



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

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February 2, 2011

To: The Honorable Karl Rhoads, Chair
The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Labor & Public Employment
and Members of the House Committee on Economic Revitalization & Business

Date: Friday, February 4, 2011
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 887 Relating to Wages

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 887, creates the prevailing wage enforcement special fund to be administered by the Department of Labor and Industrial Relations and requires .01% of all construction contracts subject to the Wages and Hours of Employees on Public Works Law, Chapter 104, Hawaii Revised Statutes (HRS) to be deposited into the fund to be used solely for enforcement of the prevailing wage law. Applies to all construction contracts with governmental contracting agencies after the effective date. DLIR defers to B&F on the technical issues of appropriate use of CIP Funds.

This law will take effect July 1, 2011.

II. CURRENT LAW

There is no funding mechanism for enforcement of the Chapter 104, HRS. All investigators are 100% general funds.

III. HOUSE BILL

The DLIR supports this measure and requests the following clarifications:

1. The Compliance Branch of the Wage Standards Division is currently complaint driven because of limited resources. Resolving close to 600 wage-related complaints last year, the Compliance Branch has cut random investigations and limits all field work as much as possible. This makes investigators available in the office to respond to public inquiries and continue investigations by phone and e-mail. Not the most effective methodology for enforcement, but the most cost-efficient. Even with these cuts, response time for Chapter 104 complaints as well as other wage complaints continues to grow. As of today, there are 164 pending wage complaints in the Division for 6 investigators. Of those 164, there are 33 pending Chapter 104, prevailing wage complaints with more than half of those older than 6 months and 10 older than one year. This measure would restore the Division's ability to conduct random investigations and provide more timely results, as well as improve the response times for other complaints. Typically, the number of Chapter 104 complaints that are filed with the Division represent just under 5% of all complaints received in a year, but the time it takes to resolve these complaints represent approximately 20-25% of an investigator's time due to the complexity of the investigation.
2. This measure appears to be similar to a provision that deposits 1% of state capital improvement projects for the Works of Art Special Fund in section 103-8.5, HRS. In 2009, the Works of Art Special Fund generated approximately \$4.5 million, one tenth of that would generate \$450,000 towards enforcement. This would provide for 4 new field investigators and a supervisor dedicated to enforcement of prevailing wages on construction contracts. Currently 6 field investigators statewide must divide their time over 600 other wage claims in addition to Chapter 104 complaints.
3. The Department believes some clarification is needed in the measure. There is some confusion as drafted as to what construction contracts this measure would apply. The phrase "total amount of each contract subject to Part I" on lines 6 and 7 on page 1, and the phrase "one-tenth of one per cent amount shall be calculated at the time a governmental contracting agency enters into a contract with a contractor" on lines 13-15 of page 1 will create some ambiguity. There are two definitions of the governmental contracting agency in Chapter 104, one in 104-1 and one in 104-2. The traditional definition of governmental contracting agency contained in Section 104-1, includes the counties and it is not clear how the comptroller will have influence over county funds. The definition of governmental contracting agency in 104-2 subjects a broader range of projects including Special Purpose Revenue Bonds. It is unclear how these types of funds

can be captured.