

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

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February 5, 2016

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT
KEOHOKALOLE, VICE CHAIR, HOUSE COMMITTEE ON LABOR AND PUBLIC
EMPLOYMENT

SUBJECT: **OPPOSITION TO H.B. 2473, RELATING TO ENFORCEMENT OF WAGE
LAWS.** Changes the penalties for government contractors who violate wages and
hours laws. Makes penalties \$1,000 for the first offense and ten per cent of the
contract amount for the second offense.

HEARING

DATE: Friday, February 5, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over 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 proposes to amend Section 104-24, Hawaii Revised Statutes by increase the prevailing wage penalty for the first violation to not more than \$1,000 for each offense and for a second violation increase the penalty to ten percent of the contract amount.

While GCA agrees that the prevailing wage should be paid when applicable, the proposed increased penalties exceed a reasonable amount when requiring ten percent of the contract amount for the second violation; and fails to correlate to the unpaid amounts of the prevailing wage violation. For these reasons GCA **opposes** this measure. Additionally, the amendments delete the reference to the amount of back wages which act as the direct correlation to the alleged penalty.

Prior to moving forward with this measure, it would be helpful to know what the statistics of second time violators are and whether the outcome of those cases have resulted in the parties failing to pay the back wages and penalties as required by law. Further, it is necessary to know whether there has a recent uptick of second violators, and if so, what has the outcome been? 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.

The proposal to subject a second time violation to ten percent of the contract amount is an arbitrary and egregious amount, particularly if the labor cost is a small percentage of the contract amount. If this Committee is to consider an increase in penalties it should be more reasonable that the penalties fit the violation.

GCA is opposed to the language suggesting that the second violation should be subject to ten percent of the project.

Thank you the opportunity to share our testimony.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIO
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 4, 2016

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

Date: Friday, February 5, 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. 2473 Relating to Enforcement of Wage Laws

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2473 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 to not more than \$1,000 for a first violation, and to ten percent of the contract amount 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.

II. CURRENT LAW

Section 104-24, HRS, provides for a penalty of \$25 per offense or 10% of the back wages due for a first violation, and \$100 for each offense or the amount of back wages due for a second violation. The actual penalty amount is the greater of the two options, for a first or second violation.

III. COMMENTS ON THE HOUSE BILL

DLIR notes that the current language in chapter 104 essentially provides only for making the laborer whole when aggrieved and an insignificant penalty when the back wages are less than \$100, therefore, DLIR suggests that requiring a penalty for each offense would enhance the understaffed enforcement efforts of the department.

The department suggests the following language to support an increase in penalties for the first violation of chapter 104:

“...the amount of back wages found due [or ~~\$25~~ \$1,000 for each offense], ~~whichever is greater~~.”

The department suggests the following language to support an increase in penalties for the second violation of chapter 104:

“...the amount of back wages found due [or ~~\$100~~ \$10,000 for each offense], ~~whichever is greater~~.”



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Friday, February 5, 2016 at 9:30 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 2473 RELATING TO ENFORCEMENT OF WAGE LAWS

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns** regarding HB 2473, which changes the penalties for government contractors who violate wages and hours laws and makes penalties \$1,000 for the first offense and ten per cent of the contract amount 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 – ten percent is a significant amount, especially for smaller projects. We would like to see statistics on second violations – how many violators are there and how serious are the violations. While again we understand the need to adjust the penalties we believe that 10% of the contract goes too far and is excessive.

Thank you for the opportunity to testify.

Hawai'i Construction Alliance

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

February 3, 2016

The Honorable Mark M. Nakashima, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and members
House Committee on Labor and Public Employment
Hawai'i State Legislature
Honolulu, Hawai'i 96813

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

Dear Chair Nakashima, Vice Chair Keohokalole, 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, relating to enforcement of wage laws.** This bill would change the penalties for contractors on public works projects who violate HRS Chapter 104, also known as the "Little Davis-Bacon Law," by increasing penalties to \$1,000 for a first offense and 10% percent of the contract amount for a second offense. This proposal is not a new one; HB2473 would return the fine and penalty structure to that which existed between 1991 and 1999.

In 1991, at the height of Hawai'i's last extended construction boom, the construction industry was struggling with the very real problem of "unethical contractors and subcontractors who intentionally seek to deprive their employees of legally-required wage and benefit rates."¹ With the support of various groups representing labor, responsible contractors, and government agencies, the legislature passed and the governor signed Act 92 (1991). Act 92 (1991) established the fine structure which we seek to return to, including a penalty of up to \$1,000 for first violations and a penalty of 10% percent for a second offense.

At the time, the legislature recognized that this proposal would "be of significant benefit in deterring unethical and illegal contracting practices."²

¹ Testimony of the Hawaii Construction Industry Association, a labor-management organization, on HB1768 HD2, March 19, 1991.

² Senate Committee on Employment and Public Institutions, Standing Committee Report 1018 on HB1768, 1991.

Unfortunately, in 1999, the legislature relaxed the penalties for violations of HRS Chapter 104, by reducing the penalties for first violations to ten per cent of the amount of back wages found due or \$25; reducing the penalties for second violations to an amount equal to back wages found due or \$100; and reducing the penalties for third violations to an amount equal to two times the back wages due or \$200. This is the fine structure which currently exists.

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.³ 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.

Ultimately, we 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.

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

Mahalo,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

³ As of October 9, 2015, DLIR had a backlog of 211 prevailing wage claims against 58 employers on 150 projects, which amounts to 150 pending prevailing wage investigations.

Testimony of Brooke Wilson
Pacific Resource Partnership

LATE

Committee on Labor and Public Employment
Representative Mark Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

HB 2473 – Enforcement of Wage Laws
Friday, February 05, 2015
9:30 A.M.
State Capitol – Room 309

Aloha Chair Nakashima, Vice Chair Keohokalole 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 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.

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.





LATE TESTIMONY

HAWAII REGIONAL COUNCIL OF CARPENTERS

LATE

February 5, 2016

The Honorable Representative Mark M. Nakashima, Chair
The Honorable Representative, Vice Chair Jarrett Keohokalole, and
Members of the Hawaii State House of Representatives Committee on Labor and Public
Employment

**Statement of the Hawaii Regional Council of Carpenters on HB 2473 – Enforcement of
Wage Laws**

Friday, February 5, 2016
9:30 a.m., State Capitol, Room 309

Dear Chair Nakashima, Vice Chair Keohokalole, and members of the Committee,

The Hawaii Regional Council of Carpenters (HRCC) supports HB 2473, which changes the penalties for government contractors who violate wages and hours laws. This measure proposes to revisit the penalty system that existed prior to 1999.

Violations of Hawaii's prevailing wage law are a frequent occurrence especially in the current construction boom. The current penalty system does not effectively deter unscrupulous contractors, particularly on lucrative public works projects.

Thank you for allowing us to voice our support of HB 2473 and we respectfully request the passage of this bill.

STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Hougatling Street, Honolulu, Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 841-0300

HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576

KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376

MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961

KAUAI OFFICE: Kuhio Medical Ctr. Bldg., 3-3295 Kuhio Hwy., Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911