

TESTIMONY

SB 1181

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 4, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: Thursday, February 5, 2009

Time: 2:45 p.m.

Place: Conference Room 224
State Capitol

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

Re: S.B. No. 1181 - Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. No. 1181 amends the Wages and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes ("HRS") to change the way prevailing wages are established to require two (2) surveys a year for the portion of fringe benefits instead of how the director determines necessary. This bill also limits the survey to only those contractors and their subcontractors who have previously worked on public works.

The measure also makes several reporting requirements of the employer for fringe benefit amounts in prevailing wages.

This Act is effective January 1, 2009.

II. CURRENT LAW

By Hawaii Administrative Rule ("HAR") 12-22-3 wage rate schedules are regularly issued on or about February 15 and September 15 of each year based on surveys or methods which the director may deem necessary to obtain data for wage determinations, including wage determinations made by the Secretary of Labor, United States Department of Labor ("USDOL"), under the Davis-Bacon Act, and includes breakdowns of basic hourly rate and fringe benefits.

All but six (6) classifications are updated twice a year according to collective bargaining agreements that prevail in the appropriate classification. The six (6) other classifications: Chlorinator; Concrete Mixer/Driver/Booster Driver; Drapery Installer; Fence Erectors (Chain Link); Termite Treater; and Water Well Driller; are surveyed annually by the Research and Statistics Office of the Department of Labor and Industrial Relations.

Specific fringe benefit information is already reported and recorded, but kept confidential as proprietary information.

III. SENATE BILL

The Department opposes S.B. 1181 for the following reasons:

1. The expansion of the survey to all contractors and subcontractors will be a costly affair to the Department. The current law requires that Hawaii prevailing wage be not lower than the USDOL prevailing wage. As the USDOL prevailing wages are determined by certain collective bargaining agreements, it does not seem reasonable for Hawaii to spend the money involved in a survey to determine an average prevailing wage that will likely be lower than a collective bargaining rate. Recent changes to the law (Act 229, Session Laws of 2005) require the director to select the modal rate (the rate of the greatest number) which will favor collective bargaining rates due to their uniformity.

Of the six (6) classifications mentioned above, four (4) are not listed in the USDOL wage determinations. Two (2) are listed in the USDOL schedule, but the federal rates have not been updated since 1997, and we continue to survey them.

For the six (6) regular surveys, contractors report for the week in which they had the largest number of workers in that classification. The new provision does not specify how to determine which rate is to be used if the contractor paid more than one rate during the prior six (6) months.

If the prevailing fringe benefit rate is determined using the modal rate, then the rate most likely will be the collective bargaining rates, but not necessarily the current rates. This may make the WRS rates lower than the USDOL rates, more often during the period between schedules if there are updates in the federal schedule.

Currently, there are more than 130 classifications in the Wage Rate Schedule (WRS). If a classification is not used in Chapter 104 projects during the survey period, there will be no data to update the fringe rates.

If we do not get data for some classifications within a group that currently receives the same fringe rates, there would be different fringe rates for some of the classifications within the group.

If the federal wage determinations were updated prior to the time the WRS is issued, the department would update fringes based on the federal rates, if higher, rather than the proposed method. If the federal schedule is not updated for the department to use, the WRS rates based on the proposed method may not reflect the current prevailing rate.

The WRS lists project rate increases based on the union schedules. This allows contractors to incorporate the increases in their bids for projects. In this proposal, the WRS would not list the projected fringe benefit rate increases. This would place a burden on contractors bidding for public projects since they must pay any increase in wages in the WRS during the length of the project, but will have limited information to determine their bid.

2. Limiting the survey to only contractors and subcontractors who have worked on public works would not provide any real data as the survey would only contain companies that were required by law to pay the prevailing rate set by the director.
3. Fringe benefit figures are already surveyed twice annually in the classification areas where collective bargaining agreements prevail. These amounts are kept confidential as proprietary information.
4. Section 2 requires a certified copy of fringe benefits, but the law only requires that contractors pay the prevailing wage, which is computed by adding the basic hourly wage plus the fringe benefit. This amount is already reported on the certified payroll. If there is a question that the whole amount has not been paid, the Wage Standards Division investigates confidential contractors' records. Because the certified payrolls are public documents, requiring this information be listed on the certified payroll will likely reveal proprietary information.
5. This measure is unnecessary and will further contribute to making bidding and working on public works more complicated and deter contractors from working on public works. When fewer contractors bid, this hurts the State's ability to get quality work at reasonable prices.

HAWAII OPERATING ENGINEERS INDUSTRY STABILIZATION FUND



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

Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice-Chair
Hawaii State Legislature Senate
Committee on Labor and JGO

Testimony by
Myles Miyasato Big Island Representative
February 5, 2009

Re: Support of S.B. 1181- RELATING TO LABOR

I would like to speak in support of the purpose and intent of SB 1181. As drafted, this bill will keep our public monies accountable and be available for public records as it should be. Presently all that is required is a check mark in a box to state that you are in compliance with the payment of fringe benefit wages. Only the hourly wages are listed as itemized payments to prove compliance.

The current fringe wages for our trade is \$22.13 an hour which comes out to \$885.20 per week in fringes only. When I review certified payrolls, the fringe wage usually has nothing left from the \$885.20 it's amazing how some employers can find benefits to cost the exact amount to the penny with no balance pay back to the employee. If there is a balance it should show on the hourly wages report, and there is no way of knowing how the rest of the fringe wages are spent.

I have had employees call me after being released from employment and not receiving any information about their supposed pension that the employer had been contributing into. Because there is no public record I cannot help them and can only tell them to go to the labor board and file a complaint. The problem is they are afraid to do this because they know there will be no chance for future employment with that company.

According to Administrative Rules 12-22-1 cost of a fringe benefit means the rate of contribution irrevocably made by a contractor to a trustee or to a third person pursuant to a fund, plan, or program in providing benefits. Irrevocable would mean that the balance of each employee's fringe wages should be included in their pay check weekly.

I urge the committee to pass S.B.1181. Thank you for this opportunity to testify.