

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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January 26, 2012

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

The Honorable Angus L.K. McKelvey, Chair, Isaac W. Choy, Vice Chair
and Members of the House Committee on Economic Revitalization & Business

Date: Friday, January 27, 2012
Time: 10:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 1699 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1699 amends the Wage and Hour Law, Chapter 387, Hawaii Revised Statutes ("HRS"), by requiring an employer to provide an unpaid meal break of not less than thirty consecutive minutes if an employee works more than five hours unless a collective bargaining agreement contains express provisions for employee meal breaks.

The Department supports the intent of H.B. 1699 and offers some comments below.

II. CURRENT LAW

Currently, there is no provision in Hawaii's Wage and Hour Law that requires meal breaks.

III. COMMENTS ON HOUSE BILL

Neither State nor federal law requires meal or other break periods. The Child Labor law is an exception, requiring at least a 30-minute break for 14 and 15-year-old minors who work five continuous hours.

1. Hawaii's Wage and Hour Law applies to small businesses while those

businesses who make more than \$500,000 in gross sales per year are subject to the federal Fair Labor Standards Act 29 C.F.R. section 785.19; which does not require meal breaks.

2. The department seeks clarification on whether the penalty will be in addition to an employer paying the correct overtime or because the meal period is not hours worked; will the payment of the penalty be moot because the overtime has been paid?

Example: Employee earns \$10.00 per hour straight time and \$15.00 per hour overtime (1.5 x \$10.00) and worked 41 hours.

Sun	Mon	Tue	Wed	Thur	Fri	Sat	Hours Worked
	8	8	9	8	8		41

The employee earns:

Straight time - 40 hours x \$10.00 = \$ 400.00
Overtime- 1 hour x \$15.00 = \$ 15.00 (or meal period not taken *)
Total wages earned = \$ 415.00

However, if the reason the employee worked one hour overtime is due to working through his meal period * of one hour, he would be paid the same pay as the above calculation.



**Testimony to the House Committees on Labor & Public Employment and Economic
Revitalization and Business
Friday, January 27, 2012
10:30 a.m.
State Capitol - Conference Room 309**

RE: HOUSE BILL NO. 1699 RELATING TO LABOR

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and members of the committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to House Bill No. 1699 relating to Labor.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

HB 1699 requires employers to provide meal breaks for employees and imposes penalties for failure to provide meal breaks. The Chamber believes the Bill is unnecessary and opposes the Bill for the following reasons:

First, the Bill will cause confusion and litigation regarding the calculation of overtime payments due to the unintended effect of altering current law on calculating employees' regular rate of pay for overtime purposes. For example, under FLSA, employers can exclude premium pay given for work on holidays or weekends when calculating the employee's regular rate of pay for overtime purposes. Under Hawaii law, if the bill passes, an employer would have to factor in premium pay in calculating the regular rate because the only method of calculating the regular rate of pay under Hawaii law is to take the total earnings for the period and divide by the number of hours worked.

Second, a meal break, we believe is unnecessary. Most employers already provide meal breaks, and in many cases provide meal breaks longer than 30 minutes.

Third, the bill will hurt employees who would rather work through their lunch or take shorter breaks in order to shorten their work day. Employers who currently operate ten hour shifts would be

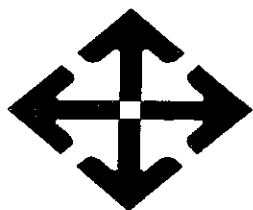
required to force employees to take an unpaid 30 minute meal break before the fifth and again before the tenth hour of work, thereby prolonging an already long work day.

Fourth, the bill will require employers to carefully monitor employees to ensure that they take meal breaks before 5 continuous hours of work have passed. To avoid paying this penalty, employers will have to send supervisors to every employee's cubicle and work location to make sure that employees have taken lunch breaks on time.

Finally, this bill imposes a significant administrative weight on employers, requiring them to create procedures to record meal breaks and to record whether a person elects to forego a meal break in order to obtain overtime pay. The bill may require employers to revise, rewrite or reprogram their payroll systems to recognize the one-half hour per day overtime allocation.

Hawaii's businesses are in the process of recovering from an economic stagnation. The Chamber firmly believes that the enactment of this mandate at this time will greatly hamper the efforts to revitalize the economic climate. Hawaii's business community is at a critical point -- where any additional mandates could mean the difference between continued existence or bankruptcy. As evidenced by recent media accounts, many local establishments, some of which have faithfully served consumers for generations, are going out of business.

Overall, this bill will significantly increase the cost of doing business in Hawaii. For these reasons, the Chamber opposes this measure. Thank you very much for the opportunity to testify.



The Hawaii Business League

Century Square 1188 Bishop St., Ste 1003 Honolulu, HI 96813-3304
Phone: (808) 533-6819 ♦ Facsimile: (808) 533-2739

January 27, 2012

Testimony To: House Committee on Labor & Public Employment
Representative Karl Rhoads, Chair

Presented By: Tim Lyons
President

Subject: H.B. 1699 – RELATING TO LABOR.

