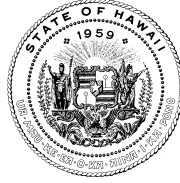


DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
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

March 10, 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, March 11 2016
Time: 10:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: S.B. No. 2723, S.D. 1 Relating to Enforcement of Wage Laws

I. OVERVIEW OF PROPOSED LEGISLATION

SB2723 SD1 proposes to amend chapter 104, Hawaii Revised Statutes (HRS), to change the penalties assessed 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 or \$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 or \$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.

The department prefers the House version of the measure (HB2473), which specifies that the penalty is ten percent of the back wages found and \$1,000 per offense. This measure if enacted five years ago would have modified the penalties that were assessed from \$240,911, to \$744,000. The current House version, HB 2473 would add the \$240,911 and the \$744,000 for an amount close to \$1 million dollars in assessed penalties over the last five years for first offenses. All penalties assessed are paid 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, and for a third violation the penalty is twice the amount due or \$200 per violation and suspension for 3 years from public works.

III. COMMENTS ON THE SENATE BILL

The department strongly supports the increase in penalties for chapter 104 violations. Currently, the department has approximately a three-year backlog in conducting these complex investigations. In 1999, the Wage Standards Division (WSD) had twenty-eight (28) authorized positions when Act 251 changed the penalty structure for first and second violations. Of these 28 positions, 13 were the Labor Law Enforcement Specialists who conducted these investigations. WSD currently has seventeen (17) authorized positions of which only six (6) are Labor Law Enforcement Specialists project investigators. This is at a time when public works construction is booming.

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) Notice of Violations (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.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Labor & Public Employment and
Committee on Higher Education
Friday, March 11, 2016 at 10:30 A.M.
Conference Room 309, State Capitol**

RE: SENATE BILL 2723 SD 1 RELATING TO ENFORCEMENT OF WAGE LAWS

Chairs Nakashima and Choy, Vice Chairs Keohokalole and Ichiyama, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns** regarding SB 2723 SD 1, which requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal to the amount of back wages found due or \$10,000 for each offense, whichever is greater, 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. Sparse statistics of second time violations seem to suggest the law deters violators and no urgent need to change the law exists. 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.

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.

Uploaded via Capitol Website

March 11, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE
LAWS.** Requires government contractors who violate wages and hours laws to pay a penalty
that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is
greater, for the first offense; and a penalty equal to the amount of back wages found due or
\$10,000 for each offense, whichever is greater, for the second offense. Effective January 7, 2059.

HEARING

DATE: Friday, March 11, 2016
TIME: 10:30 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
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.

**While GCA agrees that the prevailing wage law should be enforced, this bill will unfairly
apply harsh and unnecessary penalties that could penalize contractors for inadvertent
mistakes in certified payroll submissions. GCA opposes S.B. 2723, SD1, which proposes to
egregiously increase fines and penalties for chapter 104 violations. GCA prefers H.B. 2472
which provides appropriations for five law enforcement positions within the Department of
Labor and Industrial Relations to address its backlog of complaints and to further investigate
employers who may be in non-compliance with Chapter 104.**

S.B. 2723, SD1 unfairly proposes to amend Section 104-24, Hawaii Revised Statutes, which
governs penalties for prevailing wages violations affecting public works construction. Such
violations 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 or \$1,000 per offense, whichever is greater (**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 or \$10,000 for each offense (**current law is \$100 per offense**),
whichever is greater.

In 1999, when this body amended the law pursuant to Act 251 (1999) and did away with the
\$1,000 per offense for first notice of violation and 10% of the contract award for the second
notice of violation, the House Committee on Judiciary and Hawaiian Affairs said:

[y]our committee finds that the suspension provisions and imposition of penalties including a flat penalty of ten percent of the contract amount for a second violation in current laws *are harsh and inequitable*. Your Committee believes that amendments to this measure will deter nonpayment of wages in a fair and reasonable manner. STAND. COM. REP. NO. 1763 (1999) (*Emphasis added.*).

The proposed amendments in this measure are harsh and inequitable as well. The question to ask is whether a change of the law is necessary, given that there the Department's statistics show that in the last five years, the Department of Labor has issued only 37 First notice of violations, and only four Second Notice of Violations. See attached Department of Labor and Industrial Relations Diagram detailing the number of second notice of violations since 2008. This Diagram suggests that the current law may be working.

