



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

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March 11, 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: Tuesday, March 11, 2014  
Time: 9:30 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: S.B. No. 2260 SD2 Relating to Wages and Hours on Public Works**

**I. OVERVIEW OF PROPOSED LEGISLATION**

Amends the prevailing wage law, Chapter 104, Hawaii Revised Statutes ("HRS") to assist DLIR in enforcement by increasing the length of suspension from 3 years to 5 years, clarifying the effective date of suspension and that suspension for falsification is immediate.

The SD2 included additional notification requirements to the governmental contracting agency, and the general contractor in the case of a subcontractor. In addition, the amendments are effective only until June 30, 2018, and provided an effective date of July 1, 2050. Further, the department is provided the flexibility to investigate one project at a time or consolidate two or more projects into one investigation.

The department **supports** this measure and suggests amendments.

**II. CURRENT LAW**

The current prevailing wage suspension period for a third violation and falsification of records is 3 years. Due to the length of time for an investigation and availability of due process procedures for the contractor, the Department finds that a contractor could delay the proceedings such that the 3 year period is of little consequence.

### III. COMMENTS ON THE SENATE BILL

The amendments in this measure will assist the DLIR in ensuring that the contractor who deliberately violates the law will serve a suspension period that is more of a deterrent as envisioned by the Legislature. In the situation of falsification of records, or for delay or interference with an investigation, the language of the amendment clarifies that the suspension will be immediate, from all work.

The department suggests the following amendments.

1. In Section 1 of the bill no amendment is necessary for paragraph (d).
2. In Section 5, striking the temporary nature of the amendments by removing the phrase "provided that on July 1, 2018, this Act shall be repealed and sections 104-24 and 104-25, Hawaii Revised Statutes shall be re-enacted in the form in which they read on the day prior to the effective date of this Act."

The complex nature of these investigations would make it difficult to assess the effectiveness of the changes, before July 1, 2018, and the five-year penalty period would not be fully carried out on any of the potentially suspended contractors.

The department suggests the following language for the enactment section:

This Act shall take effect upon its approval, and shall be applicable to all construction contracts entered into after the effective date of this Act.

3. 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 and would mirror similar prohibitions already contained within Hawaii's wage laws (Chapters 387 and 388, HRS). The department recommends that a new section be added as follows:

"§104- Provisions of law may not be waived by agreement. No provision of this chapter may in any way be contravened or set aside by private agreement."

4. The department recommends that a definition of "contractor" be added to clarify the various terminology used in the chapter of a contractor who may be a general or sub-contractor.

"Contractor" means any person furnishing construction

for a public work under a contract with a governmental contracting agency, subcontractor, or any other person under a subcontract arrangement with any person who has a construction contract subject to this chapter."

Similarly, the department suggests the following housekeeping amendment for consideration at the end of the first paragraph of 104-1:

as described in [~~paragraph (7);~~] the definition of "wages".

5. The department recommends the definition of "public work" be 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.
6. The department recommends increasing penalties from \$1,000 to \$10,000 per project and from \$100 to \$1,000 for each day the violation continues.

Prevailing wage projects are big construction projects and larger penalty amounts would provide incentive to comply. When the penalty is small, contractors have little incentive for voluntary compliance.

7. The department also recommends adding the following paragraph to Section 104-22, HRS to clarify how the procurement prompt payment laws interact with the prevailing wage laws.

"(c) Notwithstanding the prompt payment provisions of section 103-10.5 to the contrary, the general contractor shall be secondarily liable and shall remain secondarily liable for the payment of the back wages and penalties assessed against any of the contractors on the public works construction project that are unpaid on the later of the twenty-first day after the notification of violation has been sent or a decision has been issued pursuant to section 104-23(c). Upon receipt, the governmental contracting agency shall notify the contractor and if the contractor is a subcontractor, the governmental contracting agency shall notify the general contractor of its intent to pay the amount of back wages and penalties found due and demanded by the department within twenty-one days from the date of the notification. The governmental contracting agency shall pay from any amounts then due to the contractor or general contractor, the amount assessed as back wages and penalties. Any such payment made by the governmental contracting agency shall not be deemed a breach of contract, nor shall such payment excuse the

contractor or general contractor from completing the project for the contract price and in accordance with the contract completion deadline."

8. The department recommends clarifying the final date of the notice of violation by amending section 104-23(b) to read as follows:

"(b) A notification of violation shall be final and conclusive unless within twenty days after a copy ~~[was mailed to the violator, unless within the twenty-day period the violator]~~ has been sent to the contractor, the contractor files a written notice of appeal with the director."

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  
March 11, 2014

S.B. 2260, S.D. 2

RELATING TO WAGES AND HOURS ON PUBLIC WORKS

Chair Nakashima and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 2260, S.D. 2.

The Department of Accounting and General Services supports the intent of S.B. 2260, S.D. 2 and defers to the Department of Labor and Industrial Relations on the substantive provisions of this measure.

