



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

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March 2, 2011

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

Date: Wednesday, March 2, 2011  
Time: 2:00 p.m.  
Place: Conference Room 308, State Capitol

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

**Re: H.B. 467, H.D. 1, Relating to Whistleblowers' Protection**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The measure is intended to provide additional protection to public employees who report violations of the law or government contracts, and expands the department of labor and industrial relations' responsibilities regarding whistleblowers.

**II. CURRENT LAW**

1. Chapter 378, Part V, "Whistleblowers' Protection Act" currently provides whistleblower protections to both private and public sector whistleblowers who report or are about to report violations of laws or rules.
2. Section 396-8(e), Hawaii Revised Statutes, provides whistleblower protections to both private and public sector workers who are discriminated against for exercising their rights under the Hawaii Occupational Safety and Health Law, Chapter 396, HRS; i.e. reporting worker health and/or safety concerns.

**III. HOUSE BILL 467 H.D. 1:**

The current measure adds to the current law by expanding the scope of whistleblower activities to include violations of government contracts and requires the department of labor and industrial relations to inform the complainant of complainant's rights under the law. It also diminishes workers' rights by adding language conflicting with Chapter 396 with regard to worker health and safety discrimination complaints.

Specifically, House Bill 467, H.D. 1 would apply only if workers blew the whistle on

activities that threaten the health or safety of the public employee and the disclosure was made for the purpose of remedying the condition. Whereas, Chapter 396, Section 8(e), applies even if the purpose of the complaint, concern, or disclosure was to restore the whistleblowers' position, livelihood, or even to punish the retaliating agency or employer.

Hawaii is required to have a whistleblower provision that is "as effective as" that of OSHA, for which the purpose is not necessarily to remedy the condition but to prevent acts by employers that would create a disincentive for workers to actively participate in their own safety and health. While the implication is that workers could dual file to cover all bases, the reality is that when the worker files a civil suit, which is what they would need to do to pursue remedy under the proposed Section 378 for public employees, it would substantially interfere with the department's ability to timely (within 90 days) investigate and provide appropriate remedies and penalties for violations of the Hawaii Occupational Safety and Health Law. Litigation impedes administrative investigations by restraining information flow and adding layers to each document request. Litigation also adds additional complexity to settlement overtures, which to be effective, must be timely executed before each party is too invested in their positions to settle. Employers could claim that Chapter 378 would take precedence over Chapter 396, further prolonging the matter and adding additional cost to each investigation. Workers could become confused because each law is different: (1) definition of employer (broader under the Hawaii OSH Law); (2) time allowed to file a complaint (60 days under HIOSH, 90 under §378); and (3) process – investigation and administrative order by agency (HIOSH) versus civil suit and court decision and order (§378).

For the above reasons we ask that if the measure is to be advanced, that paragraph (3) of the proposed new section of Chapter 378 Protected Disclosure by a public employee (Page 3, Lines 6-9) be deleted, allowing whistleblower protections for both private and public sector worker addressing worker health and safety concerns to be administered by the Hawaii Occupational Safety and Health Division under Chapter 396, HRS.

Moreover, the department also recommends that the notice pertaining to the application of the proposed new section of Chapter 378 also reference Chapter 396 -8(e).

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**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii  
House of Representatives  
Committee on Finance

Testimony by  
Hawaii Government Employees Association  
March 2, 2011

H.B. 467, H.D. 1 – RELATING TO  
WHISTLEBLOWERS' PROTECTION

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the intent and purpose of H.B. 467, H.D. 1 – Relating to Whistleblowers' Protection. This bill provides additional protection to public employees who report violations of the law and significant threats to health or safety; and expands their ability to seek relief and damages. The bill also appropriately expands the Department of Labor and Industrial Relations' responsibilities regarding whistleblowers' protection with respect to public employees.

Many state and county employees are directly responsible for protecting public health and safety through the administration of statutory requirements and enforcement rules and regulations. H.B. 467, H.D. 1 will help public employees uphold appropriate standards in their area of expertise.

Thank you for the opportunity to testify in support of H.B. 467, H.D. 1.

Sincerely,

Nora A. Nomura  
Deputy Executive Director

TESTIMONY IN SUPPORT OF HB467

COMMITTEE ON FINANCE HEARING

MARCH 2, 2011, 2 P.M.

As a state employee, I wish to recommend that HB467 be passed by the 2011 Hawai'i State Legislature. The additional protections afforded whistleblowers are necessary for the optimum functioning of government.

Pat Matsueda

University of Hawai'i-Manoa English Dept.