

SB2260

Measure Title: RELATING TO WAGES AND HOURS ON PUBLIC WORKS.
Report Title: Public Works; Prevailing Wage; Penalties; Suspension
Description: Extends 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.
Companion:
Package: None
Current Referral: CPN, JDL
Introducer(s): HEE



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

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January 29, 2014

To: The Honorable Rosalyn H. Baker, Chair,
The Honorable Brian T. Taniguchi, Vice Chair, and
Members of the Senate Committee on Commerce and Consumer Protection

Date: January 29, 2014
Time: 9:00 a.m.
Place: Conference Room 229, State Capitol

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

Re: S.B. No. 2260 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 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 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.

Clarifying the effective date of suspension

Contractors have the opportunity to appeal a finding of violation and an appeal may delay the effective date of a suspension. The Department, with the concurrence of DAGS and the AG, suggests that the language on page 1, lines 17 to 18 and continuing on page 3, lines 1 to 3 be rewritten as follows:

"The suspension shall be effective on the later of the twenty-first day after the sending of the notification of violation, or a decision has been issued pursuant to section 104-23(c)."

Notices

The Department finds that efficient and effective administration of the prevailing wage law needs coordination and communication between all parties involved, especially between the Department and the contracting agency. Therefore, the Department, with the concurrence of DAGS and the AG, suggests that section 104-25(b) also be amended as follows:

"(b) The director shall immediately notify the governmental contracting agency, comptroller, ~~and~~ the auditor or director of finance of the county, and in the case of a suspended subcontractor, the general contractor of any suspension order issued."

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. Ziellinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
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WRITTEN TESTIMONY
OF
DEAN H. SEKI, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
COMMERCE AND CONSUMER PROTECTION
ON
January 29, 2014

S.B. 2260

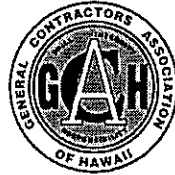
RELATING TO WAGES AND HOURS ON PUBLIC WORKS

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

The Department of Accounting and General Services supports the intent of S.B. 2260 and defers to recommendations provided in the Department of Labor and Industrial Relations testimony.

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

January 29, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

SUBJECT: **OPPOSITION TO S.B. 2260 WITH SUGGESTIONS, RELATING TO WAGES
AND HOURS ON PUBLIC WORKS.** Extends 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.

HEARING

DATE: Wednesday, January 29, 2014
TIME: 9:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi 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.

S.B. 2260 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. While GCA agrees that the prevailing wage should be paid when applicable, the proposed increase from three years to five years is unreasonable, will not further resolve the delay in processing violations and may not follow proper due process procedures.

This proposed measure is of grave concern to GCA since Act 160 (2011) was passed just three years ago where the intent of the law was to clarify that a single violation of prevailing wage refers to each separate project. 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 (three notice of violations = 3 years suspension). In that situation the contractor would have had no notice or an opportunity to correct the violation before being subject to the penalty. While proponents of this bill would disagree on such a possibility, the law as currently written could allow for such an outcome.

Additionally, the proposed amendment to Section 104-25(c) proposes to make the suspension immediate for falsification of records or for delay or interference of investigation. Such

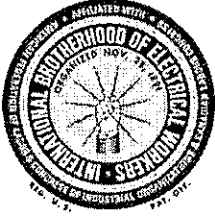
immediacy may violate procedural due process with regard to allowing a contractor to appropriately respond to allegations of falsification of records or interference of investigation.

This measure 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. It may be interesting to learn how many pending cases DLIR currently has and how they believe this bill may provide further resolution?

GCA suggests that in lieu of S.B. 2260, this legislature highly consider S.B. 3039 which establishes a wage and hour for public works projects special fund to assist the DLIR with enforcement of wage and hour law. S.B. 3039 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.

For these reasons, GCA opposes S.B. 2260 and requests that this bill be held.

GCA appreciates the opportunity to provide comments in opposition to S.B. 2260.



International Brotherhood of Electrical Workers
LOCAL UNION NO. 1186 • Affiliated with AFL-CIO

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January 28, 2014

TO: SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
For Hearing on Wednesday, January 29, 2014, at 9:00 a.m., in Room 229

RE: TESTIMONY IN STRONG SUPPORT OF SB 2260

Honorable Chair Baker, Vice Chair Taniguchi, 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 SB 2260. Penalties for violations of state prevailing wage laws have not been strong enough to stop companies from constantly trying to avoid or get around current laws to protect Hawaii's workers on state and county government public works projects.

The incentive to cheat is great in order to be the successful low-bidder on government projects. The pressure to cut corners also results in lower quality projects for our procurement agencies, at the expense of the state and all taxpayers.

Fair and competent contractors continue to lose projects, employees, and potential profits to bad-faith bidders who make up for their low or mistaken bids on the backs of their helpless workers, with little danger of penalty or cost to themselves. **SB 2260 will put more teeth into violations of state prevailing wage laws by increasing the mandatory suspension period for working on public works projects from three years to five years for a third violation of state prevailing wage law.**

Thank you for giving us this opportunity to testify, and we urge you to pass SB 2260.

Mahalo and aloha,

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

The Pacific Resource
PARTNERSHIP



Testimony of Cindy McMillan
The Pacific Resource Partnership

Senate Committee on Commerce & Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

SB 2260 – RELATING TO WAGES AND HOURS ON PUBLIC WORKS
Wednesday, January 29, 2014
9:00 AM
Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP supports SB 2260, Relating to Wages and Hours on Public Works, which extends 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.

PRP believes that labor is the backbone of our economy, and that every hardworking citizen should be compensated fairly and fully, in accordance with the terms of their employer (or former employer) has offered.

Therefore, PRP supports legislation like SB 2260 that seeks to ensure that our working citizens are not only fairly and justly compensated, but fully compensated for their contributions to their employer(s) and this State's economy.

Thank you for allowing us to voice our opinion and we respectfully request your support.

The Senate
The Twenty Seventh Legislature
Committee on Commerce and Consumer Protection
January 29, 2014, 9:00 a.m.
Room 229

Statement of the Hawaii Regional Council of Carpenters on
S.B. 2260 Relating to Wages and Hours on Public Works

The amendments proposed in S.B. 2260 will make the intent of the law consistent with today's realities.

Chapter 104 prevailing wage requirements are intended to level the playing field for bidders on public works, and prevent our own tax dollars from pushing wages down in our State. If unscrupulous contractors are able to win bids based on the assumption they can proceed to violate the law with impunity, law abiding contractors are put at a competitive disadvantage.

It is difficult enough to catch unscrupulous contractors underreporting hours worked, having skilled workers perform the work of one classification but misclassify and pay them at a lower rate, falsify reports to avoid paying daily overtime, etc., but if those contractors found in violation can circumvent a penalty such as suspension from bidding on public works, the law is not truly in effect. Fair competition for public works contracts is not in effect.

Finding a contractor in violation is not a snap decision. Investigation, consultation, appeals, all make a third violation a substantial occurrence. Furthermore, procedural delays should not become the equivalent of "time served" should a violation be found.

Should there be a suspension from bidding on public works, it is important that all government and industry entities involved be informed. Such suspended contractors may continue to work on non-public works construction. It is only for a segment of construction in Hawaii that the State is able to support fairness in this way.

Thank you for considering our comments on S.B. 2260.