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

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 11, 2014

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

SUBJECT: **COMMENTS TO S.B. 2260, SD2, RELATING TO WAGES AND HOURS ON PUBLIC WORKS.** Increases the suspension period from three to five years for a third violation of a person or firm who violates state law on wages and hours of employees on public works. Clarifies the effective date of suspension. Clarifies that a first, second, or third violation refers to each investigation involving one or more projects, rather than each project, in which a contractor has failed to comply. Specifies that suspension for falsification of records or delay or interference with an investigation is immediate. Specifies who the director of labor and industrial relations must notify of any suspension order. Repeals 06/30/2018. Effective 07/01/2050. (SD2)

#### HEARING

DATE: Tuesday March 11, 2014  
TIME: 9:30 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 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.

GCA offers the following comments on this measure. S.B. 2260, SD2 proposes to increase the suspension period from three to five years for contractors who fail to pay prevailing wage and receive a third violation within two years, falsify records or interfere with an investigation. The bill also amends the language in section 103D-24(d), which includes pre 2011 language whereby the department would consider violations on a per “investigation” basis rather than on a per “project” basis.

While GCA agrees that the prevailing wage should be paid when applicable and that the amended language in Section 103D-24(d) referencing violations on a per investigation basis is preferred over the current law, the proposed increase from three years to five years is unreasonable. The proposed bill will not further resolve the delay in processing violations and may not follow proper due process procedures.

The proposed increase in suspension period is not a solution to the real problem, which continues to be the lengthy process for conducting and completing an investigation and adjudication of a properly filed appeal. According to 2011 testimony investigations of prevailing wage violations could take up to two years to resolve. Increasing the penalty from three years to five years will not solve this delay nor deter the non-compliant contractors from such activity. Per DLIR as of November 27, 2013, a total of fifteen cases have resulted in three year suspensions for various violations.

GCA suggests that in lieu of this measure the Committee consider S.B. 3039 which appropriates funding from the general fund for two full time positions as labor law enforcement to assist the DLIR with enforcement of wage and hour law. These positions would allow DLIR the proper resources to speed up investigations to enforce prevailing wage provisions already provided in the law. The House version of S.B. 3039 is H.B. 1976, which creates a special fund to re-establish two positions within the labor enforcement division.

Thank you for the opportunity to share our testimony.

**HAWAII OPERATING ENGINEERS  
INDUSTRY STABILIZATION FUND**



*Uniting our strengths and working together  
for a better tomorrow.*

Affiliated AFL-CIO  
OPEIU - 3 - AFL-CIO (3)

March 10, 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: March 11, 2014  
Time: 9:30 a.m.  
Place: Conference Room 309, State Capitol

FROM: Kimberly Ribellia, Government Liaison  
Hawaii Operating Engineers Industry Stabilization Fund

RE: Support of Senate Bill 2260, SD2 – Relating to Wages and Hours on Public Works

My name is Kimberly Ribellia, Government Liaison, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

On behalf of the Stabilization Fund, I am in **strong opposition** to Senate Bill 2260, SD2, which increases the suspension period from three to five years for a third violation of a person or firm who violates state law on wages and hours of employees on public works. Clarifies that a first, second, or third violation refers to each investigation involving one or more projects, rather than each project, in which a contractor has failed to comply.

HOEISF does not support the proposed language in the bill that states:

*(d) A first, second, or third violation refers to each [project] investigation involving one or more projects in which the department finds that a contractor has failed to comply with this chapter."*

HOEISF prefers not to change the language currently in HRS 103D-24(d) in which the Department of Labor and Industrial Relations (DLIR) considers the failure to pay prevailing wages on each project as a violation versus a per investigation basis.

HOEISF suggests that in lieu of SB 2260, SD2, the committee consider SB 3039 which provides funding for two full-time labor law enforcement to assist DLIR with wage and hour law enforcement.

HOEISF strongly opposes Senate Bill 2260, SD2. Thank you for your consideration in this matter.



# BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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simplicityHR by ALTRES

## TESTIMONY TO THE HOUSE COMMITTEE ON LABOR & EMPLOYMENT

Tuesday, March 11, 2014

9:30 a.m.

Hawaii State Capitol - Room 309

## RE: S.B. 2260 S.D. 2 - RELATING TO WAGES AND HOURS ON PUBLIC WORKS

Dear Chair Baker, Vice-Chair Taniguchi, 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 **opposes** S.B. 2260 S.D. 2, which proposes to extend the suspension period from three to five years for a third violation of a person or firm who fails to pay the prevailing wage under a public work contract. Clarifies that a first, second, or third violation refers to each investigation involving one or more projects, rather than each project, in which a contractor has failed to comply. Specifies that suspension for falsification of records or delay or interference with an investigation is immediate.

Under current law, a contractor who inadvertently pays an employee working on multiple projects at the same time under an erroneous classification could potentially face a three year suspension for three notice of violations. This contractor would have insufficient notice or a lack of opportunity to correct the violation before being penalized.

Increasing the period from three to five years is unreasonable and will not resolve the delay in processing these violations, which is the real problem. Perhaps this Committee could review S.B. 3039, which would fund two permanent full time labor law enforcement specialist IV positions to help enforce the existing prevailing wage law.

