



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 10, 2015
Rm. 16, 9:00 a.m.

LATE

To: The Honorable Donovan Dela Cruz, Chair
Members of the Senate Committee on Government Operations

The Honorable Gilbert Keith-Agaran, Chair
Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

S.B. No. 728

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

S.B. No. 728, if enacted, will require gender pay equity, equal pay for similar work, for employees working for state government contracts. The ⁵⁷H.B. No. 728 amendment to HRS Chapter 103 will require state government agencies to include equal pay provisions in contracts, and state government contractors to report wages paid to employees by gender; and will also provide for penalties for violations of these equal pay requirements.

⁵The HCRC supports H.B. No. 728, with one suggested amendment: deletion of the § 103-__ (a) exception language on page 3, lines 18-19 of the bill, which reads, “except where such payment is made pursuant to a differential based on any factor other than gender.” This exception should be stricken, because it allows for consideration of prior salary in pay differentials for similar work, grandfathering in pay inequities rooted in discriminatory unequal starting pay.

Hawai‘i currently does not have a state law corollary to the federal E.O. 11246, which charges the

U.S. Secretary of Labor with responsibility for ensuring equal opportunity in federal contractors' recruitment, hiring, training and other employment practices. E.O. 11246 requires non-discrimination provisions in all federal contracts and mandates the filing of equal opportunity reports. The U.S. Department of Labor (USDOL) Office of Federal Contract Compliance (OFCCP) enforces E.O. 11246. Noncompliance with nondiscrimination clauses, rules, regulations, or orders can be cause for cancellation, termination, or suspension of contracts, debarment from federal contracts, and other forms of relief to victims of discrimination.

S.B. No. 728 creates a state enforcement scheme similar to the federal model, in which the U.S. Equal Employment Opportunity Commission (EEOC) has jurisdiction over complaints of discrimination under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act, which apply to all employers as defined under those laws, and OFCCP has jurisdiction over federal contractors for compliance with nondiscrimination reporting requirements of every federal contract. S.B. No. 728 sets up a state enforcement scheme, in which state contractors are required under HRS Chapter 103 to comply with equal pay and reporting requirements, subject to suspension from doing work on state contracts for noncompliance, and the HCRC continues to have jurisdiction over claims of gender-based pay discrimination under HRS Chapter 378, Part I, and the equal pay requirements of HRS § 378-2.3

The HCRC supports passage of S.B. No. 728, with the amendment suggested above.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 10, 2015

LATE

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE CLARENCE NISHIHARA, SENATE COMMITTEE ON GOVERNMENT OPERATIONS

HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **COMMENTS & CONCERNS REGARDING TO S.B. 728, RELATING TO GOVERNMENT CONTRACTS.** Requires equal pay for similar work for any employee performing services under certain government contracts. Establishes a requirement for government contractors to report wages paid to employees, by gender. Provides penalties for contractors found to be in violation of these practices, including liquidated damages and suspension from government contract work. Also prohibits contractors on certain government contracts from retaliating against employees who disclose wage information.

Hearing

DATE: Tuesday, February 10, 2015
TIME: 9:00 a.m.
PLACE: Conference Room 016

Dear Chairs Dela Cruz and Keith Agaran, Vice Chairs Nishihara and Shimabukuro, and Members of the Committees,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) 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.

The GCA is concerned regarding the language in S.B. 728, Relating to Government Contracts, as it would apply to construction workers subject to prevailing wage, commonly referred to as "Little Davis Bacon" for public works construction. The construction firms that currently bid on public works contracts submit competitive sealed bids for state construction projects based on specifications developed by the state, under the provisions of Chapter 103D. Wages and working hours are regulated under Chapter 103-55.5, HRS, and all contractors must pay prevailing wages as determined by the State Department of Labor. Union contractors may also pay more than the state's prevailing wage if the terms of collective bargaining contract provide for greater benefits. Currently contractor already file payroll affidavits with the Department of Labor to certify compliance with Chapter 103D. We believe that the requirements for public works contracts under Chapter 103D insure that wages paid to our workers are fair and exceed what is paid to government employees, regardless of gender.

Under the provisions of Chapter 103-55, HRS, bidders are already required to certify that wages paid are comparable or greater than that paid to government employees for similar work. The requirement to submit a report prior to completion of the contract of a summary of work imposes another additional requirement that will add time and cost to bids on government contracts for public works construction projects.

The GCA believes that the current laws are adequate to insure compliance with Chapter 103 and 103D. Thank you for this opportunity to present our views on this matter.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Government Operations and
Committee on Judiciary and Labor
Tuesday, February 10, 2015 at 9:00 A.M.
Conference Room 016, State Capitol**

LATE

RE: SENATE BILL 728 RELATING TO GOVERNMENT CONTRACTS

Chairs Dela Cruz and Keith-Agaran, Vice Chairs Nishihara and Shimabukuro, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **supports the intent of SB 728**, which requires equal pay for similar work for any employee performing services under certain government contracts and establishes a requirement for government contractors to report wages paid to employees, by gender. Further provides penalties for contractors found to be in violation of these practices, including liquidated damages and suspension from government contract work. Also prohibits contractors on certain government contracts from retaliating against employees who disclose wage information.

The Chamber is the largest business organization in Hawaii, representing over 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 supports the intent of this bill to establish equal pay for government contracts. At the same time, we do have some concerns. First, is the confidentiality of an employee's compensation. Second, is the employer's need for latitude in compensation. There are many cases where latitude is necessary. For example, where an employee with a higher level of experience enters the company at the same time that an employee with a lower level of experience is hired for the same position type, there may be a need for the compensation to the first employee to be slightly more than that of the second employee. Another possibility is an employee who has better performance at the company over another employee in the same position may be penalized under this bill.

While the bill allows for differential in pay other than gender, in the practice it will end up with employers having more administrative burden and possibly legal costs.

Thank you for the opportunity to testify.