

Hawai'i Construction Alliance

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February 10, 2015

The Honorable Angus L.K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
and members
House Committee on Consumer Protection & Commerce
Hawai'i State Legislature
Honolulu, Hawai'i 96813

Dear Chair McKelvey, Vice Chair Woodson, and members:

The Hawai'i Construction Alliance **supports HB713, HD1**. HB713 HD1 allows the Department of Labor and Industrial Relations to train and deputize volunteer investigators investigating public work projects, requires the Department of Labor and Industrial Relations to submit reports, and appropriates moneys.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of our state's construction industry.

Hawai'i has a long history of promoting fair, equitable, and safe work conditions on public works projects, including proper worker classification, licensing, and prevailing wages, dating back to the adoption of a "Little Davis-Bacon law" in 1955 by the territorial legislature. Since then, that law, which subsequently became HRS Chapter 104, has been effective in establishing fair labor standards in the Aloha State.

Nevertheless, there are still instances of violations or alleged violations of Chapter 104, where unlicensed individuals are being used, workers are being misclassified, or employees being underpaid. These are issues that our unions do not take lightly. The deputization of volunteers to investigate violations of Chapter 104 will help to ensure that workers on public works projects are appropriately licensed, classified, and correctly paid.

Mahalo for the opportunity to provide these comments.

Aloha,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 11, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON,
VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **CONCERNS REGARDING TO H.B. 713, HD1 RELATING TO CONTRACTORS.** Allows the Department of Labor and Industrial Relations to train and deputize volunteer investigators investigating public work projects. Requires the Department of Labor and Industrial Relations to submit reports. Appropriates moneys. (HB713 HD1)

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

While the GCA supports enforcement of contractor licensing laws and applauds the efforts to address some of the staff shortage of investigators within the Department of Labor, it has concerns regarding H.B. 713, HD1 as it proposes to deputize and indemnify volunteer investigators to police construction contractors licensed under, Chapter 104, Prevailing Wage laws. GCA would prefer the bill proposed last year allotting funding to the Department of Labor for additional investigation staff that could be properly trained and accountable for their actions.

GCA had concerns with the original bill as oversight over contractors under Chapter 444, HRS and electricians and plumbers licensed under Chapter 448E, HRS appeared problematic. GCA's concerns remain and are a bit elevated because for wage related concerns, interested parties may target unaffiliated companies and claim non-compliance within certain wage classifications. Without proper oversight and training such deputization could have the potential to open up the investigatory process, which is currently overseen by the state Regulated Industries Complaints Office, to the potential of favoritism and abuse. Furthermore, due to the waiver of any type of liability, there could be a lack of accountability on the deputized volunteer.

As an impartial government operation akin liquor inspectors or building inspectors, this oversight licensed contractors and construction workers should only be performed by individuals who have no direct affiliation with the industry, to prevent any perception of possible conflict of interest.

If there is a need for better oversight of the licensing process, it should be handled by the proper authorities to ensure due process and fair and impartial investigations.

Thank you for the opportunity to share our concerns.

SAH - Subcontractors Association of Hawaii

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February 11, 2015

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 713, HD 1 - RELATING TO CONTRACTORS

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting associations who have combined their testimony in the interest of saving time and resources.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We generally support this bill.

Violations under the Little Davis Bacon Law are all too frequent. In most cases, it is individuals classifying employees in the wrong classification in what appears to be an error however there are some egregious cases where it is quite apparent that the contractor is trying to defraud the employees.

Based on that, we generally support this requirement however we need to particularly emphasize that training is essential. Violations of the labor law and prevailing wage are legal technicalities that require advance training so we would strongly suggest that additional wording be provided in this bill to emphasize the mandatory nature of training prior to a deputy "going on the job site".

Thank you.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



ELAINE N. YOUNG
ACTING DIRECTOR

LATE

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 10, 2015

To: The Honorable Angus L.K. McKelvey, Chair,
The Honorable Justin H. Woodson, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: February 11, 2015
Time: 2:30 p.m.
Place: Conference Room 325, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 713, H.D. 1 Relating to Contractors

I. OVERVIEW OF PROPOSED LEGISLATION

HB713 HD1 amends the Hawaii prevailing wage law to allow the DLIR to train and deputize an unspecified amount of volunteer investigators to conduct prevailing wage investigations under the Wages and Hours of Employees on Public Works Law, chapter 104, Hawaii Revised Statutes (HRS). Limits liability for damages to volunteer investigators as a result of the investigations. Effective July 1, 2015.

The Department offers comments.

II. CURRENT LAW

The Wage Standards Division uses Labor Law Enforcement Specialists IV to investigate prevailing wage claims, is budgeted for six investigators at this level in the Compliance Branch, and is currently recruiting for 3 of those positions.

