

HB 442

Relating to Minimum Wage

LAB, FIN

HB442



Submit Testimony

Measure Title: RELATING TO MINIMUM WAGE.
Report Title: Labor; Minimum Wage; Counties
Description: Authorizes the counties to establish a higher minimum wage than the state minimum wage.
Companion:
Package: None
Current Referral: LAB, FIN
Introducer(s): ING, LOPRESTI, WOODSON, Gates

<u>Sort by</u> <u>Date</u>		Status Text
1/20/2017	H	Pending introduction.
1/23/2017	H	Pass First Reading
1/23/2017	H	Referred to LAB, FIN, referral sheet 2
2/10/2017	H	Bill scheduled to be heard by LAB on Tuesday, 02-14-17 8:30AM in House conference room 309.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO MINIMUM WAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§46-1.5 General powers and limitation of the counties.

4 Subject to general law, each county shall have the following
5 powers and shall be subject to the following liabilities and
6 limitations:

7 (1) Each county shall have the power to frame and adopt a
8 charter for its own self-government that shall
9 establish the county executive, administrative, and
10 legislative structure and organization, including but
11 not limited to the method of appointment or election
12 of officials, their duties, responsibilities, and
13 compensation, and the terms of their office;

14 (2) Each county shall have the power to provide for and
15 regulate the marking and lighting of all buildings and
16 other structures that may be obstructions or hazards
17 to aerial navigation, so far as may be necessary or



- 1 proper for the protection and safeguarding of life,
2 health, and property;
- 3 (3) Each county shall have the power to enforce all claims
4 on behalf of the county and approve all lawful claims
5 against the county, but shall be prohibited from
6 entering into, granting, or making in any manner any
7 contract, authorization, allowance payment, or
8 liability contrary to the provisions of any county
9 charter or general law;
- 10 (4) Each county shall have the power to make contracts and
11 to do all things necessary and proper to carry into
12 execution all powers vested in the county or any
13 county officer;
- 14 (5) Each county shall have the power to:
- 15 (A) Maintain channels, whether natural or artificial,
16 including their exits to the ocean, in suitable
17 condition to carry off storm waters;
- 18 (B) Remove from the channels, and from the shores and
19 beaches, any debris that is likely to create an
20 unsanitary condition or become a public nuisance;
21 provided that, to the extent any of the foregoing



1 work is a private responsibility, the
2 responsibility may be enforced by the county in
3 lieu of the work being done at public expense;

4 (C) Construct, acquire by gift, purchase, or by the
5 exercise of eminent domain, reconstruct, improve,
6 better, extend, and maintain projects or
7 undertakings for the control of and protection
8 against floods and flood waters, including the
9 power to drain and rehabilitate lands already
10 flooded;

11 (D) Enact zoning ordinances providing that lands
12 deemed subject to seasonable, periodic, or
13 occasional flooding shall not be used for
14 residence or other purposes in a manner as to
15 endanger the health or safety of the occupants
16 thereof, as required by the Federal Flood
17 Insurance Act of 1956 (chapter 1025, Public Law
18 1016); and

19 (E) Establish and charge user fees to create and
20 maintain any stormwater management system or
21 infrastructure;



- 1 (6) Each county shall have the power to exercise the power
2 of condemnation by eminent domain when it is in the
3 public interest to do so;
- 4 (7) Each county shall have the power to exercise
5 regulatory powers over business activity as are
6 assigned to them by chapter 445 or other general law;
- 7 (8) Each county shall have the power to fix the fees and
8 charges for all official services not otherwise
9 provided for;
- 10 (9) Each county shall have the power to provide by
11 ordinance assessments for the improvement or
12 maintenance of districts within the county;
- 13 (10) Except as otherwise provided, no county shall have the
14 power to give or loan credit to, or in aid of, any
15 person or corporation, directly or indirectly, except
16 for a public purpose;
- 17 (11) Where not within the jurisdiction of the public
18 utilities commission, each county shall have the power
19 to regulate by ordinance the operation of motor
20 vehicle common carriers transporting passengers within



1 the county and adopt and amend rules the county deems
2 necessary for the public convenience and necessity;
3 (12) Each county shall have the power to enact and enforce
4 ordinances necessary to prevent or summarily remove
5 public nuisances and to compel the clearing or removal
6 of any public nuisance, refuse, and uncultivated
7 undergrowth from streets, sidewalks, public places,
8 and unoccupied lots. In connection with these powers,
9 each county may impose and enforce liens upon the
10 property for the cost to the county of removing and
11 completing the necessary work where the property
12 owners fail, after reasonable notice, to comply with
13 the ordinances. The authority provided by this
14 paragraph shall not be self-executing, but shall
15 become fully effective within a county only upon the
16 enactment or adoption by the county of appropriate and
17 particular laws, ordinances, or rules defining "public
18 nuisances" with respect to each county's respective
19 circumstances. The counties shall provide the
20 property owner with the opportunity to contest the
21 summary action and to recover the owner's property;



1 (13) Each county shall have the power to enact ordinances
2 deemed necessary to protect health, life, and
3 property, and to preserve the order and security of
4 the county and its inhabitants on any subject or
5 matter not inconsistent with, or tending to defeat,
6 the intent of any state statute where the statute does
7 not disclose an express or implied intent that the
8 statute shall be exclusive or uniform throughout the
9 State;

10 (14) Each county shall have the power to:
11 (A) Make and enforce within the limits of the county
12 all necessary ordinances covering all:
13 (i) Local police matters;
14 (ii) Matters of sanitation;
15 (iii) Matters of inspection of buildings;
16 (iv) Matters of condemnation of unsafe
17 structures, plumbing, sewers, dairies, milk,
18 fish, and morgues; and
19 (v) Matters of the collection and disposition of
20 rubbish and garbage;

- 1 (B) Provide exemptions for homeless facilities and
- 2 any other program for the homeless authorized by
- 3 part XVII of chapter 346, for all matters under
- 4 this paragraph;
- 5 (C) Appoint county physicians and sanitary and other
- 6 inspectors as necessary to carry into effect
- 7 ordinances made under this paragraph, who shall
- 8 have the same power as given by law to agents of
- 9 the department of health, subject only to
- 10 limitations placed on them by the terms and
- 11 conditions of their appointments; and
- 12 (D) Fix a penalty for the violation of any ordinance,
- 13 which penalty may be a misdemeanor, petty
- 14 misdemeanor, or violation as defined by general
- 15 law;
- 16 (15) Each county shall have the power to provide public
- 17 pounds; to regulate the impounding of stray animals
- 18 and fowl, and their disposition; and to provide for
- 19 the appointment, powers, duties, and fees of animal
- 20 control officers;



1 (16) Each county shall have the power to purchase and
2 otherwise acquire, lease, and hold real and personal
3 property within the defined boundaries of the county
4 and to dispose of the real and personal property as
5 the interests of the inhabitants of the county may
6 require, except that:

7 (A) Any property held for school purposes may not be
8 disposed of without the consent of the
9 superintendent of education;

10 (B) No property bordering the ocean shall be sold or
11 otherwise disposed of; and

12 (C) All proceeds from the sale of park lands shall be
13 expended only for the acquisition of property for
14 park or recreational purposes;

15 (17) Each county shall have the power to provide by charter
16 for the prosecution of all offenses and to prosecute
17 for offenses against the laws of the State under the
18 authority of the attorney general of the State;

19 (18) Each county shall have the power to make
20 appropriations in amounts deemed appropriate from any
21 moneys in the treasury, for the purpose of:



- 1 (A) Community promotion and public celebrations;
- 2 (B) The entertainment of distinguished persons as may
- 3 from time to time visit the county;
- 4 (C) The entertainment of other distinguished persons,
- 5 as well as, public officials when deemed to be in
- 6 the best interest of the community; and
- 7 (D) The rendering of civic tribute to individuals
- 8 who, by virtue of their accomplishments and
- 9 community service, merit civic commendations,
- 10 recognition, or remembrance;
- 11 (19) Each county shall have the power to:
- 12 (A) Construct, purchase, take on lease, lease,
- 13 sublease, or in any other manner acquire, manage,
- 14 maintain, or dispose of buildings for county
- 15 purposes, sewers, sewer systems, pumping
- 16 stations, waterworks, including reservoirs,
- 17 wells, pipelines, and other conduits for
- 18 distributing water to the public, lighting
- 19 plants, and apparatus and appliances for lighting
- 20 streets and public buildings, and manage,
- 21 regulate, and control the same;



