

SB3039

LATE

TESTIMONY

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Testimony to the Senate Committee on Judiciary and Labor and Transportation and International Affairs Tuesday, February 11, 2014 10:30 a.m. State Capitol - Room 016

RE: S.B. 3039, Relating to Public Works

Dear Chairs Hee and English, Vice-Chairs Shimabukuro and Dela Cruz, and members of the Committees:

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 **supports** S.B. 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 bill specifies a funding mechanism for the special fund and requires an annual report and exempts the department of transportation's airports division from the special fund fee.

These new positions, while funded through a special fund, would assist the DLIR's Wage Standards Division in enforcing Chapter 104, HRS, by having more personnel investigating violations. This measure would alleviate the need for contractors to be secondarily liable for the violations of their subcontractor for nonpayment of prevailing wages, as proposed in H.B. 2322.

We appreciate the opportunity to share with you our views.

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SUBJECT: MISCELLANEOUS, Earmark to wage and hour for public works projects special fund

BILL NUMBER: SB 3039

INTRODUCED BY: Hee

BRIEF SUMMARY: Adds a new section to HRS chapter 371 to provide for the establishment of a wage and hour for public works projects special fund into which shall be transferred 0.1% of all state fund appropriations made available for capital improvements designated for the construction cost element (excluding the department of transportation's airports division). Any state department that receives an appropriation of funds for capital improvement projects shall be responsible for the transfer; provided that the transfer shall apply only to capital improvement project appropriations that are designated for the construction or renovation of state buildings.

The department of labor and industrial relations (DLIR) shall expend moneys in the wage and hour for public works projects special fund to enforce HRS chapter 104 relating to public works projects. Any moneys in the fund at the end of each fiscal year shall remain in the fund and shall not be transferred to the general fund. Requires the DLIR to submit an annual report to the legislature on the status of the wage and hour for public works projects special fund.

Appropriates \$85,241 in general funds for fiscal year 2015 for the establishment of two full-time equivalent permanent labor law enforcement specialist IV positions in the wage standards division of DLIR to enforce HRS chapter 104.

EFFECTIVE DATE: July 1, 2014

STAFF COMMENTS: This measure would earmark 0.1% of all capital improvement project monies appropriated for the construction or renovation of state buildings into a wage and hour for public works project special fund. The monies in the special fund shall then be utilized to ensure that these public construction projects are in compliance with the state's wages and hours of employees on public works laws under HRS chapter 104. The adoption of this measure would result in either each capital improvement project receiving 0.1% less in appropriations, or each capital improvement appropriation would need an additional 0.1% to be appropriated. At a minimum, it would result in appropriations being harder to track, especially if other similar special funds are established to use this same technique. At maximum, this measure may be considered interference with the appropriations process that could violate constitutional prohibitions (see, for example, Article VII Section 9). Further, there is always the danger that if the special fund thus created takes on a life of its own and starts needing more resources, the 0.1% earmarked could be increased to generate additional revenue.

This measure would also establish another special fund. The state auditor stated that these special funds "give state agencies full control of these unappropriated cash reserves, provide a way to skirt the general

fund expenditure ceiling, and over time erode the general fund.” It should also be noted that excess revenues in special funds have been raided by the legislature, most recently to shore up the general fund.

Instead, if it is deemed that these public works projects need additional oversight, the resources and positions specified should be added to DLIR by way of the normal appropriations process.

Digested 2/10/14