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To: The House Committee on Labor & Public Employment Hearing  
LABtestimony@Capitol.hawaii.gov

From: Audrey Hidano

Date: February 4, 2008

Subject: HB 2975 Relating to Public Works Projects  
Hearing: Tuesday, February 5, 2008 at 8:30 a.m., Room 309

Honorable Alex Sonson, Chair and Committee Members  
State Capitol Room 309  
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Sonson and Members of the Committee:

I am Audrey Hidano, Hidano Construction, Inc. testifying in OPPOSITION of HB 2975, Relating to Public Works Projects.

HB 2975 is the same bill as HB 853 which would have treated inadvertent errors on three projects in a single investigation as one violation each, rather than counting violations within an investigation as a single violation. HB 2975 would not assist DLIR with delays and a backlog of investigations. It would also possibly debar good contractors and we ask that this bill be HELD.

Thank you for the opportunity to testify in OPPOSITION of this proposed measure.

The Twenty-Fourth Legislature  
Regular Session of 2008

HOUSE OF REPRESENTATIVES  
Rep. Alex M. Sonson, Chair  
Rep. Bob Nakasone, Vice Chair

State Capitol, Conference Room 309  
Tuesday, February 5, 2008; 8:30 a.m.

**LATE TESTIMONY**

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2975  
RELATING TO PUBLIC WORK PROJECTS**

The ILWU Local 142 supports H.B. 2975, which clarifies that a single violation refers to each separate project where the Department of Labor and Industrial Relations finds that a contractor has failed to comply with Chapter 104.

It is a travesty of justice that contractors who commit multiple violations of the prevailing wage law but are only disciplined for a single violation. H.B. 2975 will correct this flaw in the law and will force contractors to be more compliant and fair with their employees.

In addition, we believe that typographical errors will not be considered violations of Chapter 104. This argument will be raised by opponents of H.B. 2975 and should be judged specious and rejected.

The ILWU urges passage of H.B. 2975. Thank you for the opportunity to provide testimony on this matter.



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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February 4, 2008

LATE TESTIMONY

To: The Honorable Alex Sonson, Chair  
and Members of the House Committee on Labor and Public Employment

Date: Tuesday, February 5, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

From: Darwin L.D. Ching, Director  
Department of Labor and Industrial Relations

**Testimony in Opposition  
to  
H. B. 2975 - Relating to Public Work Projects**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 2975 proposes to change the enforcement of the mandatory penalty structure from an *investigation* scope to a *project* scope. Instead of using the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> *investigations* with graduating penalties before suspending a contractor from bidding on state projects, this measure imposes a penalty structure based on *projects*. This change would mean that that a contractor would have to be suspended on a first investigation if an error, however minor, is found at three *projects*, even if it is the first investigation and the error was unintentional under the Wages and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes ("HRS").

House Bill 2975, is identical to House Bill 853, Regular Session of 2007, that was vetoed by the Governor (Governors Message No. 746, April 13, 2007).

**II. CURRENT LAW**

The Wages and Hours of Employees on Public Works Law, Chapter 104, HRS, allows an investigation to cover all public works projects a contractor or complainant employee is working on or worked on and impose mandatory penalties which could be numerous as penalties are based on each occurrence of a provision of the law violated. For the first

investigation leading to a notice of violation penalties are 10% of back wages due or \$25 per occurrence which ever is greater.

The second time a contractor is investigated and found to be in violation within, two years of the first violation the penalty is increased to the amount of back wages found due or \$100 per occurrence. On the third violation within two years of the second, the penalty is the greater of twice the back wages due or \$200 per occurrence and suspension from bidding on all state and county public works for three years.

### III. HOUSE BILL

The Department of Labor and Industrial Relations (“Department”) supports the intent of aggressive enforcement of Chapter 104, but must oppose this bill for the following reasons:

1. The substance of this measure, which is identical to H.B. 853, Regular Session of 2007, (which was vetoed by the Governor) was the impetus for a series of meetings during the interim with the construction community including the Building Industry Association, many of the trade unions and the Comptroller, the Director of Commerce and Consumer Affairs, and the Department. The purpose of this ad hoc group’s formation was to find an acceptable solution to target aggressive enforcement of Chapter 104 towards egregious contractors.

The result of these meetings is a concept introduced in H.B. 2927, and H.B. 3165 which we feel more accurately addresses the issue.

2. The approach to targeting egregious contractors was arrived by reviewing Chapter 104 statistics. The Department analyzed the data collected after 30 months of an aggressive random investigation program from January 2005 to June 2007. What we found is that most of the contractors working on public works are in compliance with the law. Just 2% or only 6 of 284 random investigations resulted in issuing a notice of violation including penalties of \$2,394. Over the same time period 56 complaints resulted in 22 notice of violations, or 39% of complaints and generating \$105,417 in penalties. All total, only 8% of 341 investigations were found to have violations.

The Department took a closer look at this 8% of contractors who were issued Notice of Violations (NOV) and made some important observations. There were two distinct types of violators- those who did not have accurate information about the law and those who took deliberate actions to falsify certified payroll records. Tracking the issuing of another current penalty under Section 104-22(b), HRS, which imposes an additional \$1,000 penalty for delay or falsification of records made a clear line regarding these two types of violations. Those who report one set of facts on the certified payroll but have a different set of facts on the time sheets and payroll records can be considered “cheaters”. In contrast, errors made that did not use the current rate because it changed during the course of the project, or incorrectly misclassified a worker, as several of the trades do overlap on certain activities, did not rise to the level of falsification of records. The contractors who falsify

records are the egregious violators that should be suspended.

3. This measure is overly broad. For example, if a contractor failed to pay overtime on June 11, 2006, Kamehameha Day, to several individuals on three projects, because it was unaware of the State holiday, the Department would have to suspend the contractor from any State work for three years. Even if the contractor corrected the mistake within 20 days and paid back wages and penalties, the Department would still have to suspend the contractor

This bill adversely affects good contractors who make one error, the same error, on three projects they are working on or have worked on, out of the running for further bidding, when it is the "egregious" violators we want to eliminate from bidding for tax payer dollars.