Chair Rhoads and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business organization. We are opposed to this bill based not on its intent but because we believe it is unnecessary.

We are also not opposed to this bill because we think that employees should have to work forever without meal breaks however, we do find that the complaints in this area seem to be almost nonexistent; at least, we have not heard of any.

Secondly, most employers are aware of the fact that employees need periodic breaks from their work and they will accommodate this without requiring employees to work straight through if

for no other reason than productivity is better when employees are in good health and get the proper nourishment.

It is also quite common for employees to request that they work right through a meal period in order to take off early and this bill does not seem to allow for that or any other exception. In fact, we know of situations where employers, because of extreme circumstances have had to require their employees to work straight through without a break but then give them additional time off at the end of the day or reward them with some other type of bonus. Drivers stuck in traffic, construction crews with fifteen (15) minutes more needed to close a job instead of returning the next day, a retail salesperson in the middle of a sales transaction all come to mind as to situations where the employee delaying a break could be essential. To mandate as a requirement, particularly with a one and one half hour penalty provision, not only will work against the employer but we believe in many cases, will work to the employee's disadvantage as well.

We also note that the bill provides that the meal break would not apply if there is a Collective Bargaining Agreement that contains expressed provisions about meal breaks. We believe that this should read instead that this entire bill does not apply where there exists a Collective Bargaining Agreement. It is up to the bargaining parties to address employee meal breaks and this is something that should be negotiated, not mandated.

Based on the above, we do not support this bill.

Thank you.



January 27, 2012

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON
LABOR & PUBLIC EMPLOYMENT, AND ON
ECONOMIC REVITALIZATION & BUSINESS
ON HB 1699 RELATING TO LABOR**

Thank you Chair Rhoads, Chair McKelvey and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

HTA requests an exception from this bill for employees whose regular duties require them to be on the road. Our concern is not a policy issue as motor carriers do provide meal breaks to their employees, but is a concern rooted in operational realities.

Drivers of commercial vehicles cannot stop and park their tractor trailers, trucks, buses, etc., for any appreciable length of time, anywhere. There simply is no space for this to occur, or they are chased away by property and store owners for taking up too much space, or by police authority for obstructing traffic.

The nature of the job offers drivers the opportunity for multiple short breaks, during which time meals and refreshment may be consumed. The drivers are paid for the short periods of time taken. These quick breaks also mean the drivers get done with their runs faster and get home earlier.

This scenario is favored by the drivers themselves.

Furthermore, federal motor carrier safety regulations already require a break for drivers, but afford more flexibility.

We support an amendment which could be placed in a new paragraph (i), on page 7 after line 9 stating, "This section shall not apply to an employee who operates a motor carrier vehicle as defined in chapter 286-201."

Thank you.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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TO: Representative Karl Rhoads
Chair, Committee on Labor & Public Employment
Representative Angus L.K. McKelvey
Chair, Committee on Economic Revitalization & Business

FROM: Gary M. Slovin

DATE: January 26, 2012

RE: H.B. 1699 – Relating to Labor

Hearing: Friday, January 27, 2011 at 10:30 am in Room 309

Dear Chairs Rhoads and McKelvey and Members of the Committees on Labor & Public Employment and Economic Revitalization & Business:

I am Gary Slovin, testifying on behalf of Covanta Energy Corporation, the operator of HPOWER. I have been working on the subject of meal breaks on behalf of HPOWER for several years. In prior years, the bills dealing with meal breaks that have passed have included an exemption for facilities like HPOWER, which are subject to environmental regulations.

In its present form, H.B. 1699 does not include this exemption. The exemption for HPOWER and similar facilities is a very narrow one that will not affect a significant number of workplaces because very few facilities would fit within the exemption.

The problem that facilities like HPOWER present is that they are subject to various strict environmental regulations. Because of this, it is necessary to monitor the environmental performance of the facility on a 24-hours a day, seven-days a week basis. Its record of compliance is excellent, and that is accomplished not only by its sophisticated equipment, but also through the skills of an excellent and highly trained complement of local employees.

January 26, 2012
Page 2

We respectfully request that H.B. 1699 be amended by inserting the following language at the end of subsection (g) on page 7:

“This subsection shall not apply to any employer who is the operator of a continuously operating facility that is regulated by an environmental permit, provided that an on-duty meal period is provided.”

This language is the same that was included in the 2003 bill passed by the Legislature, with the addition of language that makes clear that an on-duty meal period must be permitted.

If you or any member of the joint Committees has any questions regarding the HPOWER operation, we would be happy to meet with you or your staff to discuss any questions you have, or any need for additional information you may have as well. Thank you for this opportunity to comment on this measure.



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING Friday, January 27, 2012
 10:30 am
 Conference Room 309

RE **HB1699, Relating to Labor**

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

RMH strongly opposes HB1699, which requires employers to provide meal breaks for employees who work more than five consecutive hours. This mandate is unnecessary and will increase costs in an already uncertain economy.

