



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

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March 15, 2010

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

Date: March 16, 2010
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

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

**Testimony Offering Comments on H.R. 84 and H.C.R. 145:
Urging the Department of Labor and Industrial Relations to Meet or Exceed
Occupational Safety and Health Administration Position Benchmarks for
Workplace Safety and Health.**

I. DLIR's COMMENTS

The Department offers the following comments on the Resolutions:

The Department firmly disagrees that its current staffing of inspector positions jeopardizes its ability to fulfill HIOSH's mission in workplace safety and health. The current staffing levels must be viewed in the proper context.

A. CONTEXT OF THE BENCHMARKS

The benchmark staffing level for the HIOSH compliance program was last set pursuant to an April 25, 1980 OSHA report. In a December 5, 1978 court order, the U.S. Court of Appeals for the District of Columbia directed the Secretary of Labor to define staffing levels necessary for a "fully effective program." These benchmark levels were set with input from the HIOSH program.

The OSHA report set the benchmarks for Hawaii at a level of nine (9) inspectors for both safety and health.

We are currently in discussions with OSHA regarding examining the benchmark levels. The workplace in 1980 is much different from the workplace now.

Specifically, the total number of workers' compensation cases reported in 1980 was about 47,725. The total number of workers compensation cases filed in 2008 was 24,542.

The number of recordable cases for private industry in 1980 was 29,240 with an incident rate of 11.5. Within the construction industry, the incidence rate was 30.7. In 2008, the number of recordable cases of non fatal injuries for private industry was 16,700 with an incident rate of 4.3. Notably, the injury and illness rate for construction was only 6.1.

Despite the approximate increase of about 14,000 jobs in the construction industry and about 13,000 in the accommodations industry since 1980, the latest data regarding fatal occupational rates reflects a downward trend: 30 in 2006, 23 in 2007 and 18 in 2008. Also, the total number of workers' compensation cases in the past three years reflects a downward trend. In 2007, about 26,105 cases were filed. In 2008, 24,942 cases were filed. In 2009, the most current information reflects only about 21,262 cases have been filed since December 2009.

It is in this context that we are in current discussions with OSHA regarding an examination of the benchmark levels for Hawaii.

Moreover, HIOSH has long found itself in a "catch 22" situation regarding the compliance officer benchmarks. When economic times were good, the large salary disparity between the private and the public sector frustrated efforts to fill inspector positions. At one time, the private sector was paying about twice the level of the public pay scale. Retention was an issue; the HIOSH served as a training ground for safety professionals to get their experience, only to go on to more lucrative careers in the private sector.

On the other side, when economic times are bad, as they are presently, the State's dire fiscal condition prevents us from filling inspector positions. The State's economic condition necessitates all divisions, including HIOSH, to do more with less, and focus on performing core operations with essential personnel.

Filled inspector positions were not cut in the reduction in force. Instead, other areas, including the clerical positions, were affected. Federal OSHA officials previously remarked on how HIOSH's clerical section appeared overstaffed in comparison to other States.

Notwithstanding the matters discussed above, we will continue to do our mission with less until the State's fiscal condition allows us to regain our prior staffing levels. In the meantime, we welcome all the support available from our private partners to further strengthen the HIOSH program.

It is important to note that the benchmarks concerning the Consultation and Training Branch of the HIOSH were essentially met in 2007. The functions of two (2) safety consultants, two (2) health consultants, and one (1) compliance assistance officer were met. The Consultation and Training Branch had three (3) safety consultants and two (2) health consultants; one (1) health consultant fulfilled the functions of the compliance assistance post. This staffing level was maintained until the recent reduction in force.

Given the State's fiscal crisis, all departments and divisions, including the HIOSH, must do more with less. To this end, we continue to leverage the expertise and guidance of the HIOSH Advisory Committee in seeking creative ways to promote safety in Hawaii's workplaces.

II. OVERVIEW OF PROPOSED RESOLUTION

The substantive text of H.R. 84 and H.C.R. 145 are identical. The Resolutions urge the Department to "meet or exceed OSHA benchmark safety levels for Health Compliance Officers, Safety Compliance Officers, Safety Consultants, Health Consultants, Compliance Assistance, and other positions as required for HIOSH and the DLIR to fulfill its mission in workplace safety and health."

III. CURRENT LAW

Through a 1980 OSHA has set the benchmark levels for compliance officers in Hawaii at nine (9) safety inspectors and nine (9) health inspectors. OSHA also set the following levels for Hawaii's consultation and training branch: two (2) safety consultants, two (2) health consultants, and one (1) compliance assistant.



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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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LATE

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
March 16, 2010

H.C.R. 145/H.R. 84 – URGING THE
DEPARTMENT OF LABOR AND INDUSTRIAL
RELATIONS TO MEET OR EXCEED
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION POSITION BENCHMARKS
FOR WORKPLACE SAFETY AND HEALTH.

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO strongly supports H.C.R. 145/H.R. 84. Workplace safety must be the highest priority for all employers, and the state has the primary responsibility to enforce statutes and rules pertaining workplace safety. It is very disturbing that staffing levels within the Department of Labor and Industrial Relations (DLIR) do not meet federal Occupational Safety and Health Administration (OSHA) benchmarks. Of even greater concern is that DLIR continues to cut staffing levels thereby interfering with its ability to keep workplaces safe.

