

SB3039



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

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February 11, 2014

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

To: The Honorable J. Kalani English, Chair,
The Honorable Donovan M. Dela Cruz, Vice Chair, and
Members of the Senate Committee on Transportation and International
Affairs

Date: February 11, 2014
Time: 10:30 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 3039 Relating to Public Works

I. OVERVIEW OF PROPOSED LEGISLATION

This measure creates a new fund that will assist in enforcement of the Wages and Hours of Employees on Public Works (prevailing wages), Chapter 104, Hawaii Revised Statutes (HRS). The fund will be administered by the DLIR and requires all State departments except for the Airports Division of the Department of Transportation receiving capital improvement project funds to deposit .01 percent of the total amount into the fund as of July 1, 2014. The DLIR is required to provide an annual report.

The measure also appropriates \$85,241 for two Labor Law Enforcement Specialists (LLES).

The Department supports this bill.

II. CURRENT LAW

The enforcement of the prevailing wage is out of the general funds. Wage Standards currently has four LLES positions qualified to investigate 104 investigations, and has pressed supervisors and the branch chief to also do

investigations. In addition, the investigators have responsibility for five other laws the Division enforces.

III. COMMENTS ON THE SENATE BILL

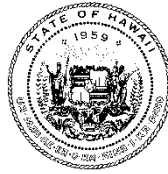
This proposal makes good sense because it will use a portion of the construction funds that the law regulates to fund investigations of violations. Other states use versions of this method with success. For example, the State of New York uses 0.10 of one percent of construction funds to support their prevailing wage enforcement.

The Wage Standards Division lost 5 LLES positions in the 2009 reduction-in-force that directly affected the enforcement of the prevailing wage law. In addition, recent changes in the law (Act 160, 2011 SLH), have changed the investigation process of prevailing wage investigations. These events together resulted in a backlog of 251 pending prevailing wage investigations of 51 contractors.

The department notes that the appropriation in Section 3 will fund two investigators for 6 months and the department assumes the intent of this bill would be to continue funding of the two investigators beyond that time period. However, the CIP funds subject to the prevailing wage and deposited into the fund created here fluctuate from year to year. Therefore, the department asks that the percentage of funds transferred as shown on page 3, line 7 be increased from 0.01 to 0.10 per cent to keep a fund balance that will maintain an appropriate amount to continue to fund investigators.

While it seems to be implied that the fund would be used to create positions and hire personnel to enforce the law, it would be clearer if the phrase “for enforcement” was modified to provide specifically for the inclusion of creating positions, training and hiring personnel. A suggested amendment to Section 2, §371- (c) on page 3 lines 17-19 could read as follows:

“(c) The department shall expend moneys in the wage and hour for public works projects special fund to enforce the provisions of chapter 104 on public works projects, including but not limited to creating positions, hiring and training personnel.”



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
SENATE COMMITTEES
ON
JUDICIARY AND LABOR
AND
TRANSPORTATION AND INTERNATIONAL AFFAIRS
ON
February 11, 2014

S.B. 3039

RELATING TO PUBLIC WORKS

Chairs Hee, English, and members of the Committees, thank you for the opportunity to submit written testimony on S.B. 3039.

The Department of Accounting and General Services (DAGS) supports the intent of S.B. 3039.

To improve efficiency, DAGS recommends that this measure be amended to require the 0.01 per cent assessments on construction CIP fund appropriations be automatically deposited into the wage and hour for public works projects special fund account rather than transferred by state departments required to deposit moneys into the special fund. DAGS defers to testimony submitted by the Department of Labor and Industrial Relations on this and other substantive provisions of S.B. 3039.

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

**HAWAII OPERATING ENGINEERS
INDUSTRY STABILIZATION FUND**



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

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

February 6, 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

The Honorable J. Kalani English, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair and
Members of the Senate Committee on Transportation and International Affairs

Date: February 11, 2014
Time: 10:30 a.m.
Place: Conference Room 016, State Capitol

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

RE: Support of Senate Bill 3039 – Relating to 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 **support** of Senate Bill 3039 which establishes the Wage and Hour Public Works Project Special Fund and creates and funds two additional labor law enforcement Specialist IV positions to assist the enforcement of Hawaii's wage and hour law for public construction projects.

While HOEISF supports Senate Bill 3039, we strongly encourage members of this committee to ensure that the Department of Labor and Industrial Relation Wage and Labor Division receive adequate funding to fill all existing permanent labor law enforcement specialist positions in their FY14-15 operating budget.

HOEISF strongly supports Senate Bill 3039. Thank you for your consideration in this matter.

The Senate
The Twenty Seventh Legislature
Committees on Judiciary and Labor and
Transportation and International Affairs
February 11, 2014, 10:30 a.m.
Room 016

Statement of the Hawaii Regional Council of Carpenters on
S.B. 3039 Relating to Public Works

The proposals in S.B. 3039 are greatly needed, and the proposed funding system carries with it the benefit of experience in other jurisdictions. It is important that tax dollars for public works construction are awarded and expended in a fair system. Unfortunately, enforcement is a necessary part of achieving fairness.

Replenishing enforcement staff lost over past years, and providing a funding mechanism that will be in tune with the level of public works construction, is consistent with the recovery of our economy and our construction industry. It would be prudent to allocate **.10 percent** of construction funding as part of administering those funds.

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. Middle class jobs are eroded and our living standards spiral down.

