

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

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

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March 19, 2019

To: The Honorable Laura H. Thielen, Chair,
The Honorable Lorraine R. Inouye, Vice Chair, and
Members of the Senate Committee on Government Operations

The Honorable Brian T. Taniguchi, Chair,
The Honorable Les Ihara, Jr., Vice Chair, and
Members of the Senate Committee on Labor, Culture and the Arts

Date: Tuesday, March 19, 2019
Time: 3:30 p.m.
Place: Conference Room 225, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 158 H.D. 1 RELATING TO LABOR LAW COMPLIANCE
FOR GOVERNMENT CONTRACTS**

I. OVERVIEW OF PROPOSED LEGISLATION

HB158HD1 proposes to amend §103-55(a), Hawaii Revised Statutes (HRS), to add a requirement that service contracts over \$500,000 submit certified payrolls as required by construction contracts of public works under Wages and Hours of Employees on Public Works, Chapter 104, HRS, particularly sections 104-2(d) and (e), 104-3, 104-4, and 104-21 through 104-33. Government service contract work under Chapter 103 would be required to comply with fifteen sections of law under Chapter 104 government construction law.

DLIR has serious concerns about the proposal.

II. CURRENT LAW

§103-55 applies to government service contracts and is under the jurisdiction of the governmental contracting agency awarding the contract to perform services. §103-55(b) states, "It shall be the duty of the governmental contracting agency awarding

the contract to perform services in excess of \$25,000 to enforce this section.”

§103-55(c) states that this section shall apply to service contracts, including contracts to supply ambulance service and janitorial service, but shall not apply to managerial, supervisory, or clerical personnel; contracts for supplies; contracts for utility services; contracts to perform personal services; contracts for professional services; contracts to operate refreshment concessions in public parks or to provide food services to educational institutions; contracts to provide transportation services for school children; or contracts with nonprofit institutions.

§103-55(a) requires contractors performing services in excess of \$25,000 for government agencies to pay rates not less than public employees would earn at the same rates and to certify prior to entering into the government contract that the contractor will pay its employees performing those services at wages or salaries not less than the wages paid to public employees for similar work. §103-55(a) also requires compliance with all applicable federal and state labor laws.

Section 104(2), HRS, states in part, “(a) This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project...”

III. COMMENTS ON THE HOUSE BILL

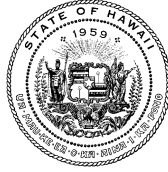
The Department is concerned about the implementation and enforcement of this measure. The DLIR has set up administrative rules and staffing for public works construction investigation and enforcement. The Department suggests that if the intent of the proposal is to mirror some of the enforcement provisions in Chapter 104, then putting those provisions into Chapter 103 may be statutorily more appropriate.

If the intent of the measure is to require certified payrolls on certain service contracts, the Department suggests submission of the certified payrolls to the contracting agency to ensure that the contracting agency can enforce contract provisions and Section 103-55, HRS.

Section 103-55(b) provides the following enforcement authority to the contracting agency: “(b) No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.”

The Department is currently not the contracting agency and does not know what services contracted by the other departments fall under 103-55(c) or fall under the exclusions provided therein. In other words, what services are included by not falling under the exclusions?

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119



TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE COMMITTEES
ON
LABOR, CULTURE & THE ARTS / GOVERNMENT OPERATIONS

MARCH 19, 2019, 3:30 P.M.
CONFERENCE ROOM 225, STATE CAPITOL

H.B. 158, HD1
RELATING TO LABOR

Chairs Taniguchi and Thielen, Vice Chairs Ihara and Inouye, and members of the Committees, thank you for the opportunity to submit testimony on H.B. 158, HD1.

The Department of Accounting and General Services (DAGS) supports the intent with strong concerns regarding this language in the proposed legislation for the following reasons:

- We are concerned that this is written too broadly and will have the unintended consequence of adversely impacting furniture and equipment contracts. Unlike most activities covered under HRS §103-55, furniture and equipment contracts are almost exclusively for the provision of goods. However, they often involve a small component of 'service' activities to install/furnish the items (i.e. delivery, assembly, positioning, commissioning, etc). These activities are often performed by the manufacturer (or its representative) and

have minimal work which could be classified as construction under Chapter 104. Since the award amount for a furniture and/or equipment contract can easily exceed the \$25,000 contract threshold to furnish/equip new buildings (or multiple locations), it would trigger the certified payroll requirement. For example, we are very concerned that this legislation could be construed to require us to pay furniture movers as construction laborers on a construction site to provide the 'service' of installing/furnishing furniture and/or equipment work. This would also require furniture and/or equipment manufacturers, who are not accustomed to the regulations governing construction and certified payrolls, to provide them. In addition, this legislation may unintentionally raise the cost to the State of procuring furniture and equipment. We respectfully request that furniture and equipment contracts be exempted (in addition to those types of contracts already exempted under HRS §103-55(c)).

