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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 23, 2016

To: The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair, and
Members of the House Committee on Finance

Date: Wednesday, February 24, 2016
Time: 3:00 p.m.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2010, H.D. 1 Relating to Special Minimum Wages

I. OVERVIEW OF PROPOSED LEGISLATION

HB2010 HD1 requires the Director to approve first job training programs wherein participants in a six to twelve month program may receive wages of \$8.00 an hour, but not less than \$2 below minimum wage.

DLIR supports the intent of the measure and offers comments and amendments below. The department believes the fiscal effect of reduced tax withholdings would be minimal. There is also a potential conflict with federal law as described in #2 & #3 in the comments section below (#3 analysis developed after subject matter discussion).

II. CURRENT LAW

Section 387-9(a), Hawaii Revised Statutes (HRS), allows for special minimum wages below minimum wage for, "... learners, of apprentices, of part-time employees who are full-time students..." at the secondary level and ward paroled from the Hawaii Youth Correctional Facility. The Director may by rule permit special rates, "... subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe;"

Section 387-9(a), HRS, also permits the Director to approve special rates through issuing certificates for, "...individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury,"

Section 387-9(b) allows the Director to prescribe by rule to ensure that the special minimum wages will not create a substantial probability of reducing full-time employment opportunities for other workers.

Act 191 (SLH, 2005) removed a similar provision enacted in 1974 (387(b)(1)), which allowed an employer to pay high school and college students 85% of the minimum wage in seasonal positions.

“After June 30, 1974, and until June 30, 1976, notwithstanding provisions of section 387-2 and the foregoing subsection, an employer engaged in a seasonal pursuit may employ an employee:

III. COMMENTS ON THE HOUSE BILL

The Department offers the following comments and one housekeeping amendment:

1. Hawaii issues less than 10 special minimum wage certificates annually that allow companies to pay disabled workers according to their capacities in relation to the minimum wage. These applicants also apply for a similar certificate of special minimum wage under the Fair Labor Standards Act (FLSA) where applicable. Rules adopted in 1983 direct the applications and authorization of these certificates in the various categories.
2. Currently, Hawaii’s minimum wage is higher than the federal standard, and reducing the minimum wage for a first job-training program may not create a conflict if the amount can be no lower than \$8. However, if the federal minimum wage increases those businesses subject to the FLSA may not be able to use this program without violating federal law. If a business has \$500,000 or more in gross sales or engages in interstate commerce, then they are subject to federal (FLSA) instead of State law. U.S. DOL interprets the latter very broadly i.e. the company handles records of interstate transactions, emails or sends letters out of state, etc.
3. The FLSA contains provisions that permit wages below the minimum wage, and this measure, if enacted, may conflict with the federal provisions:
 - \$4.25/hour—\$4.25 per hour applies to employees under the age of 20 during their first 90 consecutive calendar days of employment with an employer. Hawaii has never adopted this program by rule as it has the following programs, so this lower \$4.25 standard could currently not apply in Hawaii.
 - Workers with disabilities—individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury may be paid sub-minimum wages pursuant to a certificate issued by the U.S. Secretary of Labor. Employment at less than the minimum wage is authorized to prevent curtailment of

opportunities for employment for workers with disabilities.

- Full-time student program—is for full-time students employed in retail or service stores, agriculture, or colleges and universities. The employer that hires students can obtain a certificate from the U.S. Department of Labor, which allows the student to be paid not less than 85% of the minimum wage.
- Student learner program—is for high school students at least 16 years old who are enrolled in vocational education (shop courses). The employer that hires the student can obtain a certificate from the U.S. Department of Labor that allows the student to be paid not less than 75% of the minimum wage, for as long as the student is enrolled in the vocational education program.

HB2010 HD1 appears to apply to all ages and the reduced minimum wage could last up to one year. This creates a conflict with the federal provisions above.

- DLIR also suggests substituting the following language for the current language on page 3, lines 1-4:

Notwithstanding the provisions of chapter 387-2,
participants in a first job training program may receive an
hourly wage of at least \$8.00 per hour, but not less than
the federal minimum wage; provided that the hourly wage is
not less than \$2.00 below the current state minimum wage.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Eighth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

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Testimony by
Hawaii State AFL-CIO
February 24, 2016

H.B. 2010, H.D.1 – RELATING TO
SPECIAL MINIMUM WAGES

The Hawaii State AFL-CIO strongly opposes H.B. 2010, H.D.1, which requires the Director of Labor and Industrial Relations to approve First Job Training Programs.

H.B. 2010, H.D.1 establishes a First Job Training Program which allows employers to pay employees \$2.00 below the minimum wage for up to 12 months. We strongly oppose the creation of a subminimum wage and respectfully request the Committee on Finance to defer H.B. 2010, H.D.1 indefinitely.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President



Executive Officers:
Derek Kurisu, KTA Superstores - Chairperson
John Erickson, Young's Market Company – Vice Chair
Bob Stout, Times Supermarkets – Secretary/Treasurer
Lauren Zirbel, Executive Director

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TO: COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Wednesday, February 24, 2016
TIME: 3:00 p.m.
PLACE: Conference Room 308

RE: HB2010, HD1

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

We support this bill because it benefits young people, local businesses, the economy and the community as a whole. It will provide opportunities for young job seekers to learn and build marketable job skills, as well as provide valuable experience for future employment.

Thank you for the opportunity to testify.

The Twenty-Eighth Legislature
Regular Session of 2016



HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
State Capitol, Conference Room 308
Wednesday, February 24, 2016; 3:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2010, HD1
RELATING TO SPECIAL MINIMUM WAGES**

The ILWU Local 142 **opposes** H.B. 2010, HD1, which requires the Director of Labor and Industrial Relations to approve First Job Training Program. This measure will allow employers with 25 or more employees to pay a “training wage” of \$8.00 an hour or no less than \$2.00 below the prevailing minimum wage. The current minimum wage in Hawaii is \$8.50, which exceeds the current federal minimum wage of \$7.25.

The ILWU objects to H.B. 2010, HD1 in the interest of fairness. The bill proposes that a First Job Training Program “will provide participants with a robust and well-rounded experience aimed at developing the following: a strong work ethic, positive attitude, good communication skills, time management abilities, problem-solving skills, the ability to function as a productive team member, self-confidence, constructive criticism, flexibility, adaptability, and the ability to work under pressure.”

The assumption is that any person in the workforce for the first time will not possess these qualities. This is a downright insult to the education provided by our schools, both public and private, and the values instilled by families and communities. A person working for the first time should not be assumed to lack these qualities simply because they have never worked before. These traits are not necessarily developed due to work experience but are the result of many factors in a person’s life. And simply having a job does not mean that an employee will possess all of these qualities.

H.B. 2010, HD1 appears to be a transparent attempt to pay an employee less than the minimum wage as set by law. If an employee is performing the work required of the job, why shouldn’t he be paid like anyone else for the work he does? The bill allows for the “first job training” wage to be paid at minimum six months and at maximum one year. Will that period of time at less pay ensure that the worker will have gained all the required qualities? What kind of training will be required to help the employee acquire more skills, develop a better attitude, or foster loyalty and more productivity? Will all employers be equipped to provide such training?

These are questions that need to be asked and answered as the Legislature considers lowering the minimum wage for first time employees. Otherwise, what rational justification exists for this proposal?

The ILWU urges that H.B. 2010, HD1 be HELD. Thank you for the opportunity to share our views on this measure.