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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

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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. (HB2473 HD1)

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,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred seventy 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.

H.B. 2473, HD2 proposes to amend Section 104-24, Hawaii Revised Statutes, which governs offenses for non-compliance of paying prevailing wages for public works construction. Such offenses could include filing a certified payroll late, misclassifying workers, failing to recognize overtime rates and other erroneous procedural requirements. This measure proposes to amend monetary penalties for a first violation by requiring ten percent of the back wages found due **and** \$1,000 per offense (current law is \$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 for each offense (current law is \$100 per offense). While proponents of this measure will argue that such an increase is necessary to deter such violations, the question is whether there is really a need to change the law, given that there have been not more than three second notices of violations each year for the last nine years.

While GCA agrees that the prevailing wage should be paid when applicable, the proposed increased penalties are unreasonable; and fails to correlate the amount of the violation to the unpaid amounts of back wages. Furthermore, the way the bill is drafted the minimum fine for a second notice of violation will be \$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. Furthermore, the HD1 version of this bill would compound the backwages with the penalties, while current law requires back wages **or** penalty of dollar amount, whichever is greater.

Therefore, this HD2 version is even more penalizing than the existing statute. As indicated in Section 104-24(e) "each 'offense' means each section of this chapter under which a contractor is cited; provided that, with respect to prevailing wage and overtime citations under section 104-2, each employee and each project shall be considered a separate offense."

In order to exemplify how these offenses could penalize a contractor, whether a general or subcontractor, take this example: a contractor inadvertently misclassifies one worker who is working on two separate projects, but could be penalized with two notices of violations making him or her subject to a minimal \$10,000 fine plus the back wages. The statistics of second time violators indicate that such violations are few and far between, furthermore it is not clear whether the second time violations are for failure to pay prevailing wage or for other reasons, such as interference or inability to pay fines and back wages.

Other questions that must be raised include how many total violators exist and what has the outcome of any investigation been? Are those violations due to inadvertent misclassification of laborers and mechanics, inadequate recordkeeping or other reasons? Another measure's preamble, H.B. 2472 mentions that the Department of Labor and Industrial Relations has a backlog of 420 complaints as of October 9, 2015, while the "wage standards division receives an average of 56 prevailing wage complaints per year." If these statistics are true, one must ask how many of the 420 complaints that are backlogged are related to prevailing wage complaints and of those how many are for second time violations? If such violations are rampant, it may be a better idea to provide the department with more resources to not only investigate violators of Chapter 104, but also complete investigations in a timely manner to avoid such backlogs. These backlogs could be accomplished if H.B. 2472, which proposes to fund up to five additional labor law enforcement positions, was considered.

For the reasons mentioned, GCA remains opposed to this measure and requests that this measure be deferred. Thank you the opportunity to share our opposition to this measure.

Testimony of
Pacific Resource Partnership

State of Hawaii
Senate Committee on Judiciary & Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

HB 2473, HD1 – Enforcement of Wage Laws

Thursday, March 17, 2016
9:30 A.M.
State Capitol – Room 016

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

In an effort to ensure a level playing field among those who do follow the prevailing wage law in the State of Hawaii, we support HB 2473, HD1 and its efforts to increase penalties to effectively deter violations and reduce the number of claims.

The current penalties are not strict enough to deter unscrupulous contractors from deliberately underpaying Hawaii's works. We have seen prevailing wage claims increase dramatically since 2009 when the legislature reduced the penalties for violations of Chapter 104, HRS. In addition to the influx of prevailing wages claims, there is currently a backlog of over 200 claims.

For the reasons mentioned above, we respectfully ask for your support on HB 2473, HD1.

Thank you for the opportunity to voice our opinion.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

