the Department of the Attorney General, dated Feb. 18, 2010, related to H.B. No. 2736, wherein the Department states that "We believe this bill violates the United States Constitution." The Department's testimony asserts that under the Privileges and Immunities Clause, state legislation is constitutional only if it is "substantially related to the important government goal of reducing employment" *and* if the state can "demonstrate a valid independent reason for discriminating against nonresidents." It is true that the single case cited by the Department, *Hicklin v. Orbeck*, 437 U.S. 518 (1987), does focus on the facts of that case and offers alternative formulations of the governing text, but subsequent cases have not stated that state legislation must meet two different and distinct tests, and instead have concluded only that there must be an appropriate relationship between the state legislation and its goal.

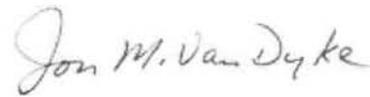
In *Hicklin*, Alaska had required that all jobs created by the Alaska pipeline go first to Alaska residents, if they were available to fill the job. The Alaska statute was poorly drafted, because it was impossible to determine which jobs were actually created by the pipeline (i.e., did it cover clerks at convenience stores established near construction sites?). More importantly, the U.S. Supreme Court explained that the goal of the statute -- to reduce unemployment in Alaska -- was not directly related to the statute, because those unemployed in Alaska generally did not have the skills to undertake jobs related to building the pipeline, and they frequently lived in remote villages far from the construction sites. In that case, therefore, the nonresident workers brought in to work on the pipeline were not, in fact, taking jobs from unemployed Alaskans.

In Hawai'i at present, by contrast, nonresident workers are being imported by contractors to fill jobs that skilled but unemployed Hawai'i residents are qualified to undertake. This is carefully documented in the Report prepared by Professors Peter Philips and Kevin Duncan, which has been

submitted as testimony to the relevant legislative committees. The nonresidents being imported for these jobs are thus the "peculiar source of the evil" that these proposed bills are trying to address, namely the unemployment of skilled Hawai'i workers. Even if, therefore, the *Hicklin* case were viewed as requiring legislation to overcome two separate tests, these bills do certainly meet the two tests because they are uniquely targeted to a defined, identified, and documented practice that is increasing the unemployment Hawai'i and thereby leading to a reduction in revenues kept in the State from public works projects funded by state taxpayers.

It is therefore my professional judgment that H.B. 2736 and S.B. 2840 are constitutional and would be upheld by a reviewing court.

Sincerely yours,

A handwritten signature in cursive script that reads "Jon M. Van Dyke". The signature is written in dark ink and is positioned centrally below the closing "Sincerely yours,".

Jon M. Van Dyke