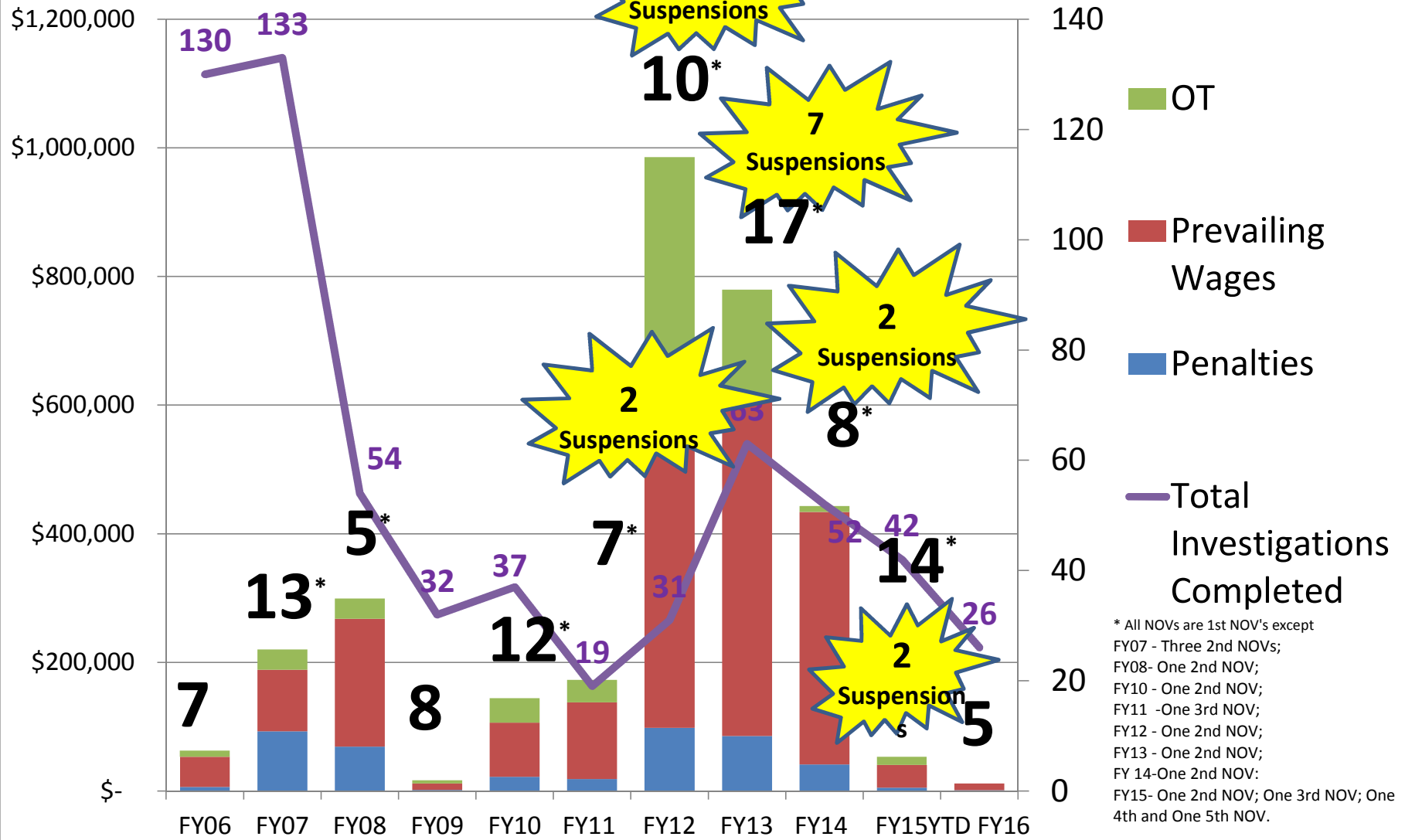
While GCA agrees that the prevailing wage should be paid when applicable, the proposed increased penalties are unreasonable and fails to correlate the amount of the violation to the unpaid amount of back wages. Furthermore, the way the bill is drafted -- the minimum fine for a second notice of violation 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. 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 minimum \$10,000 fine. 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? In the preamble of the preferred measure, H.B. 2472 which funds five law enforcement position it mentions that the Department 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 the SD1 version of S.B. 2723 and requests that this measure be deferred. Thank you the opportunity to share our opposition to this measure.

Chapter 104 Notice of Violations Issued*



* All NOV's are 1st NOV's except
 FY07 - Three 2nd NOV's;
 FY08 - One 2nd NOV;
 FY10 - One 2nd NOV;
 FY11 - One 3rd NOV;
 FY12 - One 2nd NOV;
 FY13 - One 2nd NOV;
 FY 14 - One 2nd NOV;
 FY15 - One 2nd NOV; One 3rd NOV; One 4th and One 5th NOV.