Most retailers already provide a ten- to fifteen-minute paid break during a four to five hour shift. HB1699 adds an additional unpaid one-half hour to an employee's workday. This could be problematic, for example, for a part-time employee who is a student or parent of small children who are on a very structured schedule.

In the highly competitive, customer-directed retail industry where superior service is tantamount to success, retailers develop staffing schedules that ensure attention to and assistance for consumers while providing ample rest and meal breaks for their associates. Mandating a single, specific standard requirement in an industry consisting of a variety of kinds of retail operations and categories would severely limit the retailer's flexibility to meet the specific needs of the operation and accommodate the personal individual needs of the employees.

The members of the Retail Merchants of Hawaii respectfully urge you to hold HB1699. Thank you for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202



Labor Caucus

January 24, 2011

Representative Karl Rhodes
Representative Angus L.K. McKelvey
Hawaii State Capital
Labor & Public Employment and Economic Revitalization & Business
415 South Beretania Street, Room 309
Honolulu, Hawaii 96813

Subject: H.B. No.1699 Hearing January 27, 2012 Testimony in Support

To: Representative Karl Rhodes, Representative Angus McKelvey, Labor & Public Employment committee, and Economic Revitalization and Business committee.

Aloha, my name is Steve Canales. I strongly support H.B.1699; meal breaks for workers.

Many Hawaii workers have little knowledge that meal breaks are not a given. In this day and age with longer work days and understaff employees. This bill will give workers the added security and knowledge that meals can be taken after five hours.

I strongly support H.B.1699. I would like to thank the Labor & Public Employment committee, and Economic Revitalization & Business for this opportunity to testify.

Sincerely,

Steve Canales
Labor Caucus Chair
Democratic Party of Hawaii
1050 Ala Moana Blvd. Ste. #2150
Honolulu, Hawaii 96814



Testimony to the House Committees on Labor & Public Employment and
Economic Revitalization and Business

Friday, January 27, 2012

10:30 a.m.

State Capitol - Conference Room 309

RE: HOUSE BILL NO. 1699 RELATING TO LABOR

Aloha Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and members of the committees. We are Ryan Kusumoto and Lisa Kracher, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter ("SHRM Hawaii"). SHRM Hawaii represents nearly 1,000 human resource professionals in the State of Hawaii.

We are writing to respectfully oppose HB 1699 which requires employers to provide meal breaks for employees and imposes penalties for failure to provide meal breaks.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We truly have our employers' and employees' interests at heart. We respectfully oppose this measure for the significant implementation challenges and administrative burden it would impose and for the potential for unintended consequences and costs. Among our most significant concerns are the challenges of implementing the provisions regarding the calculation of overtime payments. We believe that overtime payments may be necessary under this bill due to the potential unintended effect of altering the current Hawaii law on calculating employees' regular rate of pay for overtime purposes. We are reviewing the remaining portions of this bill and, if it advances, request to be a part of the dialog concerning it. Thank you for the opportunity to testify.

AFFILIATE OF



SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

Aloha Recycling

75 Amala Place, Kahului, Hawaii 96732 Tel (808) 871-8544 Fax (808) 873-6364

Testimony to the House Committee on Labor & Public Employment and
Economic Revitalization and Business
Friday, January 27, 2012; 10:30 a.m.
Conference Room 309
State Capitol
415 South Beretania Street

RE: HOUSE BILL 1699 RELATING TO LABOR

Dear Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and
members of the committees:

My name is Tom Reed and I **OPPOSE** HB 1699. My company is Aloha Glass Recycling. We have 26 employees, 13 of whom were hired within the last three months. The new hires support a contract we won to operate four recycling centers. This new contract is very challenging from a scheduling point of view. Adding the requirements of this legislation would cripple our ability to efficiently utilize our employees when needed and where needed. We insure that all of our employees have break time on a schedule that works for them. Please vote no on HB 1699.

Thank you for the opportunity to submit testimony. If you have any questions, please contact me at 808-871-8544 or treed@maui.net.

Sincerely yours

Tom Reed
President

Glenn Ida
45-284 Pahikaua St.
Kaneohe, Hi. 96744

Rep. Karl Rhoads, Chair
Rep. Kyle Yamashita, Vice-Chair
Committee on Labor & Public Employment
Friday, Jan. 27, 2012, at 10:30 AM.
Conference Room 309

RE: **SUPPORT HB 1699**

Aloha Chair Rhoads, Vice-Chair Yamashita and Committee members,

My name is Glenn Ida and I STRONGLY SUPPORT HB1699, Relating to Labor, which requires employers to provide meal breaks for employees. Imposes penalties for failure to provide meal breaks.

My son used to work in a National Family Restaurant. His working conditions were subject to the call of the manager. He was assigned multiple tasks within the kitchen which kept him occupied most of the time during a shift without scheduled breaks of any kind much, less a meal break away from his station. He has work at other establishments under similar conditions.

Thank you for bringing this issue to the table again. HB 1699 will bring much needed relief and fair treatment to workers.

Therefore, I STRONGLY SUPPORT HB 1699.

Thank you for this opportunity to testify.

Glenn Ida
808-295-1280