



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

830 PUNCHBOWL STREET, ROOM 321

HONOLULU, HAWAII 96813

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Email: dlir.director@hawaii.gov

March 16, 2016

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Thursday, March 17, 2016
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

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

Re: H.B. No. 2473, H.D. 2 Relating to Enforcement of Wage Laws

I. OVERVIEW OF PROPOSED LEGISLATION

HB2473 HD2 proposes to amend chapter 104, Hawaii Revised Statutes (HRS), to change the penalties due for violations of Hawaii's prevailing wage law from ten percent of back wages due or \$25 per offense to ten percent of back wages due and \$1,000 per offense for a first violation, and from the amount of wages due or \$200 per offense to the amount of wages due and \$10,000 per offense for a second violation.

DLIR strongly supports increasing the penalties for violations of chapter 104, especially as restoration of the department's enforcement capacity after 2009 has not occurred. The measure, if enacted, would modestly increase the amount of penalties going into the general fund.

II. CURRENT LAW

Act 251 (SLH, 1999) amended the penalty amounts in section 104-24, HRS, from, "... not more than \$1,000 for each offense." to a penalty of \$25 per offense or 10% of the back wages due for a first violation. Act 251 also changed the penalty amounts from 10% of the contract amount to \$100 for each offense or the amount of back wages due for a second violation. The penalty amount is the greater of the two options, for a first or second violation.

III. COMMENTS ON THE HOUSE BILL

The department strongly supports the increase in penalties for chapter 104 violations and prefers this House version. Currently, making determinations and issuing any penalties has approximately a three year backlog in these complex investigations. The Wage Standards Division (WSD) had twenty-eight (28) authorized positions when Act 251 changed the penalties for first and second violations in 1999. WSD currently has seventeen (17) authorized positions at a time when public works construction is booming. The staffing capacity and length of investigations has impeded the Division's ability to issue subsequent Notice of Violations (NOVs) after the first one.

DLIR suggests that insufficient staffing prevents WSD from enforcing the law in a manner that provides sufficient deterrence as intended by the law. The lack of sufficient staffing penalizes the innocent worker rather than the employer. Contractors undertaking public works projects are incentivized to cheat until caught because chapter 104 cases can take up to three years to make a determination. The inability to resolve cases in a timely fashion is highly problematic because the employers who allegedly violate wage laws often are able to close shop or run away before the resolution to the case. In many cases, DLIR is not able to ensure that workers receive fair compensation as provided for in the law.

In 2014, the Legislature recognized the lack of enforcement capacity in enacting Act 130. Act 130 increased the penalties imposed under §104-22(b), HRS, on a contractor who interferes with or delays an investigation from \$1,000 to \$10,000 and from \$100 to \$1,000 per day for continuing to obstruct an investigation as well as immediate suspension.

In the last five years, WSD has issued thirty-seven (37) NOVs for violations of section 104-24(a) and four (4) 2nd NOVs for violations of section 104-24(b), and two (2) 3rd NOVs for violations of section 104-24(c). In addition, during that time nineteen (19) NOVs were issued that included suspension from working on public works for falsification or obstruction under section 104-25(a)(3).

Note: this proposal changes the penalties for the 1st and 2nd violations but keeps the violation for the 3rd violation at \$200 per offense or double the wages due.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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OAHU-MAUI-HAWAII-KAUAI

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HOMEWORKS CONSTRUCTION, INC.

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MAILING
P.O. BOX 970967
WAIPAHU, HAWAII
96797-0967

STREET
94-487 AKOKI STREET,
WAIPAHU, HAWAII 96797

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WWW.BIAHAWAII.ORG

Testimony to the Senate Committee on Judiciary & Labor Thursday, March 17, 2016 9:30 a.m. State Capitol - Conference Room 016

RE: H.B. 2473 H.D. 2: Relating to Enforcement of Wage Laws.

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer 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 is in **opposition** to H.B. 2473 H.D. 2. While we understand the need to look at changes in penalties, the proposed amounts are problematic. The penalty for the second offense is a significant amount, especially for smaller projects. Again, while we understand the need to adjust the penalties, we believe that the amount goes too far and is excessive.

Thank you for the opportunity to express our views on this matter.



**Testimony to the Senate Committee on Judiciary & Labor
Thursday, March 17, 2016 at 9:30 A.M.
Conference Room 016, State Capitol**

RE: HOUSE BILL 2473 HD 2 RELATING TO ENFORCEMENT OF WAGE LAWS

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 2473 HD1, which changes the penalties for government contractors who violate wages and hours laws and increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

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.

