

SB2261



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

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January 30, 2014

To: The Honorable Clayton Hee, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: January 30, 2014
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 2261 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 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

The definition of "contractor" has been added to clarify that contractor can refer to either the general or the subcontractor. During discussions with DAGS's and the AG some minor adjustments were suggested so that the definition would read:

“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.”

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.

The DLIR already has withholding authority under §104-21, HRS. Where money is still available on jobs that have not closed the DLIR provides notice to withhold to the contracting agency. Recently, conflicts with other prompt payment laws have caused problems in obtaining the withheld funds. The provisions in Section 4 of the bill attempt to remedy this. In concurrence with DAGS and the AG, we suggest that new paragraph (c) be modified to read:

"(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."

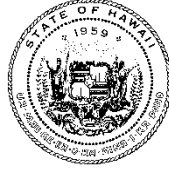
Final and conclusive

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
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WRITTEN TESTIMONY
OF
DEAN H. SEKI, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
JUDICIARY AND LABOR
ON
January 30, 2014

S.B. 2261

RELATING TO WAGES AND HOURS ON PUBLIC WORKS

Chair Hee and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 2261.

The Department of Accounting and General Services supports the intent of S.B. 2261 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.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
January 30, 2014

S.B. 2261 – RELATING TO WAGES AND
HOURS ON PUBLIC WORKS

The Hawaii State AFL-CIO supports S.B. 2261 which prohibits private agreements from contravening or setting aside any requirement under chapter 104, HRS, adds definitions of "contractor" and "public work", 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 payment of back wages and penalties imposed on any of their subcontractors, and requires 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.

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, S.B. 2261 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



Hawaii Chapter

January 30, 2014

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Sen. Clayton Hee, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair



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Associated Builders and Contractors, Hawaii Chapter
Testimony in **Opposition** to SB 2261

Chair Hee, Vice Chair Shimabukuro and members of the committee thank you for the opportunity to testify in this matter. I am Malcolm Barcarse, Jr. the legislative committee chair for Associated Builders and Contractors, Hawaii Chapter. We are **opposed** to this bill as this is an unnecessary bill that provides a chilling effect on the relationship between the government, contractors, and subcontractors on public works projects.

If the intent of this bill is to ensure that workers are being paid back wages after a violation is adjudged, the current law and administrative rules as written provides effective methods to collect back wages. HRS §104-4 and 104-24 already provides a procedure where the government can stop work and withhold payment on a project for the purpose of ensuring compliance with Chapter 104. Furthermore the definition of contractor in HAR §12-22-1 includes both the general and subcontractor so we feel that any language to say that general contractors are secondarily liable is unnecessary as the contracting agency has powers to withhold payment as a remedy.

All this bill really achieves is to promote a more adversarial relationship between general and subcontractors which may cause companies to not compete on state contracts or to submit higher bids because of increased liability exposure. This in turn results in higher costs to taxpayers who fund these projects.

Thank you for the opportunity to testify.

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America's Best Contractors



International Brotherhood of Electrical Workers

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January 29, 2014

TO: **SENATE COMMITTEE ON JUDICIARY AND LABOR**
For Hearing on Thursday, January 30, 2014, at 9:30 a.m., in Conf. Rm. 016

RE: **TESTIMONY IN STRONG SUPPORT OF SB 2261**

Honorable Chair Hee, Vice Chair Shimabukuro, 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 2261. 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 2261 will put more teeth into violations of state prevailing wage laws by increasing the maximum financial penalty per day and per project to keep pace with the increasing size of current projects. SB2261 also prevents contractors from forcing employees to accept private agreements subjecting them to less protections than provided by state prevailing wage laws.

Thank you for giving us this opportunity to testify, and we urge you to pass SB 2261.

Mahalo and aloha,

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

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB2261 on Jan 30, 2014 09:30AM*
Date: Friday, January 24, 2014 11:39:18 AM

SB2261

Submitted on: 1/24/2014

Testimony for JDL on Jan 30, 2014 09:30AM in Conference Room 016

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.

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