III. COMMENTS ON THE HOUSE BILL

HB713 appeared to be proposing methods to identify unlicensed contractors working in Hawaii and to penalize them. The HD1 now moves the investigations by voluntary investigators to only contractors working on public works projects. The level of scrutiny by contracting agencies to be awarded a public works job necessarily requires contractors to prove their licensed ability to do the work.

Licensing contractors is not under the authority of the DLIR. Additionally, by moving the volunteer investigations to chapter 104, HRS, the type of investigation changes completely from a licensing investigation to a wage payment investigation.

It is true that the Wage Standards Division could use more investigators to assist with the backlog of cases in the prevailing wage law although DLIR is hesitant to use volunteers on their most complex cases which are normally delegated to the top level Specialists.

The current backlog of complaints related to the prevailing wage law is 187 complaints against 50 employers. 129 on Oahu 46 on Maui; 6 on Kauai; 5 in Hilo; 1 in West Hawaii. This represents a total of 130 projects currently pending investigation. The average age of the pending 187 complaints is 668 days old. It is estimated that the backlog would take at least 2 years to clear if fully staffed.

Prevailing wage investigations are delegated to the level IV Labor Law Specialists. When individuals come into the Division it generally takes them 2 ½ years to qualify for a level IV position. Volunteers may be better suited for entry-level investigations. In addition to the 187 prevailing wage complaints from chapter 104, the Division has 88 pending Wage Claims and 34 minimum wage and overtime claims pending.

Note that the Division has had volunteers before and does not need any legislation to use volunteers. Using volunteers on this type of investigation is worrisome as the investigator must be available for staff conferences, attorney meetings, and testimony as a witness for appeals. Respecting the dedication of volunteers, the time it takes for training and completing investigations of this nature may be inappropriate for volunteers.

Restoring the three investigator positions in the Compliance Branch lost in the reduction in forces in 2009 would address the backlog of cases. Three additional LLES IV would cost at least \$142,200.

The department notes that the WSD is one of the general funded programs that has not obtained any restoration in capacity since the 2009 Reduction-in-Force (RIF). Twice since the RIF (HB2766, 2012 and SB3039, 2014) the Legislature has deliberated on creating a public works special fund in recognition of the reduced capacity of the department to conduct timely chapter 104 investigations. Both measures perished in conference committee.

The department also notes that having volunteer investigators may raise conflict of interest issues depending on their affiliations.

LATE

BIA-HAWAII

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THE VOICE OF THE CONSTRUCTION INDUSTRY

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Testimony to the House Committee on Consumer Protection & Commerce

Wednesday, February 11, 2015

2:30 p.m.

State Capitol - Conference Room 325

RE: HOUSE BILL NO. 713 H.D 1 RELATING TO CONTRACTORS

Dear Chair McKelvey, Vice-Chair Woodson, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii has **concerns** with H.B. 713 HD1, which would allow the Department of Labor and Industrial Relations (DLIR) to train and deputize volunteer investigators for the purpose of investigating public works projects and indemnifies said investigators from any liability.

We are deeply concerned by the inherent potential for abuse or favoritism that may come from using volunteer investigators and indemnifying them against any liability. Extreme care must be taken to insure enforcement of regulations is fair and impartial. To that end, potential investigators should act as an impartial government operation. The oversight of licensed contractors and construction workers should only be performed by individuals who have no direct affiliation with the industry, to prevent any perception of possible conflicts of interest.

We humbly recommend that the legislature consider focusing their effort on enforcement and regulation of unlicensed construction activities. We believe that enhanced enforcement techniques and stiffer penalties against unlicensed individuals would do far more good for the people of Hawaii and our economy. By cracking down on the underground construction black-market, the State would stand to generate more than enough revenue through enforcement of the GET and penalties against noncompliance, all while enhancing public safety and protecting against unlicensed individuals.

Thank you for the opportunity to express our views on this matter.



**HAWAII OPERATING ENGINEERS
INDUSTRY STABILIZATION FUND**



*Uniting our strengths and working together
for a better tomorrow.*

Affiliated AFL-CIO
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LATE

February 10, 2015

Honorable Angus L.K. McKelvey, Chair

Honorable Justin H. Woodson, Vice Chair

And members of the Committee on Consumer Protection & Commerce

415 South Beretania Street, Room 320

Honolulu, HI 96813

RE: HB 713, HD1 – Relating to Contractors

Chair McKelvey and members of the Committee,

My name is Kimberly Ribellia, Government Liaison, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

HOEISF would like to submit comments relating to House Bill 713, HD1 which allows the Department of Labor and Industrial Relations (DLIR) to train and deputize volunteer investigators investigating public work projects and appropriates moneys for training.

HOEISF supports the concept of providing DLIR more investigators to pursue complaints relating to HRS Chapter 104. However, we support a direct appropriation of moneys for permanent full-time investigator positions within the Wage Standards Division.

Thank you for this opportunity to testify in this matter.

Sincerely,

Kimberly Ribellia
Government Liaison
HOEISF