The Chamber understands the needs to look at changes in penalties, but has concerns on the proposed amounts. The penalty for the second offense is steep – \$10,000 is a significant amount, especially for smaller projects. The way the bill is drafted the minimum fine for a second notice of violation will be the amount of back wages due plus \$10,000, regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll.

The statistics from the Department of Labor and Industrial Relations indicate that such violations are few and that the law currently in place may be working to deter such Chapter 104 violations. While again we understand the need to adjust the penalties we believe that \$10,000 of the contract goes too far and is excessive.

The Chamber prefers HB 2472, which seeks to address this same issue by providing appropriations for five law enforcement positions to the Department of Labor and Industrial Relations to properly and efficiently investigate and enforce labor laws.

Thank you for the opportunity to testify.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

February 24, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
and members
Committee on Judiciary and Labor
Hawai'i State Senate
Honolulu, Hawai'i 96813

RE: Strong Support for HB2473 HD2, Relating to Enforcement of Wage Laws

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support HB2473 HD2, relating to enforcement of wage laws**. This bill would change the penalties for contractors on public works projects who violate Hawai'i's "Little Davis-Bacon Law" by amending HRS§104-24(a) to require a penalty of \$1,000 for a first offense, plus 10% of back wages found due; and a penalty of \$10,000 for a second offense, plus the amount of back wages found due.

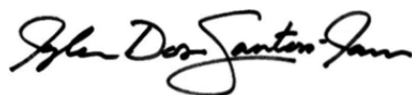
We also note, however, that HB2473 HD2 does not amend the penalties for third violations of HRS Chapter 104. We look forward to discussing proposals to address third violations further along in the legislative process.

As a result of our current fine structure, violations of HRS Chapter 104 are far too common, and the Department of Labor struggles to keep up with the numerous complaints which come in. With the current construction boom, and with the legislature's noble efforts to fund more public works and infrastructure projects, we fear that unscrupulous contractors will continue to violate the law unless the fine structure is changed.

We firmly believe that contractors who bid on and win public works contracts should be held to the highest standard of responsibility when it comes to paying Hawai'i workers properly for their skills and labor. Increasing the fine structure will deter unscrupulous contractors from using public dollars to steal from the pockets of Hawai'i workers.

We strongly urge you to pass **HB2473 HD2, relating to enforcement of wage laws**, and thank you for the opportunity to provide this testimony.

Mahalo,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance



P.O. Box 4088
Honolulu, HI 96812-4088
Phone: (808) 735-3211

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.** Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

While we support the application of Chapter 104 where required, we **oppose** H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due **and** \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due **and** \$10,000 (up from \$100 per offense) for each violation.

Proponents of this measure argue that such increase in penalties are necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations.

This bill would mandate a minimum fine of \$10,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. For the reasons mentioned, we are **opposed** to this measure and request that this measure be deferred. Thank you the opportunity to share our opposition to this measure.

OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS

March 15, 2016

Page 2

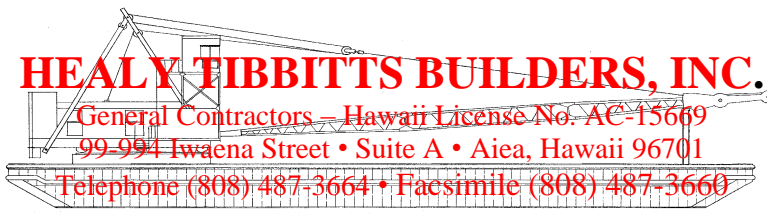
For the reasons mentioned, we are **opposed** to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Cedric T. Ota". The signature is fluid and cursive, with the first name "Cedric" and last name "Ota" clearly distinguishable.

Cedric T. Ota
Vice President





March 16, 2016

Sent Via E-mail to: JDLtestimony@capitol.hawaii.gov

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.** Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

HEARING

DATE: Thursday, March 17, 2016

TIME: 9:30 a.m.

PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's. In addition to being a general contractor, Healy Tibbitts also performs work as a subcontractor for foundation work.

While we support the application of Chapter 104 where required, we **oppose** H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due **and** \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due **and** \$10,000 (up from \$100 per offense) for each violation.

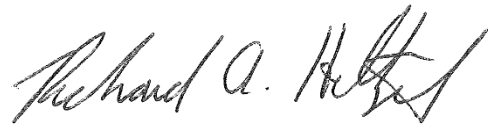
Proponents of this measure argue that such increase in penalties are necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations.