- 1 (B) Regulate and control the location and quality of
- 2 all appliances necessary to the furnishing of
- 3 water, heat, light, power, telephone, and
- 4 telecommunications service to the county;
- 5 (C) Acquire, regulate, and control any and all
- 6 appliances for the sprinkling and cleaning of the
- 7 streets and the public ways, and for flushing the
- 8 sewers; and
- 9 (D) Open, close, construct, or maintain county
- 10 highways or charge toll on county highways;
- 11 provided that all revenues received from a toll
- 12 charge shall be used for the construction or
- 13 maintenance of county highways;
- 14 (20) Each county shall have the power to regulate the
- 15 renting, subletting, and rental conditions of property
- 16 for places of abode by ordinance;
- 17 (21) Unless otherwise provided by law, each county shall
- 18 have the power to establish by ordinance the order of
- 19 succession of county officials in the event of a
- 20 military or civil disaster;



- 1 (22) Each county shall have the power to sue and be sued in
2 its corporate name;
- 3 (23) Each county shall have the power to establish and
4 maintain waterworks and sewer works; to collect rates
5 for water supplied to consumers and for the use of
6 sewers; to install water meters whenever deemed
7 expedient; provided that owners of premises having
8 vested water rights under existing laws appurtenant to
9 the premises shall not be charged for the installation
10 or use of the water meters on the premises; to take
11 over from the State existing waterworks systems,
12 including water rights, pipelines, and other
13 appurtenances belonging thereto, and sewer systems,
14 and to enlarge, develop, and improve the same;
- 15 (24) (A) Each county may impose civil fines, in addition
16 to criminal penalties, for any violation of
17 county ordinances or rules after reasonable
18 notice and requests to correct or cease the
19 violation have been made upon the violator. Any
20 administratively imposed civil fine shall not be
21 collected until after an opportunity for a



1 hearing under chapter 91. Any appeal shall be
2 filed within thirty days from the date of the
3 final written decision. These proceedings shall
4 not be a prerequisite for any civil fine or
5 injunctive relief ordered by the circuit court;

6 (B) Each county by ordinance may provide for the
7 addition of any unpaid civil fines, ordered by
8 any court of competent jurisdiction, to any
9 taxes, fees, or charges, with the exception of
10 fees or charges for water for residential use and
11 sewer charges, collected by the county. Each
12 county by ordinance may also provide for the
13 addition of any unpaid administratively imposed
14 civil fines, which remain due after all judicial
15 review rights under section 91-14 are exhausted,
16 to any taxes, fees, or charges, with the
17 exception of water for residential use and sewer
18 charges, collected by the county. The ordinance
19 shall specify the administrative procedures for
20 the addition of the unpaid civil fines to the
21 eligible taxes, fees, or charges and may require



1 hearings or other proceedings. After addition of
2 the unpaid civil fines to the taxes, fees, or
3 charges, the unpaid civil fines shall not become
4 a part of any taxes, fees, or charges. The
5 county by ordinance may condition the issuance or
6 renewal of a license, approval, or permit for
7 which a fee or charge is assessed, except for
8 water for residential use and sewer charges, on
9 payment of the unpaid civil fines. Upon
10 recordation of a notice of unpaid civil fines in
11 the bureau of conveyances, the amount of the
12 civil fines, including any increase in the amount
13 of the fine which the county may assess, shall
14 constitute a lien upon all real property or
15 rights to real property belonging to any person
16 liable for the unpaid civil fines. The lien in
17 favor of the county shall be subordinate to any
18 lien in favor of any person recorded or
19 registered prior to the recordation of the notice
20 of unpaid civil fines and senior to any lien
21 recorded or registered after the recordation of



1 the notice. The lien shall continue until the
2 unpaid civil fines are paid in full or until a
3 certificate of release or partial release of the
4 lien, prepared by the county at the owner's
5 expense, is recorded. The notice of unpaid civil
6 fines shall state the amount of the fine as of
7 the date of the notice and maximum permissible
8 daily increase of the fine. The county shall not
9 be required to include a social security number,
10 state general excise taxpayer identification
11 number, or federal employer identification number
12 on the notice. Recordation of the notice in the
13 bureau of conveyances shall be deemed, at such
14 time, for all purposes and without any further
15 action, to procure a lien on land registered in
16 land court under chapter 501. After the unpaid
17 civil fines are added to the taxes, fees, or
18 charges as specified by county ordinance, the
19 unpaid civil fines shall be deemed immediately
20 due, owing, and delinquent and may be collected
21 in any lawful manner. The procedure for



1 collection of unpaid civil fines authorized in
2 this paragraph shall be in addition to any other
3 procedures for collection available to the State
4 and county by law or rules of the courts;

5 (C) Each county may impose civil fines upon any
6 person who places graffiti on any real or
7 personal property owned, managed, or maintained
8 by the county. The fine may be up to \$1,000 or
9 may be equal to the actual cost of having the
10 damaged property repaired or replaced. The
11 parent or guardian having custody of a minor who
12 places graffiti on any real or personal property
13 owned, managed, or maintained by the county shall
14 be jointly and severally liable with the minor
15 for any civil fines imposed hereunder. Any such
16 fine may be administratively imposed after an
17 opportunity for a hearing under chapter 91, but
18 such a proceeding shall not be a prerequisite for
19 any civil fine ordered by any court. As used in
20 this subparagraph, "graffiti" means any
21 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,
2 ink, chalk, dye, or similar substances;

3 (D) At the completion of an appeal in which the
4 county's enforcement action is affirmed and upon
5 correction of the violation if requested by the
6 violator, the case shall be reviewed by the
7 county agency that imposed the civil fines to
8 determine the appropriateness of the amount of
9 the civil fines that accrued while the appeal
10 proceedings were pending. In its review of the
11 amount of the accrued fines, the county agency
12 may consider:

- 13 (i) The nature and egregiousness of the
14 violation;
- 15 (ii) The duration of the violation;
- 16 (iii) The number of recurring and other similar
17 violations;
- 18 (iv) Any effort taken by the violator to correct
19 the violation;
- 20 (v) The degree of involvement in causing or
21 continuing the violation;



- 1 (vi) Reasons for any delay in the completion of
- 2 the appeal; and
- 3 (vii) Other extenuating circumstances.

4 The civil fine that is imposed by administrative
5 order after this review is completed and the
6 violation is corrected shall be subject to
7 judicial review, notwithstanding any provisions
8 for administrative review in county charters;

9 (E) After completion of a review of the amount of
10 accrued civil fine by the county agency that
11 imposed the fine, the amount of the civil fine
12 determined appropriate, including both the
13 initial civil fine and any accrued daily civil
14 fine, shall immediately become due and
15 collectible following reasonable notice to the
16 violator. If no review of the accrued civil fine
17 is requested, the amount of the civil fine, not
18 to exceed the total accrual of civil fine prior
19 to correcting the violation, shall immediately
20 become due and collectible following reasonable



1 notice to the violator, at the completion of all
2 appeal proceedings;

3 (F) If no county agency exists to conduct appeal
4 proceedings for a particular civil fine action
5 taken by the county, then one shall be
6 established by ordinance before the county shall
7 impose the civil fine;

8 (25) Any law to the contrary notwithstanding, any county
9 mayor, by executive order, may exempt donors, provider
10 agencies, homeless facilities, and any other program
11 for the homeless under part XVII of chapter 346 from
12 real property taxes, water and sewer development fees,
13 rates collected for water supplied to consumers and
14 for use of sewers, and any other county taxes,
15 charges, or fees; provided that any county may enact
16 ordinances to regulate and grant the exemptions
17 granted by this paragraph;

18 (26) Any county may establish a captive insurance company
19 pursuant to article 19, chapter 431; ~~and~~

20 (27) Each county shall have the power to enact and enforce
21 ordinances regulating towing operations ~~[-]~~; and



1 (28) Each county shall have the power to enact and enforce
2 ordinances establishing minimum wage requirements
3 pursuant to chapter 387."

4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

7

INTRODUCED BY:

Ray
A
Montgomery
al It

JAN 20 2017



H.B. NO. 442

Report Title:

Labor; Minimum Wage; Counties

Description:

Authorizes the counties to establish a higher minimum wage than the state minimum wage.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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February 14, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 14, 2017
Time: 8:30 a.m.
Place: Conference Room 309 State Capitol

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

Re: H.B. No. 442 Relating to Minimum Wage

I. OVERVIEW OF PROPOSED LEGISLATION

HB442 amends the General Provisions Common to All Counties Law, chapter 46, Hawaii Revised Statutes (HRS) by authorizing the counties to impose and enforce a minimum wage, according to the Wage and Hour Law, chapter 387, HRS.