Adequate enforcement will not only detect violations, but it will spur voluntary compliance. Actions resulting from S.B. 3039 will send a message, combined with education, to discourage unscrupulous contractors from bidding based on a plan of underreporting hours worked, paying workers off-the-books, 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. Fair competition for public works contracts needs protection.

Thank you for considering our comments on S.B. 3039.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
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**TESTIMONY BY PETER H. M. LEE
HAWAII LECET**

THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS
Senator J. Kalani English, Chair
Senator Donovan M. Dela Cruz, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, February 11, 2014
TIME: 10:30 am
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

TESTIMONY ON SENATE BILL NO. 3039, RELATING TO PUBLIC WORKS.

TO THE HONORABLE CLAYTON HEE AND J. KALANI ENGLISH, CHAIRS; MAILE SHIMABUKURO AND DONOVAN DELA CRUZ, VICE CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Peter H. M. Lee, and I am the Construction Compliance Officer at 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 support** to Senate Bill No. 3039, which establishes the wage and hour for public works projects special fund and establishes and funds two additional labor law enforcement specialist IV positions to assist the enforcement of Hawaii's wage and hour law on public construction projects. Specifies a funding mechanism for the special fund and requires an annual report. Exempts the department of transportation's airports division from the special fund fee.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

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Since 1995, I have worked closely with DLIR's Wage Standards Division (WSD) in enforcing HRS 104, and through the years I have witnessed investigators dwindle down due to attrition, budget cuts and/or furloughs. To say the least, WSD is severely understaffed.

Not only does WSD enforces HRS 104 relating to wages and hours of employees on State or county public works construction projects, but they are also tasked to administer the following Statutes...

- Chapter 378, Part II, HRS, relating to lie detector tests in employment
- Chapter 378, Part III, HRS, relating to suspension, discharge, or discrimination due to a work related injury, on-site drug screening, or use of sick leave
- Chapter 387, HRS, relating to minimum wage and overtime
- Chapter 388, HRS, relating to unpaid wages and timely payment of wages
- Chapter 390, HRS, relating to child labor
- Chapter 398, HRS, relating to Hawaii family leave

Due to the severe understaffing, and the fact that WSD is tasked to enforce other labor laws, some HRS 104 complaints have taken year(s) to be assigned, investigated, and completed. For these reasons, Hawaii LECET welcomes funding of two additional labor law enforcement specialist IV positions to assist the enforcement of Hawaii's wage and hour law on public construction projects.

Again, Mahalo for the opportunity to provide testimony in **strong support** of Senate Bill No. 3039.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 11, 2014

TO: HONORABLE CLAYTON HEE, CHAIR, HONORABLE MAILE SHIMABUKURO,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY
AND LABOR

HONORABLE J. KALANI ENGLISH, CHAIR, HONORABLE DONOVAN DELA
CRUZ AND MEMBERS OF THE SENATE COMMITTEE ON TRANSPORTATION
AND INTERNATIONAL AFFAIRS

SUBJECT: **COMMENTS REGARDING S.B. 3039, RELATING TO PUBLIC WORKS.**
Establishes the wage and hour for public works projects special fund and
establishes and funds two additional labor law enforcement specialist IV positions
to assist the enforcement of Hawaii's wage and hour law on public construction
projects. Specifies a funding mechanism for the special fund and requires an
annual report. Exempts the department of transportation's airports division from
the special fund fee.

.HEARING

DATE: Tuesday, February 11, 2014
TIME: 10:30 a.m.
PLACE: Conference Room 016

Dear Chairs Hee and English, Vice Chairs Shimabukuro and Dela Cruz and Members of the
Committees,

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. 3039 proposes to establish a special fund for two additional labor law enforcement specialist
IV positions to assist enforce Hawaii's wage and hour law under HRS Chapter 104.
While GCA has concerns regarding the creation of new special funds, the need for two additional
labor law enforcement specialists appears necessary. These positions would allow DLIR the
proper resources to speed up investigations to enforce prevailing wage provisions already
provided in the law.

In lieu of S.B. 2260 and 2261 which proposes to among other things, increase suspension
periods, increase fines and penalties, and make a general contractor secondarily liable for the
violations of their subcontractor for nonpayment of prevailing wages, GCA would recommend
the Committee strongly consider this measure in its place.

The GCA is strongly opposed to provisions in S.B. 2261, which would make the general contractor secondarily liable for payment of back wages and penalties impose on his subcontractor's notification of a violation or decision.

Thank you for the opportunity to testify on this measure.



Testimony of Cindy McMillan
The Pacific Resource Partnership

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Senate Committee on Transportation and International Affairs
Senator J. Kalani English, Chair
Senator Donovan M. Dela Cruz, Vice Chair

SB 3039 - Public Works
Tuesday, February 11, 2014
10:30 AM
Conference Room 016

Dear Chairs Hee & English, Vice Chairs Shimabukuro & Dela Cruz and members of the committees,

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 3039, which establishes the wage and hour for public works projects special fund and establishes and funds two additional labor law enforcement specialist IV positions to assist the enforcement of Hawaii's wage and hour law on public construction projects. This measure specifies a funding mechanism for the special fund and requires an annual report. It also exempts the Department of Transportation's Airports Division from the special fund fee.

With the large amount of Capital Improvement Projects in Hawaii, it is imperative that our wage and hour law be strictly enforced on public construction projects.

Thank you for the opportunity to share our views with you and we kindly ask for your favorable consideration of SB 3039.