



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

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February 4, 2014

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Kyle T. Yamashita, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: February 4, 2014
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

**Re: H.B. No. 2323 Relating to Wages and Hours on Public
Works Law Contractor Compliance**

I. OVERVIEW OF PROPOSED LEGISLATION

Amends the prevailing wage law, Chapter 104, Hawaii Revised Statutes ("HRS") to assist DLIR in enforcement by prohibiting private agreements from setting aside any requirements under the law, increasing the penalties for interference or delay from \$100 per day and \$1,000 per project to \$1,000 per day and \$10,000 per project, clarifies that "contractor" includes subcontractors of the general, requires the general contractor to be secondarily liable for the subcontractor, and provides that notifications are final after 20 days after a copy is sent to the contractor unless an appeal is filed.

The department **strongly supports** this measure with minor adjustments that were developed with the Department of the Attorney General (AG) and the Department of Accounting & General Services (DAGS).

II. CURRENT LAW

The current prevailing wage penalties for interference or delay are \$100 a day and \$1,000 per project. There is no definition of "contractor".

III. COMMENTS ON THE SENATE BILL

The amendments in this measure will assist the DLIR in fine-tuning the enforcement efforts of the Wages and Hours of Employees on Public Works, Chapter 104, HRS.

Private agreements

Contractors who pay lower wages than required by law often try to use the defense that their employees agreed to the lower wage. By adding a section that specifically states the law cannot be set aside by private agreement, it will make it clear. Adding this provision mirrors other prohibitions already contained within Hawaii's wage laws (Chapters 387 and 388, HRS), which do not allow private agreements that contravene the law.

Definitions

This bill deletes the numbering of definitions in section 104-1, HRS. Therefore, the department suggests that in the definition of "Basic hourly rate" on page 1, line 11 to 15, the definition of "Basic hourly rate" be amended to replace the reference to "paragraph (7)" with the following:

~~[(1)]~~ "Basic hourly rate" means the hourly wage paid to a laborer or mechanic for work performed during non-overtime hours, but shall not include the cost to an employer of furnishing fringe benefits whether paid directly or indirectly to the laborer or mechanic as ~~[provided in paragraph (7);]~~ defined under the definition of "Wages".

The definition of "public work" is moved from section 104-2(a), HRS to section 104-1, HRS, to clarify that the definition applies to the whole chapter and not just section 104-2, HRS.

Increased penalties

The penalties for interference or delay are increased from \$100 a day to \$1,000 a day and from \$1,000 per project to \$10,000 per project. Before Act 160, (SLH, 2011), prevailing wage complaints were investigated by employer and now they are investigated by projects. Without these amendments, the penalty per investigation for interference or delay can now only be \$1,000. Many of the projects investigated are large projects and can be in the multi-million dollar range. The \$100 a day, and \$1,000 per project does not reflect the importance of compliance. Higher penalty values will make contractors understand the priority of compliance.

General secondarily liable for subcontractor

This proposal also codifies a general term usually contained in the construction contracts that the general contractor is contractually responsible for the payment of

the prevailing wage to all of the laborers and mechanics working on the public works construction project. This proposal serves to ensure that their subcontractors are also in compliance with the requirements of the law. Under this proposal when the general contractor hires a subcontractor that violates the prevailing wage law, the DLIR will go after the subcontractor to get compliance with the prevailing wage law. If the subcontractor does not comply or is unavailable, then the DLIR will go after the general for the back wages due the employees and penalties due to the State.

Final and conclusive

Section 5 of the bill deals with a problem DLIR is having enforcing the final notifications of violations and suspension orders. When contractors are aware of their liability under the law, after the closing conference discussing the particulars, and the investigation has come to an end, contractors are refusing to accept their certified mail containing their official notification of violations. While the DLIR proceeds with the next steps, the contractor comes back months later asking for their appeal rights because they did not receive their notice, even though it was sent to their regular place of business. This modification will allow the DLIR to avoid having to re-open cases.

All these provisions will assist the DLIR in enforcing the prevailing wage law and encourage contractors to comply with the law. When contractors comply there is a level playing field for the bidding of state and county projects and the contractors who operate with efficiency win the job, not because they pay their employees lower wages. Lastly, these proposed amendments would maintain fair bidding and protection of workers' rights and benefits by strengthening the investigation processes.

NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller

Maria E. Zielinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DEAN H. SEKI, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
LABOR & PUBLIC EMPLOYMENT
ON
February 4, 2014

H.B. 2323

RELATING TO WAGES AND HOURS ON PUBLIC WORKS LAW CONTRACTOR
COMPLIANCE

Chair Nakashima and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2323.

The Department of Accounting and General Services strongly supports H.B. 2323, an administration-sponsored measure, and defers to testimony submitted by the Department of Labor and Industrial Relations.

Thank you for the opportunity to submit written testimony on this matter.

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Honolulu, HI 96819
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Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 4, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND EMPLOYMENT

SUBJECT: **OPPOSITION TO H.B. 2323 WITH SUGGESTIONS, RELATING TO WAGES AND HOURS ON PUBLIC WORKS.** Increases the prevailing wage penalty from \$1,000 per project and \$100 per day to \$10,000 per project and \$1,000 per day. Clarifies that general contractors are secondarily liable for wages and penalties found due by their subcontractors and their agents. Prohibits private agreements made to contravene the law. Adds a definition for "contractor" and "public work".

HEARING

DATE: Tuesday, February 4, 2014
TIME: 9:00 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over approximately hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

H.B. 2323 proposes to, among other things, increase the prevailing wage penalties from \$1,000 to \$10,000 per project and from \$100 to \$1,000 per day and purports to clarify that the general contractor would be secondarily liable for payment of back wages and penalties imposed on any of their subcontractors. While GCA agrees that the prevailing wage should be paid when applicable, the proposed amendments are unreasonable and thus GCA **opposes** this measure.

The GCA is opposed to making the general contractor secondarily liable for payment of back wages and penalties impose on his subcontractor's notification of a violation or decision. The general contractor is usually not involved in the investigation of a subcontractor for alleged violation of the wage and hour law and therefore, unable to try to get the subcontractor to comply with the request of the DLIR. The definition of contractor in the law includes general, subcontractors and other entities and individuals while the change in the statute states the notice is sent to the contractor. Which party will be notified of the decision? Will all parties involved in the contract be sent the notice or just the subcontractor? If the general contractor is not timely notified he will not be able to file an appeal within the twenty one day window.

The GCA is concerned that because the general contractor on large public works projects may have numerous subcontractors working on the project. We believe it is unfair to hold the general contractor responsible to pay penalties for actions taken by a subcontractor when he or she has no knowledge or control over activities regarding payment of appropriate wages.

GCA suggests that in lieu of H.B. 2323, this legislature highly consider H.B. 1976, which establishes a wage and hour for public works projects special fund to assist the DLIR with enforcement of wage and hour law. H.B. 1976 proposes to fund two full time permanent labor law enforcement specialist IV positions. These positions would allow DLIR the proper resources to speed up investigations to enforce prevailing wage provisions already provided in the law.

We urge the committee to defer the bill. Thank you for the opportunity to testify on this measure.



Randy Perreira
President

HAWAII STATE AFL-CIO

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Telephone: (808) 597-1441
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The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 4, 2014

H.B. 2323 - RELATING TO WAGES
AND HOURS ON PUBLIC WORKS
LAW CONTRACTOR COMPLIANCE

The Hawaii State AFL-CIO supports H.B. 2323 which increases the prevailing wage penalty from \$1,000 per project and \$100 per day to \$10,000 per project and \$1,000 per day and clarifies that general contractors are secondarily liable for wages and penalties found due by their subcontractors and their agents and prohibits private agreements made to contravene the law.

The purpose of this bill is to help ensure employees are properly protected under chapter 104, HRS and to help make sure they are paid any back wages owed to them. In all, H.B. 2323 should help reduce the number of violations and protect workers from contractors trying to evade the law.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

Testimony of Glenn Ida
Representing
The Plumbers and Fitters United Association, Local 675
1109 Bethel St. Lower Level
Honolulu, Hi. 96813

Rep. Mark Nakashima, Chair
Rep. Kyle Yamashita, Vice-Chair
Committee on Labor and Public Employment
Tuesday, 2-4-2014
9:00 AM, Room 309

Re: Support of HB2323, Relating to Wages and Hours on Public Works Law
Contractor Compliance.

Aloha Chair Nakashima, Vice-Chair Yamashita and Members of the Committee,

My name is Glenn Ida representing the 2000 active members and retirees of the Plumbers and Fitters UA, Local 675. Local 675 is an affiliate of the Hawaii Building and Construction Trades Council.

