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

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February 2, 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: Wednesday, February 3, 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: S.B. No. 2723 Relating to Enforcement of Wage Laws

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 2723 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 SENATE BILL

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 Senate Committee on Judiciary and Labor
Wednesday, February 3, 2016 at 9:30 A.M.
Conference Room 016, State Capitol**

RE: SENATE BILL 2723 RELATING TO ENFORCEMENT OF WAGE LAWS

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

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns** regarding SB 2723, 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.

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 3, 2016

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

SUBJECT: **OPPOSITION TO S.B. 2723, 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: Wednesday, February 3, 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.

S.B. 2723 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.

SAH - Subcontractors Association of Hawaii

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

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

February 3, 2016

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

Presented By: Tim Lyons, President

Subject: S.B. 2723 - 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 law however, we do have a problem with the size of the fine in the 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% of the contract could be disastrous. If the contractor happens to have a \$1M contract which is not uncommon in the construction industry, a \$100,000.00 fine could cause a secondary disaster putting the contractor out of business. It is almost a rarity for any contractor to make 10% profit on a job so imposing a 10% penalty means that you are making a dent into the contractor's viability. 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 "not more than \$5000.00 for each second offense"; understanding that there could be more than one offense on the same job.

Thank you.

Testimony of Brooke Wilson
Pacific Resource Partnership

Senate Committee on Judiciary and Labor
Senator Gilbert Keith-Agaran, Chair
Senator Maile Shimabukuro, Vice Chair

SB 2723 – Enforcement of Wage Laws
Wednesday, February 03, 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 SB 2723 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. In FY2013, hundreds of claims were made affecting over 400 workers whose wages were unlawfully reduced by unscrupulous contractors.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on SB 2723.

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.



Hawai'i Construction Alliance

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

February 1, 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 SB2723, 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 SB2723, 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; SB2723 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 **SB2723, 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.



HAWAII REGIONAL COUNCIL OF CARPENTERS

February 1, 2016

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

Statement of the Hawaii Regional Council of Carpenters on SB 2723 – Enforcement of Wage Laws

Wednesday, February 3, 2016
9:30 a.m., State Capitol, Room 016

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

The Hawaii Regional Council of Carpenters (HRCC) supports SB 2723, 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.

For the reasons mentioned above, we support SB 2723 and respectfully request the passage of this bill.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB2723 on Feb 3, 2016 09:30AM*
Date: Monday, February 01, 2016 12:28:22 PM

SB2723

Submitted on: 2/1/2016

Testimony for JDL on Feb 3, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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