II. CURRENT LAW

There is no State law authorizing the counties to enact and enforce minimum wage requirements. The Fair Labor Standards Act (FLSA) contains a savings clause, specifically authorizing states and municipalities to set stricter regulations: "No provision of this [Act] shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this [Act] or a maximum work week lower than the maximum workweek established under this chapter," 29 USC § 218.

III. COMMENTS ON THE HOUSE BILL

This measure may give the counties the authority to impose the applicable minimum wage to all workers in their respective counties. The proposal states that each county shall have the power to enact and enforce ordinances pursuant to chapter 387. The Wage Standards Division (WSD) of DLIR administers chapter 387, HRS.

It is not clear how the counties would administer ordinances under chapter 387, HRS. Other states have this situation where there are counties or cities that pass ordinances requiring workers operating within their jurisdictions to be paid a higher minimum wage. A common practice is to have the county or city jurisdiction contract with the State enforcement agency to enforce the higher minimum wage imposed by the county.

DLIR would require additional staffing and resources to take on any additional responsibilities if the measure were enacted.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2017 6:40 PM
To: LABtestimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for HB442 on Feb 14, 2017 08:30AM

HB442

Submitted on: 2/11/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We're in STRONG SUPPORT of this bill.

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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The Twenty-Ninth Legislature
Regular Session of 2017

THE HOUSE

Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, February 14, 2017; 8:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 5, H.B. 442, AND H.B. 1433,
RELATING TO THE MINIMUM WAGE**

The ILWU Local 142 supports increasing the minimum wage in Hawaii, even though increases were legislated in 2014 for incremental increases through 2018. The minimum wage has not kept up with inflation, and many earning the minimum wage are supporting not only themselves but their families. That often means working at multiple minimum wage jobs to make ends meet, resulting in less-than-ideal family situations.

H.B. 5 increases the minimum wage in four increments to \$15.00 per hour beginning on January 1, 2021. It also provides to the Department of Labor and Industrial Relations the responsibility of annually adjusting the minimum wage, based on the Honolulu region consumer price index for urban wage earners and clerical workers, CPI-W. This would begin on September 30, 2021, and each adjusted minimum wage rate would take effect the following January first. H.B. 5 further deletes the tip credit. We support the contents of this bill.

H.B. 442 would provide the Counties with the authorization to “enact and enforce ordinances establishing minimum wage requirements pursuant to chapter 387”. The ILWU has questions related to H.B. 442 such as would this new structure provide some confusion with more than one minimum wage in the State, especially for employers who are operating in multiple counties? Also, would the counties have the authority to pass ordinances only for minimum wages higher than the State’s minimum wage?

H.B. 1433 would also place the responsibility of annually adjusting the minimum wage, based on the Honolulu region consumer price index for urban wage earners and clerical workers, CPI-W on the Department of Labor and Industrial Relations. The first adjusted minimum wage by the Department would occur following the last incremental step to \$10.10 per hour from the prior minimum wage law change, and begin on January 1, 2019. We support the contents of this bill.

The ILWU supports the deletion of the tip credit. Other states have increased their minimum wage but have no tip credit. Among them are several western states such as Washington, Alaska, California, Minnesota, Montana, Nevada, Oregon, and the District of Columbia.

Employers argue that tipped employees earn far more than the minimum when tips are included. Why should that matter to the employer? Tipped employees earn their tips, just as they earn their wages. And who pays the tip? Not the employer, who actually benefits from a subsidy provided by the tipping customer. Without tips, the employer might be forced to pay the employee two or three times more in wages. Finally, a tip is not guaranteed. While it is customary in the U.S. for customers to leave a tip for restaurant servers, the tip is voluntary.

Of the three bills, the ILWU prefers H.B. 5. We thank you for the opportunity to share our views and concerns.

Testimony on Minimum Wage Increases

Testimony to the House Committee on Labor & Public Employment

February 14, 2017

8:30 a.m.

State Capitol – Conference Room 309


Re: House Bill 442 RELATIONG TO LABOR

Committee on Labor & Public Employment: Chair Aaron Ling Johanson, Vice-Chair Daniel Holt

POSITION: STRONGLY OPPOSE

My name is Monica Konanimakamae Toguchi Ryan, and I own a 70-year old family business, Highway Inn.

What happens to the price of Lau Lau with the proposed increases in minimum wage?

	2017	2018	2019 ?	2020 ?	2022 ?
Minimum Wage/hr	\$ 9.25	\$ 10.10	\$ 11.50	\$ 15.00	\$ 22.00
Price of 1 Lau Lau	\$ 6.95	\$ 7.40	\$ 8.26	\$ 10.50	\$ 15.42

- Would you buy a Lau Lau for \$15.50, or \$10.50?
 - That is what it will cost with minimum wage at \$22 or \$15 per hour.
- Would you think the restaurant's owners were overcharging?
 - Our customers will!

Not only does this analysis apply to the iconic Hawaiian Lau Lau, but it will apply to restaurants in Hawaii as a whole, as labor and local food costs¹ increase. Increased prices reduce demand for services, goods and labor, and as a whole negate benefits of income redistribution through raising the minimum wage.

Restaurants have approximately 1/3rd to 2/5^{ths} of one cost: Labor. Hence, restaurants' economic fortunes are very sensitive to the rise in labor cost. This cost can increase with the stroke of pen. It is similar to how other industries with one large input cost and low margins struggle when that one cost spikes - e.g. oil price shock in the transportation industry.

Although restaurants also have another 1/3rd of their costs in many types of food products, food costs increase and decrease at different times, and for different food products. Hence overall food costs remain at manageable 'CPI' levels. The other ~ 1/3rd of costs are also typically long term manageable and predictable costs such as electric bills and rent.

¹ assumes local ingredients used in a lau lau increase in cost at a rate of 1/4th the rate of labor increase as farmers low wage laborers also increases. Restaurant margin kept equal in each year at 4%

The other deadening impact of arbitrarily raising the minimum wage is that employees with skills honed after several years of work and *merit-based* salary increases, are matched in pay to non-skilled workers, thus their skill is devalued. Employers need to compensate existing skilled and loyal employees, even higher than the new minimum wage to maintain the internal equity between skilled and non-skilled labor. We estimate this adds an additional 25-40% in labor costs above the impact on costs of raising minimum wage.

The Minimum Wage Paradox in the Restaurant Industry

Moreover, the Paradox of the restaurant industry is that *staff members making Minimum Wage are the highest compensated employee group (non-manager) in the business*. Kitchen-staff earn less than the servers. BLS.gov from 2015 shows Hawaii servers making on average \$15.62 per hour (which is the highest in the nation), because the difference between \$15.62 and the Minimum Wage is paid in Tips. At Highway Inn Kaka'ako, servers earn \$20-\$30 per hour in tips. In fact, in 2015 one minimum wage employee earned \$72,100 in total compensation including earning Minimum Wage for 40 hours a week.

In Hawaii, the state has a disproportionate amount of wage earners in this category (1.35x the average per state per BLS.gov and third highest in the nation). Hence the data suggests that raising the minimum wage will not only impact restaurants more than the average in Hawaii, and thus the state, but it also compensates the workers that are already the highest compensated. Furthermore BLS.gov data says 25% of minimum wage earners are under 19, and 25% are between 19 and 34 years old – those people just setting out on their careers, or making ends meet while at college.

In other words – in Hawaii, the minimum wage increase will largely benefit high school and college students in short term work, and further increase the salary of a large proportion of minimum wage workers making \$15.62 an hour; likely not a group struggling with housing and basic needs.

The Established Federal Tip Credit law successfully restores balance to restaurant workers' salaries

The Tip Credit redistributes wages from the high-earning employees (servers) to the lower-earning employees (kitchen workers), at the individual restaurant micro level. Hawaii currently implements the lowest tip credit in the nation (see attachment).

Other States implement federal provisions specifically for tipped employees to remove this paradox. For example Massachusetts implements one of the highest tip credits of \$7.25 to reduce Wait staff's salaries to \$7.25 below the minimum wage – and servers then have their gross of \$20-\$30 per hour wage reduced to \$13-\$23 per hour. The accumulation of the tip credit for each hour worked gets redistributed to the kitchen workers such as dishwashers and cooks to increase their salaries to around \$20-\$25 per hour. Servers are accustomed to this. Servers have shared tips with Kitchen staff for many decades until it was deemed illegal in recent times. Now the Tip Credit is used to affect the same result.