- Consideration should also be given to the possibility that other types of contracts, not currently exempted under HRS §103-55(c), may fall into the same category as furniture and equipment contracts (i.e. contracts that have only a small component involved in the delivery of a 'service').
- This requirement will also increase the administrative burden associated with service and maintenance contracts.
- We respectfully request that existing contracts be exempted since these requirements were not part of the agreement and may affect the pricing of the services being provided.

Thank you for the opportunity to submit testimony on this matter



HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Government Operations
The Honorable Laura H. Thielen, Chair
The Honorable Lorraine R. Inouye, Vice Chair

Senate Committee on Labor, Culture, and the Arts
The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair

Tuesday, March 19, 2019, 3:30PM
State Capitol Room 225

HB158, HD1 – Relating to Labor

Statement of the Hawaii Regional Council of Carpenters – Support for HB158, HD1

Aloha Chairs Thielen and Taniguchi, Vice Chairs Inouye and Ihara, and Members of the Committees:

The Hawaii Regional Council of Carpenters supports HB158, HD1, which would require that a contractor contracting for services with a civil servant submit certified payrolls and comply with certain wages and hours laws.

HB158, HD1 seeks to provide a clear and effective enforcement mechanism for the existing provisions in HRS 103-55(a), which already require that for government contracts, “services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work,” and that “all applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.”

In contrast to government-sponsored public works projects, where construction wages can be clearly verified through certified payrolls submitted in compliance with HRS 104, there is currently no way to ensure that workers on government service contracts are indeed being paid correctly. In the absence of such a mechanism, contractors bidding on government service contracts can unfairly reduce their bid price by skimping out on appropriate wages and benefits.

By implementing a certified payroll process for government service contracts, we can ensure a level playing field for all bidders and that local workers are being paid fairly.

Mahalo for the opportunity to provide these comments in support of HB158, HD1.

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HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300 · URL: hilecet.org

March 15, 2019

**HAWAII STATE SENATE
COMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON LABOR, CULTURE AND THE ARTS**

DATE: Tuesday, March 19, 2019
TIME: 3:30 PM
PLACE: Conference Room 225
State Capitol
415 South Beretania Street

RE: SUPPORT FOR HB158 HD1 - RELATING TO LABOR LAW COMPLIANCE FOR GOVERNMENT CONTRACTS

Aloha Chair Thielen, Chair Taniguchi, Vice Chair Inouye, Vice Chair Ihara and members of the Committee on Government Operations and the Committee on Labor, Culture and the Arts:

The Hawaii Laborers-Employers Cooperation and Education Trust (LECET) is a labor-management partnership between the 5000+ members of the Hawaii Laborers' International Union of North America Local 368 and its 250+ unionized contractors. The Laborers' International Union of North America is the largest construction union in the United States with over 600,000 members.

Hawaii LECET SUPPORTS HB158 HD1 which would require contractors for government service projects to submit certified payrolls to demonstrate compliance with wage and hour requirements.

Currently, Chapter 103 Service and Maintenance contracts do not have any requirements to submit certified payroll affidavits. Without this requirement, there is no safeguard to ensure that workers are being paid the proper wages. Unlike Chapter 104 Public Works Projects which require the weekly submission of certified payroll affidavits, Chapter 103 projects are being procured through a government service contract with no safeguards to ensure that wages and hours are being properly paid.

In addition, reports from contractor associations indicate that there is a strong possibility that unscrupulous contractors are not paying the proper wages in order to win the low bid on these contracts. This affects not only the workers who are not being paid properly, but also affects the bidding on Chapter 103 Service and Maintenance contracts. HB158 HD1 will ensure that there is fair competition and that workers are protected.

Hawaii LECET would like to propose the attached amendments to replace the current amendments. The attached amendments clarify the definition of wages and enforcement implementation and limits the requirements for certified payroll to be applied only to mechanics and laborers under service contracts. We ask for your consideration and support of these amendments for HB158 HD1.

With respect,

Hawaii Laborers-Employers Cooperation
and Education Trust

§103-55 Wages, hours, and working conditions of employees of contractors performing services. (a) Before any offeror enters into a contract to perform services in excess of \$25,000 for any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

(1) The contractor or the contractor's subcontractor shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five working days prior to the time of payment, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics. A copy of the rates of wages shall be given to each laborer and mechanic employed under the contract by the contractor at the time each laborer and mechanic is employed, except that where there is a collective bargaining agreement the contractor does not have to provide the contractor's employees the wage rate schedules.

