

TESTIMONY

SB 1125



**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES**

P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
LABOR
ON
February 10, 2009

S.B. 1125

RELATING TO PROCUREMENT

Chair Takamine and members of the Committee, thank you for the opportunity to testify on S.B. 1125.

The Department of Accounting and General Services (DAGS) opposes S.B. 1125 because it will limit the number and type of construction contractors that can bid for DAGS construction projects 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 with certified apprentice programs. This may

eliminate small and other construction firms that do not have a certified apprentice program.

Thank you for the opportunity to testify on this matter.

Testimony In Support of
SB1125 Relating To Procurement

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

To the Senate Committee On Labor
Tuesday, February 10, 2009, 2:45 p.m.
Conference Room 224, State Capitol

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

The Laborers' Union supports the requirement for all offerors and subcontractors for public work construction contracts subject to the procurement code, to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding.

Construction work is a very dangerous vocation; it is not a place for the untrained, undisciplined or careless worker who could be a danger to him/herself and others. According to the National Institute of Occupational Safety and Health, the construction industry has the most job-related fatalities and injuries than other industries.

The most common accidents are falls, being hit by objects, electric shock, lifting operations injuries, crushing or run over by equipment, installation injuries and many other reasons including carelessness.

According to the state, a "CIP Strike force" has been created to expedite projects for which appropriations have already been approved by the Legislature. The Comptroller leads the Strike force. Its goal is to start construction work on approximately 1,500 projects worth about \$1,86 billion by the end of 2009.

There is concern that in the rush to implement projects and utilize federal economic stimulus funds that have a limited timeline to be spent and have a "use it or lose" condition, there will be a tendency to utilize available workers that may not be sufficiently experienced or trained after the most experienced and trained workers are first employed by the many competing

contractors who are expected to bid the hundreds of jobs and “capture” the “good ones” first. This is where apprenticeship programs are urgently needed to avoid industrial accidents, worker injury, implement work place safety conditions and rules, and maintain productivity and compliance within contractual provisions. Insufficiently experienced or insufficiently trained workers must be mentored properly and given needed instructions and monitoring to avoid injury or even death. This is the most responsible thing to do.

We strongly **support** SB1125.

Thank you for the opportunity to present this testimony.

The Senate
Committee on Labor
February 10, 2009, Conference Room 224

Statement of the Hawaii Carpenters Union on S.B. 1125
Relating To Procurement

The Hawaii Carpenters Union strongly supports S.B. 1125, furthering construction craft training on public construction projects of \$100,000 or more. By passing this Bill, the legislature will:

- Provide now for the capacity to construct public works into the future.
- Contribute to the maintenance of a skilled work force for one of our main economic engines.
- Advance education public policy, and the long standing public-private partnership of apprenticeship.
- Bolster worker safety.

Without increasing labor costs, the benefits of our public construction funds can be maximized. The construction industry is suffering now, but recall not so long ago the clamor over a shortage of skilled construction workers, here and across the nation. The demand will rise again, as it did over the past ten years. Training must go on, if only in consideration of retirements and individual career changes.

Government, in both the Federal Davis-Bacon and Chapter 104, HRS, recognizes the importance of construction training, and therefore includes it in prevailing wage determinations. Since construction contractors already pay prevailing wages on public works projects, there is no increase in labor costs due to this Bill. In fact, labor costs can be reduced by participation in an approved apprenticeship program because lower apprentice rates are recognized in prevailing wage law.

Numerous contractors currently participating in apprenticeship programs do not have apprentices employed, or for that matter any employees, at the time of bidding, instead hiring them after signing a contract. That contractor also has the option of not employing any apprentices on any particular project.

Apprenticeship is an education and career option, in addition to that of seeking a college degree. The State has recognized this with an existing program-approval process, and is a partner through community college and other programs.

Apprenticeship also greatly advances construction job safety training, thereby preventing human tragedy, furthering State policy, and reducing construction costs.

We urge the passage of SB. 1125, and it's earliest implementation. Thank you for considering our testimony.

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
Tuesday, February 10, 2009; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1125
RELATING TO PROCUREMENT**

The ILWU Local 142 supports S.B. 1125, which requires all offerors and subcontractors for construction contracts subject to the state procurement code to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding.