Healy Tibbitts Builders, Inc.

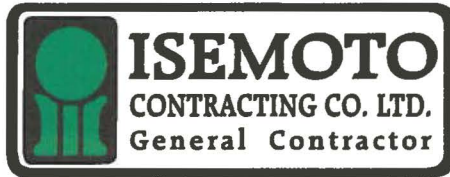
This bill would mandate a minimum fine of \$10,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen.

For the reasons mentioned, we are **opposed** to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, appearing to read "Richard A. Heltzel". The signature is written in a cursive, flowing style.

Richard A. Heltzel
President



Contractor's License No. ABC1036

☐ MAIN OFFICE: 648 PIILANI STREET, P.O. BOX 4669, HILO, HAWAII 96720
PHONE (808) 935-7194 FAX (808) 961-6417

☐ KONA OFFICE: 74-5039B QUEEN KAAHUMANU HWY, P.O. BOX 3169, KAILUA-KONA, HI 96740
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March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.** Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

My name is Leslie Isemoto, President of Isemoto Contracting Co., Ltd.

While we support the application of Chapter 104 where required, we **oppose** H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due **and** \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due **and** \$10,000 (up from \$100 per offense) for each violation.

Proponents of this measure argue that such increase in penalties are necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations.

This bill would mandate a minimum fine of \$10,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. For the reasons mentioned, we are **opposed** to this measure and request that this measure be deferred. Thank you the opportunity to share our opposition to this measure.

For the reasons mentioned, we are **opposed** to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Isemoto". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Leslie Isemoto,
President



Since 1974

Sent Via E-mail to JDLtestimony@capitol.hawaii.gov
Via Fax to (808) 586-7348

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

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DATE: Thursday, March 17, 2016
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Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

As a relatively large painting contractor in the Islands, employing 80-120 workers full time, I am concerned about the possible negative effect this proposed bill could have on the construction industry.

While we support the application of Chapter 104 where required, we **oppose** H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due **and** \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due **and** \$10,000 (up from \$100 per offense) for each violation.

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Since 1974

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For the reasons mentioned, we are **opposed** to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Sincerely,

Christine McGurk
Office Manager/Treasurer

Lindemann Construction Inc.
500 Ala Kawa St. #216-J
Honolulu, HI 96817

Sent Via E-mail to JDLtestimony@capitol.hawaii.gov
Via Fax to (808) 586-7348

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

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A SEN PLEX COMPANY

OAHU PLUMBING & SHEET METAL, LTD.

938 Kohou St. • P.O. Box 17010 • Honolulu, Hawaii 96817 • Telephone (808) 848-0111 • Fax (808) 848-0210

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.** Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

Oahu Plumbing and Sheetmetal, Ltd. Is in opposition to the passage of H.B. 2723.

While we support the application of Chapter 104 where required, we **oppose** H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473. HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due **and** \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due **and** \$10,000 (up from \$100 per offense) for each violation.

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This bill would mandate a minimum fine of \$10,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. For the reasons mentioned, we are **opposed** to this measure and request that this measure be deferred. Thank you the opportunity to share our opposition to this measure.

For the reasons mentioned, we are **opposed** to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Very truly yours,



Norman K. Tada
Executive Vice President



RALPH S. INOUE CO LTD
GENERAL CONTRACTOR

500 Alakawa St., #220E
Honolulu, Hawaii 96817

T: 808.839.9002
F: 808.833.5971

License No. ABC-457
Founded in 1962

Sent Via E-mail to JDLtestimony@capitol.hawaii.gov
Via Fax to (808) 586-7348

March 16, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE
SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND
LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE
LAWS.** Changes the penalties for government contractors who violate
wages and hours laws. Increases penalties, in addition to the separate
payment of back wages, to \$1,000 for the first offense and \$10,000 for the
second offense.

HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran, Vice Chair Shimabukuro and Members,

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor and member of the General Contractors Association of Hawaii, **opposes** H.B. 2473, HD2, primarily because it could have serious unintended consequences on contractors who unintentionally are found to have violated prevailing wage laws of Chapter 104. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. RSI respectfully suggests that a better solution to address intentional and chronic violators would be to increase DLIR staffing (e.g., H.B. 2472) to go after them. Increasing fines, as being proposed, have not been shown to be a deterrent as some have opined without any data to back it up.

Therefore, RSI remains **opposed** to this measure and request that this measure be deferred. Thank you the opportunity to share our views on this measure.