We appreciate the opportunity to share with you our views.



*A'ohe hana nui ka alu'ia*  
*"No Task Is Too Big When Done Together By All"*

**HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO**

735 Bishop Street, Suite 412 \* Honolulu, Hawaii 96813  
(808) 524-2249 - FAX (808) 524-6893

**KIKA G. BUKOSKI**  
*Executive Director*

March 10, 2014

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Workers Local 996

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Roofers, Waterproofers & Allied  
Workers United Union of Roofer  
Local 221

Honorable Representative Mark Nakashima, Chair  
Honorable Representative Kyle Yamashita, Vice Chair  
Members of the Committee on Labor and Public Employment  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

RE: SB2260 SD2 RELATING TO WAGES AND HOURS ON PUBLIC WORKS Hearing:  
Tuesday, March 11, 2014, 09:30 a.m. Conference Room 309

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO is a chartered member of the Building and Construction Trades Department, AFL-CIO first organized in 1908 and comprised of 14 out of 15 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 15,000 members locally. Our primary mission is to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council Supports SB2260 as introduced and disagrees with certain provisions in Senate Draft 2 which as proposed, repeals ACT 160 (2011) which specifies that a first, second, or third violation refers to an investigation based on a project by project basis versus multiple projects and provides an expiration date of June 30, 2018.

This measure as introduced attempts to address ongoing abuse by contractors who willfully disregard wage and hour requirements when contracted to perform work on public works projects. Public works projects are funded by public tax payer dollars and therefore regulations intended to protect the public's best interest should be strictly enforced and adhered to.

Any willful intent to defraud the public should be dealt with swiftly and with significant consequence. Current penalties do not appear to dissuade contractors from such illegal practice of defrauding the public.

As such, we humbly request that the following amendments be made to SB2260 SD2;

- 1) Section 1(d): remove proposed amended language referring to each "investigation involving one or more projects", and honor provisions of ACT 160 (2011);
- 2) Section 5: remove repeal date of June 30, 2018;
- 3) Section 5: amend effective date to take effect upon approval.

Mahalo for the opportunity to provide comment and suggested amendments to SB2260, SD2.





# HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

## TESTIMONY OF HAWAII LECET PETER H. M. LEE

HOUSE OF REPRESENTATIVES  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2014

### COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Mark M. Nakashima, Chair  
Rep. Kyle T. Yamashita, Vice Chair

Rep. Henry J.C. Aquino	Rep. Roy M. Takumi
Rep. Linda Ichiyama	Rep. Ryan I. Yamane
Rep. Gregg Takayama	Rep. Aaron Ling Johanson
Rep. Kaniela Ing	

### NOTICE OF HEARING

DATE: Tuesday, March 11, 2014  
TIME: 9:30 AM  
PLACE: Conference Room 309  
State Capitol  
415 South Beretania Street

### **TESTIMONY ON SENATE BILL NO. 2260 SD2, RELATING TO WAGES AND HOURS ON PUBLIC WORKS.**

TO THE HONORABLE MARK NAKASHIMA, CHAIR; KYLE YAMASHITA, VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Peter H. M. Lee, and I am the Construction Compliance Officer of Hawaii Laborers-Employers Cooperation and Education Trust (LECET). Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify in **STRONG OPPOSITION** to Senate Bill No. 2260 SD2, which amends that a first, second, or third violation refers to each investigation involving one or more projects, rather than each project, in which a contractor has failed to comply.

In 2011, the industry worked hard to clarify Notice of Violations by DLIR. As a result, the Legislature passed HB1434 HD2 SD1, and was signed by the Governor as Act 160 on June 23, 2011 (Gov. Msg. No. 1263). Act 160 (HRS 104-24(d)) states that...

**"A first, second, or third violation refers to each project in which the department finds that a contractor has failed to comply with this chapter."**

We are oppose to the amendment made to SB2260 SD2, page 2, line 4, and for this reason, I am in **STRONG OPPOSITION** to this measure. I humbly ask that SB2260 SD2 be held.



# LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



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*Business Manager/  
Secretary-Treasurer*

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*Auditor*

**LEUMA L. LEATUMAUGA**  
*Sergeant-At-Arms*

March 10, 2014

Honorable Mark Nakashima, Chair  
Honorable Kyle Yamashita, Vice Chair  
Members of the House Committee on Labor and Public Employment

**LATE**

RE: **SB2260 SD2** Relating to Wages and Public Works  
DATE: March 11, 2014  
TIME: 9:30 A.M.  
PLACE: Room 309  
POSITION: **Oppose**

Honorable Mark Nakashima, Vice Chair Yamashita and members of the Committee:

SB2260 SD2 relate to public works, prevailing wages and suspension. The bill increases the suspension period from three to five years. While we do not condone unpaid wages, we believe that 5 years is unreasonable. It may bankrupt a contractor or worse yet, encourage outside contractors to come to Hawaii to fill the void.

For this reason we oppose SB2260 SD2

Thank you for the opportunity to submit this testimony in opposition to SB2260 SD2.

Sincerely,

Al Lardizabal  
Government Relations