(2) The governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to the laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the required wages and the wages received and not refunded by the laborers and mechanics.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) Every such contract and the specifications for such contract shall contain a provision that a certified copy of all payrolls shall be submitted weekly to the governmental contracting agency for review. The contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the contracting agency shall be reported to the contractor and the director to effect compliance.

Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the contractor and the contractor's subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The contractor shall make payroll records available for examination within ten days from the date of a written request by a governmental contracting agency, director, or any authorized representatives thereof. Any contractor who:

(1) Fails to make payroll records accessible within ten days;

(2) Fails to provide information requested for the proper enforcement of this chapter within ten days; or

(3) Fails to keep or falsifies any record required under this chapter, shall be assessed a penalty as provided in section 104-22(b).

The administration and enforcement of the requirement for certified payroll records shall be in the same manner as sections 404-4, 104-21 through 104-28, and 104-33 in relation to service contracts.

(bc) No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

(ed) This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel;
- (2) Contracts for supplies, materials, or printing;
- (3) Contracts for utility services;
- (4) Contracts to perform personal services under section 46-33(7), (8), and (9), section 76-16(b)(2), (3), (12), and (15), and section 76-77(7), (8), and (12);
- (5) Contracts for professional services;
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions;
- (7) Contracts to provide transportation services for school children; or
- (8) Contracts with nonprofit institutions.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 220-8892

March 19, 2019

The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara Jr., Vice Chair
and members
Senate Committee on Labor

The Honorable Laura Thielen, Chair
The Honorable Lorraine R. Inouye, Vice Chair
Senate Committee on Government Operations
415 South Beretania Street
Honolulu, Hawai'i 96813

**RE: Strong Support for HB158 HD1, RELATING TO LABOR LAW COMPLIANCE
FOR GOVERNMENT CONTRACTS**

Dear Chair Taniguchi, Chair Thielen, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

The Alliance is in support of this bill as it gives much needed transparency to wages that are paid to workers on large government contracts. Many of these contracts are in excess of \$500,000, and some range in the millions of dollars. With virtually no oversight, workers can easily be taken advantage of and forced to work at below minimum wage, or without overtime.

Certified payrolls are an important step toward ensuring that workers are paid the correct wages and receive adequate compensation for what can be hazardous and difficult work.

Therefore, we strongly ask for your committee's favorable action on HB158 HD1.

Mahalo,

A handwritten signature in black ink, appearing to read "Nathaniel Kinney". The signature is fluid and cursive, with the first name being more legible than the last.

Nathaniel Kinney
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



LiUNA!

**TESTIMONY OF RYAN K. KOBAYASHI
GOVERNMENT AND COMMUNITY RELATIONS DIRECTOR
HAWAII LABORERS UNION LOCAL 368**

PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

JAMES DRUMGOLD JR.
Executive Board

ORLANDO PAESTE
Executive Board

JOSEPH YAW
Executive Board

MARTIN ARANAYDO
Auditor

RUSSELL NAPIHA'A
Auditor

MARK TRAVALINO
Auditor

ALFRED HUFANA JR.
Sergeant-At-Arms

COMMITTEE ON FINANCE

NOTICE OF HEARING

DATE: Tuesday, March 19, 2019
TIME: 3:30 p.m.
PLACE: Room 225

**TESTIMONY IN SUPPORT OF HB158 HD1 RELATING TO LABOR LAW COMPLIANCE
FOR GOVERNMENT CONTRACTS**

ALOHA COMMITTEE CHAIR LUKE; VICE-CHAIR CULLEN,

My name is Ryan K. Kobayashi, Government and Community Relations Director for the Hawaii Laborers Union, Local 368. The Hawaii Laborers Union is made up of over 5000 working and retired members across the State of Hawaii. We **SUPPORT HB158 HD1** which would require service providers for government contracts to provide certified payrolls to the contracting government entity.

Presently, unlike Chapter 104 public works projects, there are no safeguards and no way to efficiently verify if wages and hours are being properly paid under Chapter 103 government service contracts that are outsourced from public sector unions.

Reports from contractors associations are that it is difficult to compete with unscrupulous contractors on Chapter 103 government service projects that are outsourced due to wage violations that unscrupulous employers may impose upon their workers.

Therefore, to help ensure a level playing field between fair contractors and those who would seek to abuse the government contracting process as well as their employees, the Hawaii Laborers' Union, **SUPPORTS HB158 HD1**, and respectfully requests your committees favorable action on the same.

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Feel the Power