626 Kokea Street, Bldg. B-3 • Honolulu, Hawaii 96817 • Phone: (808) 845-6477 • Fax: (808) 845-6471 • E-mail: rmkaya@hawaii.r.com
 Building and Improvement Specialist Since 1937
 Serving Hawaii for Over a Half Century

Sent Via E-mail to JDtestimony@capitol.hawaii.gov
 Via Fax to (808) 586-7348

March 16, 2016

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SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.** Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

HEARING

DATE: Thursday, March 17, 2016
 TIME: 9:30 a.m.
 PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

While Robert M. Kaya Builders, Inc. supports the application of Chapter 104 where required, we **oppose** H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due **and** \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due **and** \$10,000 (up from \$100 per offense) for each violation.

Proponents of this measure argue that such increase in penalties are necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations.

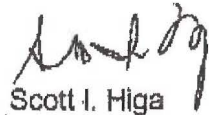
Senate Committee on Judiciary and Labor
Re: Opposition to H.B. 2473, HD2
March 16, 2016
Page Two

This bill would mandate a minimum fine of \$10,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen.

For the reasons mentioned, we are opposed to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Yours truly,

ROBERT M. KAYA BUILDERS, INC.



Scott I. Higa
President

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.** Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.



HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

Royal Contracting opposes to HB 2473 HD2 since most mistakes on wages are not intentional.

Those who repeatedly violate the low intentionally should have their construction license removed.

The fine being proposed is unreasonable since it could occur because hours was not added correctly or a written number for hours could be misread.

Penalty as proposed should be reduced otherwise HB2473 HD2 should not be passed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leonard K.P. Leong'.
Leonard K.P. Leong
Vice President



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Sent Via E-mail to JDLtestimony@capitol.hawaii.gov
Via Fax to (808) 586-7348

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS.**
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HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

While we support the application of Chapter 104 where required, we oppose H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due and \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due and \$10,000 (up from \$100 per offense) for each violation.

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For the reasons mentioned, we are opposed to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Very truly yours,
S & M Sakamoto, Inc.

Gerard Sakamoto
Chairman of the Board



SimplexGrinnell
99-1379 Koaha Place
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March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: OPPOSITION TO H.B. 2473, HD2, RELATING TO ENFORCEMENT OF WAGE LAWS. Changes the penalties for government contractors who violate wages and hours laws. Increases penalties, in addition to the separate payment of back wages, to \$1,000 for the first offense and \$10,000 for the second offense.

Dear Chair Keith Agaran and Vice Chair Shimabukuro and Members,

While we support the application of Chapter 104 where required, we oppose H.B. 2473, HD2, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission or mistakenly misclassify an employee. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. H.B. 2473, HD2 would amend Section 104-24, Hawaii Revised Statutes by compounding back wages plus the monetary penalties for a first violation with ten percent of the back wages found due and \$1,000 per offense (up from current law of \$25.00 per offense); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with back wages due and \$10,000 (up from \$100 per offense) for each violation.

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For the reasons mentioned, we are opposed to this measure and request that this measure be held. Thank you the opportunity to share our opposition to this measure.

Mahalo,

Michael J. Wertman

Michael J. Wertman | District General Manager | SimplexGrinnell
Tel: 808-486-6679 x211 | Mobile: 808-330-3562 | Fax: 808-488-9618
99-1379 Koaha Place, Aiea, Hawaii 96701 USA

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 17, 2016

Testimony To: Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair

Presented By: Tim Lyons, President

Subject: H.B. 2473, HD 2 - RELATING TO ENFORCEMENT OF WAGE LAWS.

Chair Keith-Agaran and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We agree with the intent of this bill however, we do have a problem with the size of the fine in the second violation in the event that two separate incidents, based on the same error, are treated as both the first and second violation.

Perhaps increasing the fine from \$25.00 to \$1000.00 for an offense of not paying the proper wages is in order considering that the contractor could profit more by paying the incorrect wages than by paying the \$25.00 fine (although we note that the current 10% of the back wages could be substantial depending on the extent of the violation).

However we also find that changing the second offense from \$100.00 to \$10,000 or the back wages could be disastrous. Back wages and a fine could cause a secondary disaster putting the contractor out of business. We think the purpose of this proposal should be to get compliance, not to put someone out of business so that they have no jobs to offer.

Based on the above, we recommend changing the penalty to something like "payment of the back wages" or a fine of \$5000, whichever is greater, with the understanding that there could not be more than one penalty assessed on the same job.

Thank you.