Recent 9th circuit court rulings made tip pooling illegal in February 2016 in western states including Hawaii, further widening the gap between servers' and kitchen workers take-home pay, thereby making the Tip Credit the remaining legal mechanism for redistributing tips within a restaurant.

FEDERAL: Fair Labor Standards Act (FLSA)		Rank High to Low
Jurisdiction	Basic Combined Cash & Tip Minimum Wage Rate \$7.25	Maximum Tip Credit Against Minimum Wage \$5.12
District of Columbia*	\$11.50	\$8.73
Massachusetts	\$11.00	\$7.25
Nebraska	\$9.00	\$6.87
New Jersey	\$8.44	\$6.31
West Virginia	\$8.75	\$6.13
Delaware	\$8.25	\$6.02
Arkansas	\$8.50	\$5.87
Rhode Island	\$9.60	\$5.71
Michigan	\$8.90	\$5.52
New Mexico	\$7.50	\$5.37
Indiana	\$7.25	\$5.12
Kansas	\$7.25	\$5.12
Kentucky	\$7.25	\$5.12
Maryland	\$8.75	\$5.12
North Carolina	\$7.25	\$5.12
Oklahoma	\$7.25	\$5.12
Puerto Rico	\$7.25	\$5.12
Texas	\$7.25	\$5.12
Utah	\$7.25	\$5.12
Virginia	\$7.25	\$5.12
Alabama		Remainder = \$2.13
Georgia		Remainder = \$2.13
Louisiana		Remainder = \$2.13
Mississippi		Remainder = \$2.13
South Carolina		Remainder = \$2.13
Tennessee		Remainder = \$2.13
Virgin Islands	\$8.35	\$5.01
Vermont	\$10.00	\$5.00
Wisconsin	\$7.25	\$4.92
Pennsylvania	\$7.25	\$4.42
South Dakota	\$8.65	\$4.33
Ohio	\$8.15	\$4.07
Maine	\$9.00	\$4.00
New Hampshire	\$7.25	\$3.99
Idaho	\$7.25	\$3.90
Missouri	\$7.70	\$3.85
Connecticut	\$10.10	\$3.72
New York	\$7.50	\$3.50
Illinois	\$8.25	\$3.30
Colorado	\$9.30	\$3.02
Florida	\$8.10	\$3.02
Wyoming	\$5.15	\$3.02
Arizona	\$10.00	\$3.00
Iowa	\$7.25	\$2.90
North Dakota	\$7.25	\$2.39
Hawaii	\$9.25	\$0.75

The problem that's tearing restaurants apart

By **Roberto A. Ferdman** August 20, 2015

All across the country, restaurants are struggling to fill their kitchens. It's happening on the East Coast, in New York City, and in the Midwest, in Chicago; it's happening out West, too, in Los Angeles, San Francisco and Seattle. Good cooks, who were once in excess supply, are suddenly a lot tougher to find.

The truth is that despite what you might see on the Food Network or other cooking shows, being a cook is grueling work that's not for the faint of heart. The slowdown in immigration over the past five years has also made it harder for kitchens to find staff since the industry is deeply reliant on immigrant labor.

But there's another problem that's been bubbling up for decades: Many of the people who work the kitchen have been getting short-changed -- especially when compared to the wait staff serving customers.

"The back-of-house staff are typically underpaid compared to the front of the house," said Darren Tristano, executive vice president of Technomic, a restaurant industry research firm. "It's a really big issue."

Tipping the scale

On paper at least, cooks in this country are paid more than waiters. The median pay for cooks is about \$10 an hour, according to the Bureau of Labor Statistics. For waiters, it's roughly \$9 an hour. But those numbers don't tell the whole story -- because waiters are paid tips, and kitchen workers are not. And tips completely skew the comparison.

The government's estimate for how much waiters make includes a bit of guesswork about how much they earn from tips, since tips are often paid in cash, and things paid in cash tend to slip through the cracks. The Atlantic wrote about the issue earlier this year:

...the IRS estimates that as much as 40 percent of tips go unreported. It's hard to track for an obvious reason: Everyone likes giving and getting tips in cash. Nationally this adds up to as much as \$11 billion in unreported (and untaxed) income.

Waiters, in other words, are probably making a lot more money than BLS data makes it seem. Pay Scale, which tracks salaries through crowdsourcing, estimates that in cities like Miami, Boston and San Francisco, waiters can expect to make \$13 an hour in tips alone, on average. Elsewhere, tips can add well over \$10 an hour to servers' salaries.

Waiters working in big cities understand this. But so do cooks, and they aren't happy about it.

"The fact that servers are making so much money in tips is certainly a reference point that causes cooks to be dissatisfied with their pay," said Michael Lynn, a Cornell University professor and one of the country's foremost experts on tipping. "That is absolutely true. It's the way it is."

The waiting game

Waiters aren't paid like everyone else. Unlike cooks, who are subject to the federal minimum wage, servers are instead compensated based on the assumption that they are going to earn some extra money on the side. Restaurants are required to pay their wait staff what is known as the tipped-minimum wage, which is \$2.13 per hour.

The understanding is that tips will make up for the difference between the tipped and regular pay floor. But even when the tips don't make up that difference, waiters still make no less than the federal minimum wage because restaurants are legally required to pay the rest.

The truth, however, is that that rarely happens. The average base pay for waiters is \$4.90, according to Pay Scale. What they make in tips is earned on top of that, and tips alone more often than not amount to a good deal more than the \$7.25 federal minimum wage.

"It can be a very high-paying job," said Tristano. "Especially considering that many entry-level cooks earn at or near the minimum wage."

Kitchen workers aren't allowed to share tips. Early on, it was common practice for restaurateurs to pool together tips and then split them among their entire staff. It was also common for tips to disappear en route to the employees, likely into the pockets of management.

Realizing the need for regulation, the government intervened, creating a set of rules known as the Fair Labor Standards Act, which stipulates, among other things, that if tips are pooled, they can only be distributed among workers who "customarily and regularly receive tips." Cooks do not qualify. Neither do dishwashers or janitors.

"You can force a waiter to share a tip with a bus boy or bartender but not with someone in the kitchen staff," said Lynn. "It's illegal to split tips with the cooks."

Part of the reason for the measure was to ensure that there was no room for defrauding the public. If people think they're tipping the waiter but aren't, there's a lack of transparency. But mostly, Lynn said, it was a hasty response to the outgrowth of

firms plucking tips away from servers.

"It was a less than optimal solution," he said. "It was patchwork. The problem is that it doesn't really benefit the people working the back of house."

Tristano agrees. "It's not working for cooks," he said. "It's not working for them at all, and that's never really been addressed."

Bridging the gap, even as it grows

The ark of tipping etiquette varies, depending on where you live, but it tends to bend upward. In many cities, the tip norm has crept up from 15 percent of the bill to 18 percent. Where 20 percent was considered generous, 25 percent is becoming the new standard. And that's only widening the gap between what waiters and cooks are paid.

"The more money servers earn from tips, the more customers are ultimately paying to eat out," said Lynn. "That pressures restaurants to charge lower prices, which, in turn, makes it even harder to pay cooks."

The number of chefs and restaurateurs who are concerned about the current system is growing. Last year, a panel that included celebrity chef Michael Chiarello and Shake Shack founder Danny Meyer discussed how the tipping system is creating pay inequality within restaurants. In 2013, New York Times restaurant critic Pete Wells wrote a passionate takedown of tipping.

"The restaurant business can be seen as a class struggle between the groomed, pressed, articulate charmers working in the dining room and the blistered, stained and profane grunts in the kitchen," Wells wrote.

Many restaurants have responded by breaking from the traditional tipping system. Some have gotten rid of tips altogether. For instance, Sushi Yasuda in New York City added this note to its credit card slip a couple years ago: "Sushi Yasuda's service staff are fully compensated by their salary. Therefore gratuities are not accepted." Many others have simply added a flat service charge.

But there are other, more unique adaptations, too. One restaurant in Los Angeles, Alimento, added a kitchen service line to its bills, so that customers could leave a tip for both the servers and the cooks. Chef and owner Zach Pollack shared a picture of the new receipts on Instagram earlier this year.