KING & NEEL, INC.

1164 Bishop Street • Suite 1710 • Honolulu, Hawaii 96813
Telephone: (808) 521-8311
Fax: (808) 526-3893



Sent Via E-mail to LABtestimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 9, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE
LAWS.** Requires government contractors who violate wages and hours
laws to pay a penalty that is equal to ten per cent of the amount of back
wages due or \$1,000 per offense, whichever is greater, for the first
offense; and a penalty equal to the amount of back wages found due or
\$10,000 for each offense, whichever is greater, for the second offense.
Effective January 7, 2059. (SD1)

HEARING

DATE: Friday, March 11, 2016
TIME: 10:30 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. 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. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

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.



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 11, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE
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Effective January 7, 2059. (SD1)

HEARING

DATE: Friday, March 11, 2016
TIME: 10:30 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

Oahu Plumbing and Sheetmetal, Ltd. is in **opposition** to the passage of SB 2723.

While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. 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. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

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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.

Very truly yours,



Norman K. Tada
Executive Vice President



general contractor license #ABC 21576

Sent Via E-mail to LABtestimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 9, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE**

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HEARING

DATE: Friday, March 11, 2016
TIME: 10:30 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

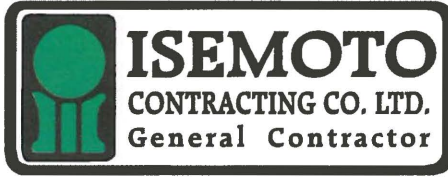
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This bill would mandate a minimum fine of \$10,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified 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.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular stamp or seal.

James N. Kurita
Vice President/ Chief Operating Officer



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
PHONE (808) 329-8051 FAX (808) 329-3261

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An Equal Opportunity Employer

Sent Via E-mail to LABtestimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 11, 2016

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT
KEOHOKALOLE, VICE CHAIR, HOUSE COMMITTEE ON LABOR AND PUBLIC
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SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE
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DATE: Friday, March 11, 2016
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Dear Chair Nakashima and Vice Chair Keohokalole and Members,

While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. 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. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

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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.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Isemoto". The signature is fluid and cursive, with a large initial "L" and a long, sweeping tail.

Leslie Isemoto,
President



Alan Shintani INC.

GENERAL CONTRACTOR BC 13068

March 11, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE LAWS.**

Requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal to the amount of back wages found due or \$10,000 for each offense, whichever is greater, for the second offense. Effective Januar 7, 2059. (SD1)

Date: Friday, March 11, 2016

Time: 10:30 AM

Place: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

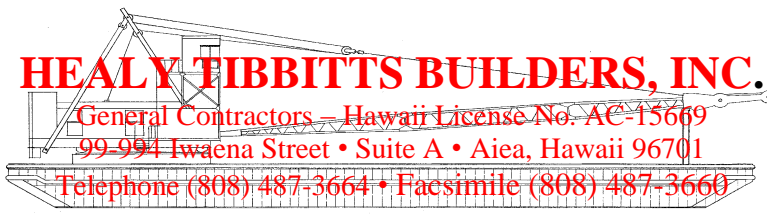
Alan Shintani, Inc. has been providing general contracting and construction management services for homes, commercial buildings and government projects since 1984.

While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. 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. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

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Alan Shintani
President



March 10, 2016

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

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

DATE: Friday, March 11, 2016

TIME: 10:30 a.m.

PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole 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** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. 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. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

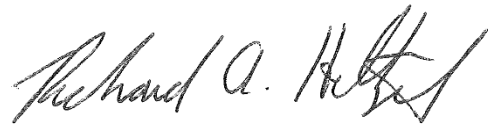
Proponents of this measure argue that such an increase in penalties is necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (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 thirty-

Healy Tibbitts Builders, Inc.

seven (37) 1st Notice of violations, and four (4) 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.

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, slightly slanted style.

Richard A. Heltzel
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 LABtestimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 11, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF
WAGE LAWS.** Requires government contractors who violate wages and
hours laws to pay a penalty that is equal to ten per cent of the amount of
back wages due or \$1,000 per offense, whichever is greater, for the first
offense; and a penalty equal to the amount of back wages found due or
\$10,000 for each offense, whichever is greater, for the second offense.
Effective January 7, 2059. (SD1)

HEARING

DATE: Friday, March 11, 2016
TIME: 10:30 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor and member of the General Contractors Association of Hawaii, **opposes** S.B. 2723. SD1, 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.

