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LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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February 23, 2016

To: The Honorable Jill Tokuda, Chair,  
The Honorable Donovan Dela Cruz, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Wednesday, February 24, 2016  
Time: 1:15 p.m.  
Place: Conference Room 211, 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**

SB 2723 SD1 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 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.

**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 SENATE BILL**

The department strongly supports the increase in penalties for chapter 104 violations. 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.

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) 2<sup>nd</sup> NOVs for violations of section 104-24(b), and two (2) 3<sup>rd</sup> 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 1<sup>st</sup> and 2<sup>nd</sup> violations but keeps the violation for the 3<sup>rd</sup> 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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COLDWELL BANKER PACIFIC  
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BAYS LUNG ROSE & HOLMA

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

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94-487 AKOKI STREET,  
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## Testimony to the Senate Committee on Ways & Means Tuesday, February 24, 2016 1:15 PM. State Capitol - Conference Room 211

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

Dear Chair Tokuda, Vice-Chair Dela Cruz, 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.



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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

February 25, 2016

Sent Via E-mail to [FINtestimony@capitol.hawaii.gov](mailto:FINtestimony@capitol.hawaii.gov)  
Via Fax to 1(800) 535-3859

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE  
CHAIR, HOUSE COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION TO H.B. 2473, HD1, 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, February 25, 2016  
TIME: 11:00 a.m.  
PLACE: Conference Room 308

Dear Chair Luke and Vice Chair Nishimoto and Members,

Dorvin D. Leis Co., Inc. **opposes** H.B. 2473. SD1, which 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 compound 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. While proponents of this measure may argue that such an increase is necessary to deter those that fail to pay prevailing wages on public works construction projects, the question is whether there is really a need to change the law? 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 (Department of Labor) indicate that such violations are few and far between, with less than three -- Second Notices of Violation each year for the last nine years. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations. The current law requires that third violations within two years of a second notification of violation can result in suspension from doing public work for three years, which provides even further deterrence from such unlawful activities.

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,

  
Stephen T. Leis,  
President

General Contractor ABC 23231

[www.heartwoodpacific.com](http://www.heartwoodpacific.com)Sent Via E-mail to [WAMtestimony@capitol.hawaii.gov](mailto:WAMtestimony@capitol.hawaii.gov)

Via Fax to 808-587-7220

February 24, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ, VICE CHAIR, SENATE  
COMMITTEE ON WAYS AND MEANSSUBJECT: **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: Wednesday, February 24, 2016

TIME: 1:15 p.m.

PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Dela Cruz and Members:

I humbly request you to not support this bill. It is challenging enough to operate as a small business general contractor in the State of Hawaii. We do not agree with the reasoning behind more enforcement of the current regulations and an increase of fines. I question what special interest group is behind this bill and for what purpose.

Heartwood Pacific LLC opposes S.B. 2723. SD1, which 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. While proponents of this measure may argue that such an increase is necessary to deter those that fail to pay prevailing wages on public works construction projects, the question is whether there is really a need to change the law? 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.

The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between, with less than three -- Second Notices of Violation each year for the last nine years. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations. The current law requires that third violations within two years of a second notification of violation can result in suspension from doing public work for three years, which provides even further deterrence from such unlawful activities.

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,

F. Michael Singer  
Managing Member

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

Sent Via E-mail to [WAMtestimony@capitol.hawaii.gov](mailto:WAMtestimony@capitol.hawaii.gov)  
Via Fax to 808-587-7220

February 24, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ,  
VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

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, 2016. (SD1)

HEARING

DATE: Wednesday, February 24, 2016  
TIME: 1:15 p.m.  
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Dela Cruz and Members,

**Lindemann Construction Inc. opposes** S.B. 2723. SD1, which 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. While proponents of this measure may argue that such an increase is necessary to deter those that fail to pay prevailing wages on public works construction projects, the question is whether there is really a need to change the law? 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.

The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between, with less than three -- Second Notices of Violation each year for the last nine years. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations. The current law requires that third violations within two years of a second notification of violation can result in suspension from doing public work for three years, which provides even further deterrence from such unlawful activities.

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.



Sent Via E-mail to [WAMtestimony@capitol.hawaii.gov](mailto:WAMtestimony@capitol.hawaii.gov)  
Via Fax to 808-587-7220

February 24, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ,  
VICE CHAIR, SENATE COMMITTEE ON WAYS AND MEANS

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: Wednesday, February 24, 2016  
TIME: 1:15 p.m.  
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Dela Cruz and Members,

**INSERT COMPANY INTRODUCTORY PARAGRAPH (Optional).**

**INSERT COMPANY NAME** opposes S.B. 2723. SD1, which 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. While proponents of this measure may argue that such an increase is necessary to deter those that fail to pay prevailing wages on public works construction projects, the question is whether there is really a need to change the law? 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.

The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between, with less than three -- Second Notices of

Swinerton Builders License No. ABC-3753  
Pauahi Tower, 1003 Bishop Street, Suite 1340, Honolulu, HI 96813-6401  
Tel: 808.521.8408 Fax: 808.521.8438 [www.swinerton.com](http://www.swinerton.com)

Violation each year for the last nine years. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations. The current law requires that third violations within two years of a second notification of violation can result in suspension from doing public work for three years, which provides even further deterrence from such unlawful activities.

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.

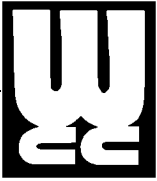
Sincerely,

**SWINERTON BUILDERS**

A handwritten signature in brown ink, appearing to read "GEHARA", written over the printed name.

George Ehara  
VP/Division Manager





# WILLOCKS CONSTRUCTION CORPORATION

Sent Via E-mail to [WAMtestimony@capitol.hawaii.gov](mailto:WAMtestimony@capitol.hawaii.gov)  
Via Fax to 808-587-7220

February 24, 2016

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE DONOVAN DELA CRUZ, VICE CHAIR,  
SENATE COMMITTEE ON WAYS AND MEANS

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: Wednesday, February 24, 2016  
TIME: 1:15 p.m.  
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Dela Cruz and Members,

**WILLOCKS CONSTRUCTION CORPORATION** opposes S.B. 2723. SD1, which 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. While proponents of this measure may argue that such an increase is necessary to deter those that fail to pay prevailing wages on public works construction projects, the question is whether there is really a need to change the law? 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.

The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between, with less than three -- Second Notices of Violation each year for the last nine years. The Department of Labor's statistics suggest that the law currently in place may be working to deter such Chapter 104 violations. The current law requires that third violations within two years of a second notification of violation can result in suspension from doing public work for three years, which provides even further deterrence from such unlawful activities.

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.

Hugh M. Willocks, President

Gary T. Powell, Treasurer