LABOR LAWSUITS NEWS

1

The Supreme Court Might Get to Decide If Tip-Pooling Is Legal

Here's why that's problematic

by [Daniela Galarza](#) | Jan 24, 2017, 3:52pm EST



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Late last week, the National Restaurant Association (often called “the other NRA”) [petitioned the U.S. Supreme Court](#) to hear a case to **decide if employee tips may be collected by the employer and redistributed** or pooled among tipped and/or non-tipped employees. In 2011, in response to a court ruling, the Department of Labor amended the [Fair Labor Standards Act](#) (FLSA) to specifically outlaw the practice of sharing tips between tipped employees and non-tipped employees, arguing that employers could use that leniency to pay its traditionally-non-tipped employees a lower minimum wage. In its recent petition, the NRA — which wants tipped and non-tipped employees to be able to share tips — is questioning the DOL’s authority to make changes to those laws.

How does tip pooling work?

Tipped employees in a restaurant setting include front-of-house staff: servers, captains, bussers, bartenders, and runners. Non-tipped employees refer to all back-of-house workers, including chefs, cooks, dishwashers, and porters.

In some states, there is a universal minimum wage; in others, there is a minimum wage and a separate tipped minimum wage. The **controversial** tipped minimum wage allows employers to pay tipped employees as little as \$2.13 per hour, with the understanding that all or a portion of their tips will make up the difference between their sub-minimum wage and the regular state or federal minimum. In order to do this, employers must notify employees of how their wages and tips will be calculated, and claim what is known in the industry as a “tip credit.”

Where this becomes complicated is when a restaurant wants to pool its servers’ tips and redistribute them among the staff. On this topic, the **Fair Labor Standards Act currently reads:**

Tips are the property of the employee. The employer is prohibited from using an employee’s tips for any reason other than as a credit against its minimum wage obligation to the employee (“tip credit”) or in furtherance of a valid tip pool.

Meanwhile, the FLSA on tip pools, and what constitutes a valid tip pool:

The requirement that an employee must retain all tips does not preclude **a valid tip pooling or sharing arrangement** among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), bussers, and service bartenders. A valid tip pool may not include employees who do not customarily and regularly received tips, such as dishwashers, cooks, chefs, and janitors.

Why and how did tip pooling end up in the courts?

The NRA’s petition stems from a 2010 case, *Cumbie v. Woody Woo Inc.*, in which a server in Oregon (where the minimum wage was \$8.40 per hour at the time of the case; there is no tipped minimum wage in Oregon) sued her employer because her tips were being pooled between front (tipped) and back-of-house (non-tipped) staff. In that case, the server’s tips were being distributed thusly, **as described in the appeal:** “The largest portion of the tip pool (between 55 percent and 70 percent) went to kitchen staff (e.g., dishwashers and cooks), who

are not customarily tipped in the restaurant industry. The remainder (between 30 percent and 45 percent) was returned to the servers in proportion to their hours worked.”

Cumbie’s argument was straightforward: The FLSA states (29 U.S.C. §§ 203(m)) that tip pooling is valid only when (a) an employer claims a tip credit; (b) an employer tells employees in advance that they will be pooling tips; and crucially (c) tips are shared amongst tipped employees only (i.e. **front-of-house staff and not back-of-house staff**).

The initial case was dismissed. **In the appeal**, the court sided with the defendant, Woody Woo Inc. It argued that because (a) Cumbie was paid at least the minimum wage; and (b) knew upon the start of her employment that she would be sharing tips with back-of-house staff, the tip pooling arrangement set forth by Woo Inc. was valid. (That court’s decision was later overturned; more on that below.)

What else is at stake?

But the bigger argument Woody Woo Inc. successfully made — and the one the NRA wants upheld according to its petition — is that Congress did not grant a specific statute under which the Department of Labor can make such rules or amendments to the law: In other words, **who gave the DOL the authority to make these rules, anyway?** Various cases related to other parts of the FLSA have fixated on what powers the regulators at the DOL do or do not have; this argument isn’t a new one. But the petition does give the Supreme Court a reason to reassess the laws and pertinent cases and make a final call, which, if it happens, could in theory upend judgements in dozens of legacy cases.

In the Cumbie v. Woody Woo Inc. case, the Department of Labor — under then-Secretary of Labor Thomas Perez — disagreed with the appeal, **writing in 2011** that “if there are no restrictions on an employer’s use of its employees’ tips... the employer can... mandate that employees turn over all of their tips and use those tips to pay the minimum wage or for any other purpose.” In other words, according to the DOL’s reading of the Cumbie v. Woody Woo Inc. ruling, a restaurant could pay a cook — a non-tipped employee — less than minimum wage, collect tips from a server and, as long as the server made minimum wage, use a portion of those tips to make up the pay to the cook. The DOL specifically sought to prevent employers

from withholding and redistributing employee tips for the purposes **of making up the wages of non-tipped employees.**

DeCamp and the Restaurant Law Center's executive director Angelo Amador clarified in an email that in their current argument to the Ninth Circuit, "not a single one of the plaintiffs in this case advocates restaurants keeping tips... We stated very clearly... during oral argument that if the only thing DOL did here was to ban restaurants from keeping some or all of the employee tips, we would not have filed the case. This case is, and always has been, purely about restaurants being able to have tip pools that also include kitchen staff. That's it."

But the court's ruling is in fact so open to interpretation, **according to the DOL's notes on updating the FLSA**, that it could be argued that an employer may collect tips from tipped employees — as long as it paid them minimum wage, did not claim a tip credit, and informed them of the practice in advance — and tip out the chef, or even management. Reached by phone, Paul DeCamp — council of record for the Restaurant Law Center, a legal division of the NRA — said assuming the prerequisites were in order, an employer could even keep a portion of the tips "for the house itself." Though this isn't the intent of the NRA's petition, this under-publicized loophole remains.

How does this fit in with the current tipping conversation?

In 2011, **the DOL further amended the rule to specify** "valid mandatory tip pools... can only include those employees who customarily and regularly receive tips," and that "an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employee's tips for any other purpose." **In February 2016**, the Ninth Circuit Court overturned the Cumbie ruling, officially referring to the DOL's version of its tipping regulation: It is illegal to pool tips with non-tipped employees.

But Cumbie v. Woody Woo Inc. is not the first or only lawsuit that has sought to clarify or overturn these rules, which is why DeCamp believes the Supreme Court petition for his case may just have a chance. Restaurants have been trying to side-step the labor department's rules for years, **mostly in good faith** and for the purposes of sharing front-of-house wealth with the hard-working and highly-skilled back-of-house. **A couple of years ago, LA-based chef Zach Pollack added a kitchen tip line** to every check, thereby giving diners an opportunity to bump up the take-home pay of cooks and dishwashers.

Most notably, NYC-based restaurateur and Shake Shack mastermind Danny Meyer **announced in 2014 that he would be eliminating gratuity** from his restaurants altogether by raising menu prices and paying front- and back-of-house staff salaries that compensated them based on merit, not the arbitrary generosity of individual guests. **In a recent interview, Meyer explained** his reasoning for evolving his business out of its dependence on tips in blunter terms:

What is a tip? It's a multiplier of menu pricing and as menu prices have gone up, so too has the multiplier over the course of my career which is now 30, 31 years. Tipped employees, happily for them, are making about 300 percent of what they were 31 years ago. During that same period, everyone in the kitchen – the dishwasher, non-tip eligible employees – have seen their hourly income go up about 20 percent.

With minimum wages on the rise across the country, the topic has become a hot-button issue for restaurants. In 2015, the National Restaurant Association **came out against raises for fast-food workers and the Fight for \$15**, a grassroots movement that seeks to raise the wages of workers in several industries, including hospitality. One reading of the NRA's recent petition could be that it's hoping a relaxing of FLSA regulations will make it easier for the industry to meet increasing labor costs by giving restaurateurs more options for how to manage tips and meet wage obligations.

But what if the new administration under (proposed) **incoming Secretary of Labor Andrew Puzder**, a Republican in favor of deregulation, seeks to relax those rules — referencing the same statutes the DOL did in its 2011 revisions — without waiting for a Supreme Court interpretation? Now, that would be interesting.

- **All Labor Coverage** [E]
- **All National Restaurant Association Coverage** [E]

Daniela Galarza is a senior editor at Eater.

Editor: Erin DeJesus

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Duff on Hospitality Law

Bad News for Employers: In a Surprise, Ninth Circuit Upholds Tip Pooling Regulations

By Michael Brunet on 2.25.16 | Posted in Employment Law, Food and Beverage, Hotel Restaurant

In the latest of a series of twists and turns regarding the legality of certain tip pools in Western states, on February 23, 2016, a divided three judge panel of the Ninth Circuit Court of Appeals validated regulations by the Department of Labor (“DOL”) that significantly limit employers’ ability to have tip pools that include more than “customarily and regularly tipped” employees. This development means that employers operating in states or territories in the Ninth Circuit (covering Washington, Oregon, Alaska, Idaho, Montana, Nevada, California, Arizona, Hawaii, Guam, and the Northern Mariana Islands) cannot include in their tip pools “back of the house” employees (such as cooks or dishwashers) or other employees who are not customarily tipped. We examine the impact of and history behind this decision below.

