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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 11, 2016

To: The Honorable Mark Nakashima, Chair
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 12, 2016
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

HB 2010 Proposed HD 1 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.

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 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):

“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:

- (A) To whom the minimum wage rate required by section 387-2 would apply in such employment but for this subsection, and
- (B) Who is a full-time student who attended a public or private school, other than a college, university, business school or technical school, for at least six months during the preceding twelve-month period, at a special minimum wage rate not less than eighty-five per centum of a minimum wage applicable under section 387-2.”

III. COMMENTS ON THE HOUSE BILL

The Department offers the following comments:

- 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.
- 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.
- There are federal youth programs for those ages 20 and under that provide for an 85% reduction in the current minimum wage for ninety (90) days of training in a position. The way HB2010 is presented in proposed HD1 it appears to apply to all ages and the reduced minimum wage could last up to one year. This may create a conflict with federal law.
- The language found on page 2, lines 14-20, is quite subjective and would be problematic for the department to define, enforce, administer and make determinations, “provide participants with a robust and well-rounded

experience...”. In addition, the distinction between new and first time hires is ambiguous (page 2, line 12).

- In light of the above point, the department suggests amending the measure in (c) by placing a period after “education” on page 2, line 14.
- DLIR also suggests the following amendments to page 3:
 - Line 1: strike “run” and insert “operate”
 - Line 3: strike “will” and insert “may”
 - Line 5: insert “by the employer” at the end of the line
 - Line 8: strike “a” and insert “an hourly:”
 - Lines 9-10: strike “of” through “shall” and “be”.



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TO:
COMMITTEE LABOR & PUBLIC EMPLOYMENT
Representative Mark Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Friday, February 12, 2016
TIME: 10:00am
PLACE: Conference Room 309

RE: HB2010

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.



HAWAII RESTAURANT ASSOCIATION

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Date: February 10, 2016

To: Rep. Mark M. Nakashima, Chair; Rep. Jarrett Keohokalole, Vice Chair
Committee on Labor & Public employment

Rep. Gregg Takayama, Chair; rep. Kyle T. Yamashita, Vice Chair
Committee on Public Safety

From: Victor Lim, Legislative Chair, Hawaii Restaurant Association

Subj: HB 2010 Special Minimum Wages

The Hawaii Restaurant Association strongly supports HB2010 relating to special minimum wages for learners, apprentices, full-time secondary school students paroled wards of youth correctional facility, and handicapped workers.

HRA has been servicing the restaurant industry here in Hawaii for 69 years representing over 3,300 restaurants, making up mostly of small and medium size businesses. We are in most cases the first employer for people entering the work force and at the same time provides tremendous opportunities for individual growth.

This bill has a chance of allowing business to provide more openings for these first time entrants to the workforce, providing a step ladder to better future.

Thank you for giving us the opportunity to testify on this.

Gregg Fraser,
Executive Director
Hawaii Restaurant Association



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Labor & Public Employment and
Committee on Public Safety
Friday, February 12, 2016 at 10:00 A.M.
Conference Room 309, State Capitol**

LATE

RE: HOUSE BILL 2010 RELATING TO SPECIAL MINIMUM WAGES

Chairs Nakashima and Takayama, Vice Chairs Keohokalole and Yamashita, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2010, which requires, rather than authorizes, the Director of Labor and Industrial Relations to adopt rules establishing special minimum wages and related standards and requirements for the employment of learners; apprentices; part-time employees who are full-time public or private school students, but not post-secondary school students; paroled wards of Hawaii Youth Correctional Facility; and handicapped workers.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We support the bill which provides employers the ability to train many first time workers and students. With the large increases in minimum wage coming up it may be financially difficult to provide first time learners and students the opportunity to have their first time job and get valuable work experience.

Thank you for the opportunity to testify.