



LATE

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

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February 28, 2011

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Monday, February 28, 2011

Time: 3:30 p.m.

Place: Conference Room 308, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. No. 1434, H.D. 1 Relating to Public Works Projects

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1434, H.D.1 amends the Wages and Hours of Employees on Public Works to change the penalty process to require penalties be imposed by project instead of by investigation and allows for an affirmative defense of unintentional error up to six violations.

II. CURRENT LAW

The penalty process does not differentiate between intentional or unintentional errors and imposes suspension after three violations and does not provide for six violations. The law requires investigators to calculate penalties across projects but imposes one Notice of Violation per investigation.

III. HOUSE BILL

The Department supports strong enforcement of the State's prevailing wage law. The department appreciates the amendments made by the previous committee and has the following comments about the HD1.

1. The measure considers up to six violations but penalty provisions have a one, two, three and out structure. This creates an ambiguity that will be difficult to enforce. If there will be an allowance for a fourth, fifth and sixth violation penalty provisions need to be amended as well.

2. Act 146, Session Laws 2008 is operating to eliminate those who falsify records on certified payrolls. The first contractor suspended for three years under this law was suspended in November 2010. Currently other contractors are in the process of being suspended. This approach to suspension focuses on “cheaters” and keeps the current penalty process intact to allow those generally compliant contractors who unintentionally make a mistake still pay a minimal penalty. Act 146 is just now having an opportunity to eliminate those who do one thing and report another –those who intentionally take action, rather than unintentionally make a mistake