During the recent reduction-in-force, 12 employees were laid off within Hawaii Occupational Safety and Health Division (HIOSH). Hawaii workers are therefore exposed to greater risk as a result of this shortsighted decision. We agree with the purpose of H.C.R. 145/H.R. 84 that DLIR must take affirmative steps to meet or exceed OSHA benchmark safety levels for Health Compliance Officers, Safety Compliance Officers, Safety Consultants, Health Consultants, Compliance assistants, and other positions for HIOSH to adequately protect workplace safety. Enforcing accountability through a report from DLIR on HIOSH staffing levels to the 2011 Legislature is also warranted.

Thank you for the opportunity to testify in support of H.C.R. 145/H.R. 84.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

LATE

Testimony In Support of

HR 84/HCR 145

URGING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO
MEET OR EXCEED OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
POSITION BENCHMARKS FOR WORKPLACE SAFETY AND HEALTH

BY Al Lardizabal, Director of Government Relations
Hawaii Laborers' Union

To the Committee on Labor and Public Employment
Tuesday, March 16, 2010, 10:00 a.m.
State Capitol, Room 309

Representative Karl Rhoads, Chairman and Members of the Committee:

Secretary of Labor Hilda L. Solis said, "The safety of workers must be priority one, and the U.S. Department of Labor is stepping up review of state OSHA plans to ensure that is the case." The state of Nevada safety and health program had such serious deficiencies that the U.S. DOL is now auditing other state safety and health programs including that of Hawaii.

The federal government under President Obama and Secretary Solis has increased the OSHA budget by 10% to \$563 million because of this priority for the safety of workers. The opposite is occurring in Hawaii state government. Positions in HIOSH have been gradually reduced affecting the capability of the HIOSH to fulfill its mission.

According to anecdotal evidence, in 2009, 17 positions were abolished within HIOSH. In August 2009, 13 more positions were lost. This year, the department recommended the reduction of another 13.50 positions but thankfully, the Legislature saw fit to restore them in the current budget bill now under consideration. Vacant positions even if without funding, should be left intact for the next governor and director to determine their utility.

In April 17, 2008, the International Labor Organization established benchmarks for safety: it said that there should be at least one labor inspector for every 10,000 workers. In comparison, before the recent budget increase, the U.S. Government (DOL) had a one to 63,670 ratio nationally and the Hawaii offices of the U.S. D.O.L. had a one to 29,803 ratio. Hawaii has a civilian labor force of about 636,050 (2009) therefore, using the ILO ratio of 1/10,000, Hawaii should ideally have about 63 inspectors or staffing; it doesn't.

The above is not an accurate measurement for staffing but it provides a basis for comparison and determining the relative importance of worker safety and health in the overall scheme of things. It is my understanding, subject to confirmation, that HIOSH has only 26 staff now.

To put safety in perspective, according to U.S. D.O.L data of workplace fatalities for the period 1992 to 2007 for all states, Hawaii had 405 fatalities or about 26 per year. This is 26 deaths too many each year.

I wish to make clear that the staff of the entire DLIR especially the HIOSH, are all professionals in their own right and are performing under exceedingly difficult conditions. They deserve to be acknowledged for their dedication and effort to keep Hawaii workers safe. But they are severely limited in resources and personnel to perform the job, as it should be done. And if the workers of Hawaii are to be protected from industrial injury and illness, especially when more construction projects are coming online, the HIOSH program must be supported and strengthened.

Thank you for the opportunity to submit this supporting testimony.

LATE

House of Representatives
Committee on Labor & Public Employment
Tuesday, March 16, 2010
10:00 a.m., Room 309

Statement of the Hawaii Carpenters Union in Support of HR 84/ HCR 145

The Hawaii Occupational Safety and Health Division (HIOSH), the subject of this resolution, cannot be subjected to continued understaffing, nor can its performance be allowed to slip to the point of "Federalization".

The Legislature considered the above during tough budget deliberations in 2009. After careful consideration, the Legislature decided against de-staffing HIOSH. There should not be an administrative implementation of what the Legislature decided against.

In 2009, legislators became aware of the myths around the California experience, seeing that in the brief period when Federal OSHA stepped into the place of the state program, not all functions were replaced. Furthermore, savings to the state were not realized because still other functions and overhead costs could not be discontinued because they supported other state programs. Serving public workers, which Federal OSHA does not do, was also a continuing cost.

The State of Hawaii has a history and tradition of caring about the health and safety of its working people. No individual or family should be devastated by injury or illness that would not have occurred if not for a worker having to be on a job to make a living.

Economically, many unionized companies have come to emphasize job safety instead of attempting regressive action against Workers Compensation benefits. HIOSH is needed to provide education to these companies, and to extend the economic sensibility to those employers who don't care.

In the course of considering this resolution, we urge the Committee to shed light on the recent reductions in staffing. Is there a deliberate, intentional policy to sabotage a program that workers' very lives depend on?

Full staffing and proactive policies are needed in this basic preventative program. It is preventative healthcare, prevents burdens on the community, and prevents costs. Thank you for your consideration of our testimony in support of this resolution.