How did we get here?

Under the federal Fair Labor Standards Act (“FLSA”), with proper notice, an employer can use an employee’s tips to offset a significant portion of the federal minimum wage. This is known as a “tip credit.” Tip credits are illegal under Oregon and Washington law, but remain legal in many other states.

Under the FLSA, where an employer claims a tip credit toward the federal minimum wage, the employer may only require that employees pool tips with other employees who customarily and regularly receive tips. This requirement means that “back of the house” employees and other employees who do not regularly receive more than \$30 in tips each month are not eligible to participate in a mandatory tip pool *if their employer takes a tip credit*. The FLSA is silent about who may participate in a mandatory tip pool if the employer does not claim a tip credit against the minimum wage.

The scope of mandatory tip pools in situations when the employer does not claim tip credits was the main subject of the 2010 case *Cumbie v. Woody Woo, Inc., dba Vita Cafe*, 596 P.2d 577 (9th Cir. 2010), a much-touted victory for the hospitality industry in the Ninth Circuit (achieved by GSB’s own Eric Lindenauer, who was representing the employer). In that case, the Ninth Circuit Court of Appeals rejected a waitstaff’s claim against Vita Cafe in Portland, Oregon that the cafe’s mandatory tip pool violated the FLSA because the pool included employees



Bad News for Employers: In a Surprise, Ninth Circuit Upholds Tip Pooling Regulations



who did not regularly receive tips (in that case, kitchen employees). The court held that the FLSA's restriction on tip sharing among customarily and regularly tipped employees applies only when their employer claims the federal tip credit. Accordingly, after this decision, employers operating in the Ninth Circuit who did not claim a tip credit could legally require servers to share tips with "back of the house" employees who did not customarily receive tips.

Unsurprisingly, and in direct response to the *Woody Woo* decision, in May 2011, DOL issued new regulations regarding tips. Under those regulations, DOL interpreted the FLSA such that tips are the property of the tipped employee (and no one else) regardless of whether an employer claims a tip credit against that employee's wages. As such, under the regulations, an employer cannot use an employee's tips except as a credit against minimum wage (if allowed by state law) or as part of a tip pool that only includes employees who regularly receive tips.

While the 2011 regulations were being prepared by DOL, the National Restaurant Association met with the agency several times to discuss how the regulations would be enforced in the Ninth Circuit in light of the *Woody Woo* decision. The agency assured the Association that it would not enforce the new rules in the Ninth Circuit. However, in an abrupt about-face, in February 2012 DOL issued a directive to its field investigators that explicitly rejected the *Woody Woo* decision and instructed them to enforce the new regulations nationwide, including in the Ninth Circuit.

In July 2012 several restaurant industry associations (including the Washington Restaurant Association and Oregon Restaurant and Lodging Association) and others filed a lawsuit in Oregon's federal court, challenging the validity of the 2011 DOL regulations. They argued that DOL exceeded its authority in issuing the regulations, and that the regulations were inconsistent with the plain language of the FLSA as well as of *Woody Woo*. They prevailed in summer 2013, when a federal judge ruled that DOL went beyond its authority when it issued regulations prohibiting the use of tips by an employer even when the employer does not take a tip credit. Specifically, Judge Michael Mosman held that Congress, through the FLSA, had intended to impose tip pooling conditions on employers who take a tip credit, but did not intend to impose a similar requirement for all tipped employees. As a result of this ruling, DOL's 2011 tip pooling regulations were invalidated for employers operating in the Ninth Circuit.

Unfortunately, DOL appealed the decision to the Ninth Circuit Court of Appeals, where it was consolidated with another similar appeal regarding control over casino workers' tips. Legal experts expected that the Court of Appeals would affirm the Oregon federal court's decision, given that judges from the same court decided *Woody Woo* in employers' favor just a few years ago. However, as discussed above, a divided three judge panel issued a surprise ruling in February 2016, concluding that DOL did in fact have authority to issue the 2011 regulations. The complete decision is available to read here.

Bad News for Employers: In a Surprise, Ninth Circuit Upholds Tip Pooling Regulations



Where do we go from here?

There is still a slight chance that the Ninth Circuit Court of Appeals' decision may be reconsidered by 11 judges of the court (called an *en banc* hearing), or considered on appeal to the United States Supreme Court. However, neither of these outcomes is likely. As it stands, the law under this new ruling does not permit mandatory tip pools that include anyone (like back of the house workers) other than regularly and customarily tipped employees. This is a major shift, as such tip pools appeared safe in the Ninth Circuit for the last five years.

In light of this ruling, employers with mandatory tip pools should change the parameters of their programs to eliminate sharing with employees who do not customarily receive tips. Or, as an alternative, such employers could consider implementing a non-discretionary service charge to be shared more broadly among employees (more on that option here). Either way, every employer's situation is different, and we recommend seeking legal counsel before making any changes to tip pools.

Tags: back of house employees, Department of Labor, DOL, Fair Labor Standards Act, Federal Minimum Wage, FLSA, National Restaurant Association, Ninth Circuit, Ninth Circuit Court of Appeals, Oregon, Oregon Restaurant and Lodging Association, Tip Credit, tip pooling conditions, tip pools, Washington Restaurant Association



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TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Tuesday, Feb. 14, 2017
TIME: 8:30 a.m.
PLACE: Conference Room 309

RE: HB442 (Minimum wage; counties)
Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA opposes this bill, which will allow the counties to have the power to enact and enforce ordinances establishing minimum wage requirements. We are concerned that doing so may lead to economic disparities across the state and may eventually increase the price of food and make it harder for working families to make ends meet, which is the opposite of its intended impact.

We believe that the minimum wage should continue to be determined and established at the state level, rather than by individual counties.

Thank you for the opportunity to testify.

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To: Rep. Aaron Ling Johanson, Chair
 Rep. Daniel Holt, Vice Chair
 Members of the Committee on Labor & Public Employment

From: Victor Lim, Hawaii Restaurant Association

Subj: HB442 Authorize the counties to establish a higher minimum wage than the state's.

Date: February 12, 2017

The Hawaii Restaurant Association representing about 3,500 restaurants with about 90,000 food service jobs here opposes HB442 that would authorizes the counties to establish a higher minimum wage than the state minimum wage.

We believe that such an important decision should be done at the State level for uniformity of wage and hour laws. It would make it very difficult for companies that have businesses at different counties to have a uniform policy.

Thank you for allowing me the opportunity to share our point of view.

Aloha.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Tuesday, February 14, 2017 at 8:30 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 442 RELATING TO MINIMUM WAGE

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 442, which authorizes the counties to establish a higher minimum wage than the state minimum wage.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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.

We do not believe that the counties should be able to set the minimum wage. Employer policies, regulations and enforcement should remain at the state level. The counties neither have the expertise or resources to be able to set some of these policies let alone enforce them. Having it done at the state level provides consistency for employers and enforcement.

We ask that this bill be deferred. Thank you for the opportunity to testify.



02/13/17

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair & Rep. Daniel Holt, Vice Chair

RE: Opposed to HB442 County Authority to Set Local Minimum Wage

While Gyotaku is committed to providing a living wage to all its employees, we strongly opposed to giving wage and hour authority to the county government.

Wage and hour law is best overseen by the Federal and State Governments.

Variable minimum wages between the counties in Hawaii would be problematic to multi location business owners and create another level of enforcement that is duplicitous and inefficient.

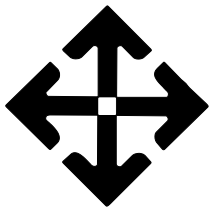
Sincerely,

Thomas H Jones

President & CO-Owner

REI Food Service, LLC

d.b.a. Gyotaku Japanese Restaurants



The Hawaii Business League

1188 Bishop St., Ste. 1003, Honolulu, Hawaii 96813

Phone: (808) 533-6819 Facsimile: (808) 533-2739

February 14, 2017

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons
President

Subject: H.B. 442 – RELATING TO MINIMUM WAGE.

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization. We are opposed to this bill.