Local 675 supports HB2323, which increases the prevailing wage penalty from \$1000 per project and \$100 per day to \$10,000 per project and \$1000 per day. Clarifies that General contractors are secondarily liable for wages and penalties found due to their subcontractors and their agents. Prohibits private agreements made to contravene the law. Adds a definition for contractor and public work.

We believe that the provisions in this bill, improve the protection of public works construction workers' rights and that the penalties will deter the willful violations of the Hawaii Wage and Hour Laws.

Therefore Local 675 supports HB2323.

Thank you for this opportunity to testify.

Mahalo,

Glenn Ida
808-295-1280

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Ryan Engle

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Stephen Hanson

simplicityHR by ALTRES

TESTIMONY TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

TUESDAY, FEBRUARY 4, 2014

9:00 A.M.

HAWAII STATE CAPITOL - ROOM 309

SUBJECT: H.B. 2323 - RELATING TO WAGES AND HOURS ON PUBLIC WORKS LAW CONTRACTOR COMPLIANCE

Dear Chair Nakashima, Vice-Chair Yamashita, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly opposes** H.B. 2323, which would: 1) prohibit private agreements from contravening or setting aside any requirement under chapter 104, HRS; 2) Adds definitions of "contractor" and "public work;" 3) Increase the prevailing wage penalty from \$1,000 per project and \$100 per day to \$10,000 per project and \$1,000 per day; 4) Clarify that general contractors are secondarily liable for payment of back wages and penalties imposed on any of their subcontractors; and 5) Require notifications of violations to be final and conclusive unless within 20 days after a copy is sent to the contractor, the contractor files a written notice of appeal.

Existing law, Chapters 104-4 and 104-24, HRS, already allows stoppage of work by the government if the contractor is found in violation of Chapter 104. Therefore, S.B. 2261 is unnecessary and will have a tremendous negative impact on the relationship between the government, contractors, and subcontractors involved in a public works project, as well as promote a more adversarial relationship between contractors and subcontractors, ultimately resulting in a higher cost to taxpayers.

Based on the foregoing reasons, BIA-Hawaii is in **strong opposition** to H.B. 2323.

We appreciate the opportunity to share with you our views.

yamashita1

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 31, 2014 9:32 AM
To: LABtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB2323 on Feb 4, 2014 09:00AM*

HB2323

Submitted on: 1/31/2014

Testimony for LAB on Feb 4, 2014 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



International Brotherhood of Electrical Workers

LOCAL UNION NO. 1186 • Affiliated with AFL-CIO

1935 HAU STREET, ROOM 401 • HONOLULU, HI 96819-5003
TELEPHONE (808) 847-5341 • FAX (808) 847-2224

February 3, 2014

VIA FAX 586 6331

TO: **HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**
For Hearing on Tuesday, February 4, 2014, at 9:00 a.m., in Conf. Rm. 309

LATE

RE: **TESTIMONY IN STRONG SUPPORT OF HB 2323**

Honorable Chair Nakashima, Vice Chair Yamashita, and Committee Members,

The **International Brotherhood of Electrical Workers Local Union 1186** represents over 3,400 members working in electrical construction, telecommunications, and with Oceanic Cable. Our members include civil service employees at Pearl Harbor, Hickam, Kaneohe, and military facilities throughout Hawaii. IBEW Local 1186 also represents over 110 signatory electrical contracting companies that perform most of the electrical work in our state.

We strongly support HB 2323, which increases the prevailing wage penalty from \$1,000 per project and \$100 per day to \$10,000 per project and \$1,000 per day; clarifies that general contractors are secondarily liable for wages and penalties found due by their subcontractors and their agents; prohibits private agreements made to contravene the law; and clarifies the definition for "contractor" and "public work".

HB 2323 fixes some of the loopholes used by bad contractors to circumvent enforcement of existing state prevailing wage laws. The current penalties for violations also need to be increased, as contractors continue to see the weak enforcement and penalties available to the State. The existing penalties have become just a small cost of doing business for unfair contractors who wish to continue taking advantage of their workers, and cheating other contractors from fairly bidding on the work for their families and employees.

Thank you for giving us this opportunity to testify in strong support of HB 2323.

Mahalo and aloha,

A handwritten signature in black ink, appearing to read "Damien Kim".

Damien Kim
Business Manager – Financial Secretary
International Brotherhood of
Electrical Workers, Local Union 1186