When public monies are used, taxpayers will want the best value for their dollar. Apprenticeship programs will ensure that those working on public works projects are qualified and trained in their respective trade. A state-approved apprenticeship program will provide workers with the knowledge of the trade and help them develop and enhance their skills on the job.

The ILWU urges passage of S.B. 1125. Thank you for considering our testimony.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 10, 2009

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

RE: SB 1125 “Relating to Procurement”

Chair Takamine and Members of the Senate Committee on Labor:

I am Karen Nakamura, Executive Vice President and Chief Executive 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 **SB 1125, “Relating to Procurement” (the “Apprentice Relief Bill”)** because of the increased burden that it places upon Contractors and Subcontractors; the Procurement Officers and DLIR 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.

Everyone is in favor of having a well trained workforce but this bill does not further that end. Why further cloud and burden the Procurement process at a time when our economy needs streamlining of the procurement process? We need to be expediting the work under the stimulus package that will be required to preserve work for every citizen of this state, not creating further roadblocks that allow for legal challenges. The bill increases costs and delays procurement yet serves no pressing public purpose.

1. The bill is objectionable because it requires a “bona fide, state-approved apprenticeship program”.

- a. **Chapter 372** on Apprenticeship is currently a voluntary program for “*registration*” of apprenticeship agreements which will in effect become mandatory for all Public Works contracts exceeding \$100,000 and to subcontractors at any tier no matter how small. *Does registration under Chapter 372 of an apprenticeship agreement mean that it is a “bona fide, state-approved*

apprenticeship program”? Acceptance for registration does not constitute “state-approval” under Chapter 372 which makes every bid subject to challenge until new rules are promulgated.

In the Matter of International Brotherhood of Painters and Allied Trades, et al 88 P.3rd 647 (2004) the Hawaii Supreme Court found that participants in existing apprenticeship programs did not have due process property interests with respect to registration of these programs which would require the Director of the Department of Labor and Industrial Relations to provide them with a contested case hearing. Since SB 1125 will now require “legal rights, duties or privileges...required by law..” to be determined, constitutional due process will require contested case hearings since the Director of Labor and Industrial Relations will no longer be in an advisory role but would be determining the eligibility of bidders for Public Procurement. The Application by the Carpenter’s Union for registration of their painter’s apprenticeship program in the Painter’s case above, was submitted on February 13, 1998. The Supreme Court decision is dated April 30, 2004. It took over ***six years*** to get a final determination on the propriety of the registration of the Carpenter’s apprenticeship registration. It is safe to assume that the Bill as drafted will require new Procurement Rules and will subsequently face legal challenges involving not only Procurement but also the function of the DLIR and its rules for contested cases.

- 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 until they can work through the procedures in place under Chapter 372.
- c. It requires the extra costs of an apprenticeship program even if no apprentices are required for the project, (there is no exception for a sole proprietor or a small business of two or three owner employees).
- 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 for registration, and,
- e. It does not define an “apprenticeable trade” which would mean any job on a construction Project. All work is arguably apprenticeable.

2. 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.

3. Section 103D-310(d) does not state that it is limited to construction contracts.

4. 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 or subcontractor to withholding of payments, suspension or even debarment.

5. It appears to place an unreasonable burden upon the procuring officer to “police” the continuing work and verify compliance on a monthly basis.

6. 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.

The Bill as written 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.

BIA-Hawaii respectfully requests that the bill be held.

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

A handwritten signature in cursive script, reading "Karen L. Mahamua".

Executive Vice President and Chief Executive Officer
BIA-Hawaii

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

Committee on Labor

Time: Tuesday, February 10, 2009 at 2:45 p.m.

Place Conference Room 224

Re: SB 1125 Procurement; State Approved Apprenticeship Program.

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

My name is Roy Ogawa and I am a lawyer; small business person and a taxpayer. I am strongly opposed to **SB 1125, “Relating to Procurement” (the “Apprentice Relief Bill”)** because of the increased burden that it places upon Contractors and Subcontractors; the Procurement Officers and DLIR 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. Everyone is in favor of having a well trained workforce but this bill does not further that end. Why further cloud and burden the Procurement process at a time when our economy needs streamlining of the procurement process? We need to be expediting the work under the stimulus package that will be required to preserve work for every citizen of this state not creating further roadblocks that allow for legal challenges. The bill increases costs and delays procurement yet serves no pressing public purpose.

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Thank you for the opportunity to testify.

/s/ Roy Ogawa