



**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.

LATE

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
INTERIM DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON LABOR & PUBLIC EMPLOYMENT
AND ECONOMIC REVITALIZATION & BUSINESS
ON
HOUSE BILL NO. 887

February 4, 2011

RELATING TO WAGES

House Bill No. 887 creates a Prevailing Wage Enforcement special fund to be administered by the Department of Labor and Industrial Relations. The special fund will receive moneys from one-tenth of one-percent of the total amount of contracts from governmental contracting agencies to be used to fund the enforcement of the State prevailing wage laws.

The Department of Budget and Finance supports the intent of the bill to enforce the prevailing wage laws; however, we believe the measure may provide unnecessary funds to enforce the State prevailing wage laws. Based on the \$835,596,630 allotted for capital improvement program projects for all means of financing in FY 10, the one-tenth of one percent would amount to \$835,596 being deposited into the special fund. This is in addition to the \$948,152 in general funds already appropriated to the Department of Labor and Industrial Relations for the Wage Standards Program.

From a policy perspective, operating funds should be used to pay for operating expenditures and capital improvement proceeds should be used to fund capital expenditures. As such, we believe it is not appropriate to fund the Prevailing Wage Enforcement special fund with capital improvement financing which would be repaid over a 20-year period, especially since general funds currently pay for the same enforcement services.

Additionally, the Department of Budget and Finance does not support the creation of any special fund or revolving fund that does not meet the requirements of Sections 37-52.3 and 37-52.4, Hawaii Revised Statutes. Special and revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 887, it is difficult to determine whether there is a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of the program and whether the means of financing for the program is appropriate.

NEIL ABERCROMBIE
GOVERNOR



BRUCE A. COPPA
Comptroller

RYAN OKAHARA
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
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TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEES
ON
LABOR & PUBLIC EMPLOYMENT AND ECONOMIC REVITALIZATION & BUSINESS
ON
February 4, 2011

H.B. 887

RELATING TO WAGES

Chair Rhoads, Chair McKelvey, and members of the Committees, thank you for the opportunity to testify H.B. No. 887.

The Department of Accounting and General Services (DAGS) supports the intent of H.B. No. 887 but cannot support passage of H.B. No. 887 because of the following reasons:

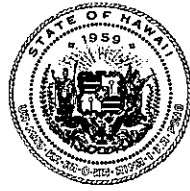
1. If passed, this bill will:

- A. Increase existing DAGS staff overview administrative responsibilities during the contract execution process for its construction projects.
- B. Require DAGS to ensure all governmental contracting agencies calculate and transfer funds for this purpose in a proper and timely manner. However, DAGS cannot ensure all governmental contracting agencies will comply with this

Legislative mandate because DAGS is not involved in the execution of construction contracts for all governmental contracting agencies. [NOTE: Even if DAGS were to require every State governmental contracting agency to submit a certification of payment for this purpose before any State funds are encumbered under a State construction contract, DAGS will not be able to ensure governmental contracting agencies using County or Federal funds for construction contracts will also comply with this Legislative mandate.]

- C. Require DAGS to assume “policing responsibilities” and additional reporting considerations (if possible) for this purpose.
- 2. DAGS does not have the resources needed for this Legislative mandate (due to staff vacancies; “furlough days; and budget shortages).

Thank you for the opportunity to testify on this matter.



LATE

Deputy Directors
FORD N. FUCHIGAMI
JAN S. GOUVEIA
RANDY GRUNE
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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 7, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 887

COMMITTEE ON TRANSPORTATION

House Bill 887 creates the prevailing wage enforcement special fund to be administered by the Department of Labor and Industrial Relations. The bill assesses a charge of .01% of all construction contracts subject to the Wages and Hours of Employees on Public Works Law, Chapter 104, Hawaii Revised Statutes (HRS) be deposited into the fund. The fund will be used solely for enforcement of the prevailing wage law. The bill applies to all construction contracts with governmental contracting agencies after the effective date.

The Department of Transportation opposes this bill. The charge assessed against Department of Transportation (DOT) construction contracts yields no direct benefit back to DOT and only increases the cost of its construction projects. In that regard, we suggest that those benefiting from the legislation bear the responsibility of funding this enforcement initiative. Furthermore, the assessment is unlimited. Many DOT projects are in the hundreds of millions of dollars. For example, a \$150 million highway project will add an additional \$1.5 million in fees. Federal funds cannot be used to pay this charge.