Despite the arguments for and against raising the minimum wage, just the mere impracticality of having differing minimum wages from county to county presents a whole variety of obstacles and burdens for small businesses. Hawaii is still a small state and many members operate in various counties. If the counties decided to not act uniformly, and as a result different wage scales were adopted, it could have a dramatic effect on how small businesses operate from county to county. Some may elect not to service certain counties if their wage differential became much higher than the normal. Bookkeeping problems would abound.

We are still opposed to an increase in the minimum wage for the reasons which we will outline in subsequent testimony for other bills on this agenda, but at this point we would only like to point out that a county minimum wage would create havoc.

Based on the above we cannot support this bill.

Thank you.



3610 Waialae Ave
Honolulu, HI 96816
P: (808) 592-4200
E: tyamaki@rmhawaii.org

**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 14, 2017
Re: HB 442 RELATING TO MINIMUM WAGE**

Good morning Chairman Johanson and members of the House Committee on Labor and Public Employment. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The Retail Merchants of Hawaii strongly opposes HB 442 Relating to Minimum Wage. This bill would allow the counties to impose minimum wages that could exponentially be higher than its current \$9.25 per hour.

The most harmful consequence of this minimum wage increase will be on our smaller retailers which face constant and intense competition, not only from other retailers, but also from internet sellers.

The impact of a minimum wage increase is exponential, causing a compression of wages between newly hired, inexperienced workers and veteran, experienced employees. Mandating scheduled adjustments at the lowest tier of the employment scale causes a tremendous and prohibitive increase in overall employment costs. Furthermore, an increase in payroll costs also leads to increases in benefit costs that are based on wages, including unemployment insurance, Social Security and Medicare, workers' compensation premiums, and vacation and holiday pay.

Over the past few years, the retail industry has seen reasonable growth, with existing companies opening new locations and new retailers entering the marketplace. Hundreds of new retail jobs are being created, with compensation levels based on the current economic conditions, reemployment regulations, and the business philosophy of the employer. Increasing the minimum wage is counterproductive to any further growth.

We respectfully ask that you hold this measure. Mahalo again for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 12:19 AM
To: LABtestimony
Cc: makikirandy@yahoo.com
Subject: *Submitted testimony for HB442 on Feb 14, 2017 08:30AM*

HB442

Submitted on: 2/13/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Ching	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2017 8:43 PM
To: LABtestimony
Cc: jamesjtz@aol.com
Subject: *Submitted testimony for HB442 on Feb 14, 2017 08:30AM*

HB442

Submitted on: 2/11/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
James Gauer	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2017 8:37 PM
To: LABtestimony
Cc: clareloprinzi@gmail.com
Subject: Submitted testimony for HB442 on Feb 14, 2017 08:30AM

HB442

Submitted on: 2/10/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
clare loprinzi	Individual	Support	No

Comments: Increase in wages is essential when cost of living is so high. No brainer

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2017 4:01 PM
To: LABtestimony
Cc: victor.ramos@mpd.net
Subject: *Submitted testimony for HB442 on Feb 14, 2017 08:30AM*

HB442

Submitted on: 2/10/2017

Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

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Hi committee,

My name is Tyler Greenhill. I am from Hawai'i Kai, HD17 and SD9. I strongly support HB442.

For almost all of my 12 years working I have received a near minimum wage, certainly below \$15/hour. With such a wage it has been impossible to pay off my student load debt, or begin to imagine moving out of my parents' house here on Oahu. I am unable to spend much beyond what is required of my monthly bills. While I now work a job with a slightly higher wage, because of graduate school I work fewer hours.

Were I for the last 12 years making a more humane wage, such as \$15/hour or better, I would have been able to make a much larger dent in my debts. Also, I would have had slightly more money to spend eating out with friends and family.

I find it inconceivable that in 2017, in a place with such an exorbitant cost of living that is part of the wealthiest nation on earth, that the minimum wage is as low as \$9.25/hr. What about the people in much more financially difficult situations, who might not have parents in Hawai'i to offer them housing? What about those working on a minimum wage who have children?

Increasing the minimum wage to \$15/hour would not only help countless people in financial and employment situations like me maybe make ends meet, but would also be a significant boon for our economy. I have too many debts to save. Thus, all money I make is quickly spent. Were I or people in my situation to have a higher wage we would spend more money, creating greater revenue for local businesses.

I urge you to support HB442, not only because it is the economically responsible thing to do, but because it is morally just.

Thank you,

Tyler Greenhill

HB 442

Late Testimony

LATE

LATE

LATE



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR HOUSE BILL 442, RELATING TO MINIMUM WAGE

**House Committee on Labor
Hon. Aaron Ling Johanson, Chair
Hon. Daniel Holt, Vice Chair**

**Tuesday, February 14, 2017, 8:30 AM
State Capitol, Conference Room 309**

Honorable Chair Johanson and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 350 members. On behalf of our members, we offer this testimony in strong support of House Bill 442, relating to minimum wage.

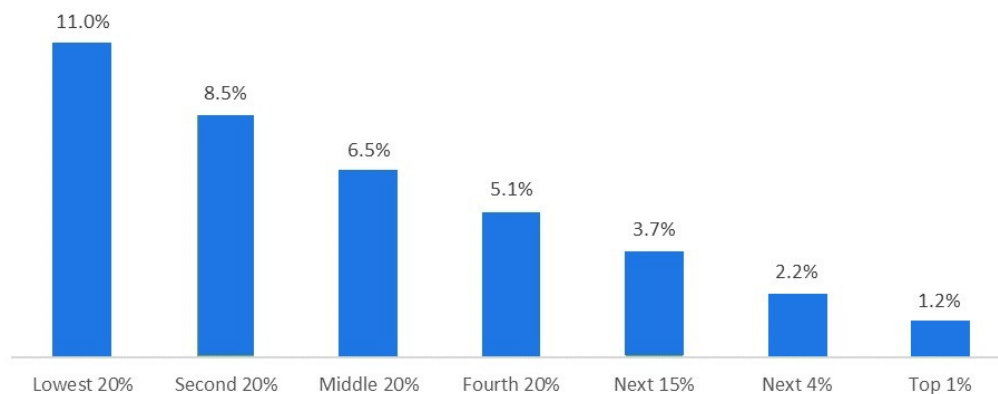
Hawai'i is exorbitantly expensive. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2016* report found that a full-time worker would need to earn \$34.22/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015. Average rent for a two-bedroom unit surpassed \$2,100 in 2015, with average rent for a 900-square-foot exceeding \$2,200 in 2016. In the past three years alone, Honolulu rent has increased 23.5 percent. While 47 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$14.49/hour, scarcely enough to meet their basic needs. One out of every four households in Hawai'i report that they are "doubling up" or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, 54 percent of households are cost-burdened, meaning that they pay more than 30 percent of their income for housing costs.

To make matters worse, we are in the midst of an affordable housing crisis. For context, our state's cost of housing has skyrocketed over the last decade, leaving many families searching for affordable alternatives, in shelters, or on the streets. The median price of condominiums on O'ahu increased 8.3 percent in 2016 to \$390,000, while the median price for single-family homes increased by 6.5 percent to \$735,000, according to the Honolulu Board of Realtors. The cost of a four-bedroom home in urban Honolulu now exceeds \$1.1 million. At least 40 percent of residences in Hawai'i are owner unoccupied, per the Hawai'i Housing Finance and Development Corporation, meaning that nearly 50 percent—and by some estimates well over half—of Hawai'i homes are investment properties. Many of those properties are owned by mainland and foreign

buyers, whose real estate market speculation is a prime driver of Hawai'i's highest-in-the-nation cost of housing.

Moreover, the islands are subject to a general excise tax that regressively impacts the poor. Today, our state's lowest-income households pay over 13 percent of their income in taxes, while our highest earners pay 8 percent or less. The GET, specifically, hits low-income families nearly 1000 percent harder than high earners. Hawai'i is in the minority of states that push low-income people deeper into poverty with an unequal tax structure. Yet, in allowing high-earner income tax rates to expire in 2015, lawmakers effectively give our state's wealthiest residents a \$43 million windfall.

The GET Hits Low-Income Workers Almost 10 Times As Hard As the Top 1%
Hawaii's General Excise Tax as a Share of Family Income



It is the moral responsibility of policymakers, then, to ensure that Hawai'i's lower-income workers can earn a living wage. Even after the minimum wage increases enacted in 2014 that gradually rise to \$10.10 in 2018, our state's minimum wage lags behind our steep housing costs. Like comparisons of other professional wages and salaries in the islands, after factoring in cost of living, Hawai'i has the lowest minimum wage in the nation. About one-third of the state's work force, or 200,000 workers, would see pay increases if this proposal passes, 57 percent of whom are women, 69 percent of whom are over the age of 25, and 3 out of 5 of whom work full-time.