Can-Am Coatings, Inc.
98-1329 Akaaka Street
Aiea, Hi 96701

Sent Via E-mail to LABt_estimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 11, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE**
LAWS. Requires government contractors who violate wages and
hours laws to pay a penalty that is equal to ten per cent of the amount of
back wages due or \$1,000 per offense, whichever is greater, for the first
offense; and a penalty equal to the amount of back wages found
due or \$10,000 for each offense, whichever is greater, for the
second offense. Effective January 7, 2059. (SD1)

HEARING

DATE: Friday, March 11, 2016

TIME: 10:30 a.m.

PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

As a small business owner, please no to this one

While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. 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. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

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.

SAH - Subcontractors Association of Hawaii

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

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

March 11, 2016

Testimony To: House Committee on Labor & Public Employment
Representative Mark M. Nakashima, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2723, SD 1 - RELATING TO ENFORCEMENT OF WAGE LAWS.

Chair Nakashima 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" and a fine of \$5000 with the understanding that there could not be more than one penalty assessed on the same job.

Thank you.



March 10, 2016

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

RE: Strong Support for SB2723 SD1, 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 SB2723 SD1, 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 ten percent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense, and the amount of back wages due or \$10,000 for each offense, whichever is greater, for the second offense. The bill currently does not address the question of third violations. We are open to amendments to increase penalties for third violations to deter repeated, intentional, and malicious cheating.

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 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 to be an effective deterrent.

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.

In closing, we strongly urge you to pass **SD2723 SD1, Relating to Enforcement of Wage Laws**.

Mahalo,

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

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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SERVCO HOME & APPLIANCE
DISTRIBUTION

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BAYS LUNG ROSE & HOLMA

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

STREET
94-487 AKOKI STREET,
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E INFO@BIAHAWAII.ORG

WWW.BIAHAWAII.ORG

LATE

Testimony to the House Committee on Labor & Public Employment Friday, March 11, 2016 10:30 a.m. State Capitol - Conference Room 309

RE: SB 2723 SD1: Relating to Enforcement of Wage Laws.

Dear Chair Nakashima, Vice-Chair Keohokalole, 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 SB 2723 SD1. 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.

LATE



Maui 202 Lalo Street • Kahului, HI. 96732-2924
Phone: (808) 877-3902 • Fax: (808) 871-6828
Service Dept: (808) 877-4040 • Fax: (808) 873-6199
Oahu 2265 Hoonee Place • Honolulu, HI. 96819
Phone: (808) 841-2112 • Fax: (808) 847-1991

March 10, 2016

Sent Via E-mail to LABtestimony@capitol.hawaii.gov

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF
WAGE LAWS.** Requires government contractors who violate wages and
hours laws to pay a penalty that is equal to ten per cent of the amount of
back wages due or \$1,000 per offense, whichever is greater, for the first
offense; and a penalty equal to the amount of back wages found due
\$10,000 for each offense, whichever is greater, for the second offense.
Effective January 7, 2059. (SD1)

HEARING

DATE: Friday, March 11, 2016

TIME: 10:30 a.m.

PLACE Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

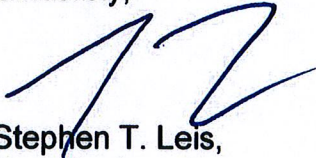
While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; 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 or \$10,000 (up from \$100 per offense) for each violation, whichever is greater.

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.

Please feel free to contact me at (808) 357-2630 with any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read 'STL', is written over the typed name.

Stephen T. Leis,
President

STL/dp



general contractor license #ABC 21576

LATE

Sent Via E-mail to LABtestimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 9, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE**

LAWS. Requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal to the amount of back wages found due or \$10,000 for each offense, whichever is greater, for the second offense. Effective January 7, 2015. (SD1)

HEARING

DATE: Friday, March 11, 2016
TIME: 10:30 a.m.
PLACE: Conference Room 309

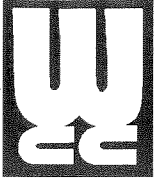
Dear Chair Nakashima and Vice Chair Keohokalole and Members,

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James N. Kurita
Vice President/ Chief Operating Officer



WILLOCKS CONSTRUCTION CORPORATION

LATE

Sent Via E-mail to LABtestimony@capitol.hawaii.gov
Via Fax to 808-586-8544

March 11, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, RELATING TO ENFORCEMENT OF WAGE**

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HEARING
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PLACE: Conference Room 309

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Hugh M. Willocks, President


Gary T. Powell, Vice-President

16-209 Melekauiwa Place • Keaau, Hawaii 96749 • Phone: (808) 982-9099 • Fax (808) 982-9091

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