To make Hawai'i more affordable for working class residents, IMUAlliance asks you to support this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2017 12:28 AM
To: LABtestimony
Cc: doorae@hawaii.edu
Subject: Submitted testimony for HB442 on Feb 14, 2017 08:30AM

HB442

Submitted on: 2/14/2017
 Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
doorae shin	Individual	Comments Only	No

Comments: Aloha, My name is Doorae Shin and I am a resident of Manoa Valley. This bill is important for the present and future livelihoods of our residents in Hawaii as well as for the local economy. Higher wages always lead to a growing middle class which always leads to a healthier economy, where people have more financial freedom to support the local economy and small businesses. Raising the minimum wage empowers the people and benefits our local economy. I am in full support of this bill. Mahalo

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NFIB

The Voice of Small Business.®

Before the House Committee on Labor & Public Employment

DATE: February 14, 2017

TIME: 8:30 a.m.

PLACE: Conference Room 309

Re: HB 442 Relating to Minimum Wage

Testimony of Melissa Pavlicek for NFIB Hawaii

Aloha Chair Johanson, Vice Chair Holt, and members of the Committee:

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to House Bill 442, which authorizes the counties to establish a higher minimum wage than the state minimum wage.

Mandatory wage increases hurt not only small businesses, but their employees as well. Most minimum-wage jobs are offered by small businesses. The overwhelming majority of economists continue to affirm the negative impact of mandatory wage increases on jobs. Mandatory minimum-wage increases end up reducing employment levels for those people with the lowest skills.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

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To: Chair Johanson, Vice Chair Holt, and Members of the Labor Committee

RE: Support HB 442– Minimum wage Increase by counties

Contact info:

Cameron Sato 808-497-8332 Cameron.a.r.sato@gmail.com 969 Kaahue St, Honolulu, Hawai‘i 96825

Dear Chair Johanson, Vice Chair Holt, and Members of the Labor Committee,

I am testifying on behalf of Young Progressives Demanding Action – Hawai‘i (YPDA) an organization started by Students at UH Manoa with over 500 active members. YPDA was responsible for “Love Trumps Hate” a rally that drew 1,137 demonstrators following the Trump election. The goal of YPDA is to get young people involved in politics by advocating for progressive issues such as: Economic justice, social justice (women’s right to choose, LGBTQ+, Hawaiian affairs) and protecting our environment. I am the co-chapter leader, co-founder of YPDA- Hawai‘i, and Economic Justice Committee Chair. Increasing the minimum wage to \$15 an hour is one of our top priorities for our organization.

YPDA supports HB 442 as it allows for counties to raise the minimum wage based on the need and support from constituents in the respective county. We would ideally like a \$15 minimum wage bill for the entire State, however, allowing Counties to do the same would be also be suitable but less optimal. According to MIT’s living wage calculator people need \$14.66 to get by in Honolulu and \$13.74 for the State. (<http://www.civilbeat.org/2016/04/living-hawaii-why-our-salaries-arent-rising-faster/>). The Bureau on Labor Statistics calculates the unemployment rate in Hawai‘i to be 2.9% in December 2016 (<https://www.bls.gov/eag/eag.hi.htm>) leading us to conclude that now that the economy is doing well, it is time to give working people a raise they long deserve with minimal impact on the economy.

Many studies have found that when the minimum wage has increased at a gradual rate, there will be no net loss of jobs. If HB 442 were to pass, and counties raised the minimum wage, there would be no mass unemployment due to an increase in minimum wage despite what the those opposing this bill will say.

<https://www.businessforafairminimumwage.org/news/00135/research-shows-minimum-wage-increases-do-not-cause-job-loss>

<http://uhero.hawaii.edu/news/view/267>

<http://davidcard.berkeley.edu/papers/njmin-aer.pdf> (study showing that adjacent counties across State lines found no increase in

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 6:21 PM
To: LABtestimony
Cc: warrenmcfb@gmail.com
Subject: *Submitted testimony for HB442 on Feb 14, 2017 08:30AM*

HB442

Submitted on: 2/13/2017
Testimony for LAB on Feb 14, 2017 08:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Watanabe	Maui County Farm Bureau	Oppose	No

Comments:

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P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

LATE

February 14, 2017

HEARING BEFORE THE
HOUSE COMMITTEE ON LABOR

TESTIMONY ON HB 442
RELATING TO MINIMUM WAGE

LATE

Room 309
8:30 AM

Aloha Chair Johanson, Vice Chair Holt, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

Hawaii Farm Bureau **strongly opposes HB 442**, providing county authority to establish minimum wages beyond state standards.

Hawaii Farm Bureau Policy states:

"State tax and monetary policies should be designed to encourage private initiative to help stabilize farm economics in the State of Hawaii, to promote employment and economic growth and to distribute the tax burden equitably. Further such policy should be used by the state, when appropriate, to encourage agricultural growth and expansion."

Hawaii's minimum wage is above Federal standards. In addition, the actual compensation to the worker includes many benefits, easily multiplying the actual monetary wage.

Rural areas, where our farms and ranches are located, face significant challenges due to their distance from population centers. Distance to markets, input transportation costs, access to labor are the many issues facing our members. Disparity in expenses due to geographic location is already an issue. This measure will exacerbate this matter.

HFB respectfully requests your strong opposition of this measure understanding the severe impact it will have on rural Hawaii.

Thank you for this opportunity to provide comment on this important subject.



MAUI

CHAMBER OF COMMERCE
VOICE OF BUSINESS

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HEARING BEFORE THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 309
TUESDAY, FEBRUARY 14, 2017 AT 8:30 A.M.

To The Honorable Aaron Ling Johanson, Chair;
The Honorable Daniel Holt, Vice Chair; and
Members of the Committee on Labor & Public Employment

**TESTIMONY IN OPPOSITION OF HB 442 TO AUTHORIZE COUNTIES TO
ESTABLISH HIGHER MINIMUM WAGE THAN STATE MINIMUM WAGE**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees on Maui. I am writing share our opposition to HB 442.

We oppose bill HB 442 to amend the Hawaii Revised Statutes to authorize Counties to establish a higher minimum wage beyond the state. We feel there should not be further legislation made to increase the minimum wage at this time as we do not yet know the impact that the previous increase in minimum wage has had. The increase of the minimum wage assumes that the economy will continue to grow, but the State is finding we have less revenue, businesses are still working hard, and various industries across the state are fairing differently. We believe an economic analysis of the impact of the current minimum wage and consideration of an exemption for small businesses should be completed before proposing a new bill to increase it.

Further, by allowing counties to establish higher minimum wage rates than the state, different counties may choose to impart different rates. If counties across our state had different minimum wage rates, that could create an unfair competition within our state. This would also create employment inconsistencies for businesses who operate statewide and who have offices in different counties.

Finally, the minimum wage is not meant to be a living wage; nor is it a skill wage reflective of the skills employees bring to the table. It is simply a starting point and is generally used for unskilled labor. Arbitrarily increasing the minimum wage creates a wage compression within businesses because it narrows the gap from what longstanding employees are earning to what new people coming in are now making. This then raises the overall employment cost for businesses. Also the minimum wage does not reflect the added costs of benefits and taxes that businesses have to pay per employee. Raising the minimum wage so drastically could force employers to reduce hours and other benefits for employees and in turn, hurt those that the bill seeks to help or be too large of a financial burden for many local businesses to undertake.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be deferred.

Mahalo for your consideration of our testimony and we hope you will support a deferral.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

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LATE TESTIMONY for Measure: 442

Committee	LAB
Committee Referrals	LAB
Date of Hearing	2/17/2017
Organization	Tiki's Grill & Bar
Name of Testifier	Michael Miller
Job Title of Testifier	Dir of ops.
Position – Circle One	Support / <u>Oppose</u> / Comments
Category – Circle One	Fed Govt. / State Govt. / County Govt. / <u>Industry</u> / Private
Notes:	Please see written Testimony section — Makealo for gov / Time.

LATE

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LATE TESTIMONY for Measure: HB 442

Committee	LAB
Committee Referrals	LAB
Date of Hearing	2/14/17
Organization	SELF
Name of Testifier	BART DAME
Job Title of Testifier	self employed
Position – Circle One	<u>Support</u> / Oppose / Comments
Category – Circle One	Fed Govt. / State Govt. / County Govt. / Industry / <u>Private</u>
Notes:	