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March 27, 2019

To: The Honorable Donovan M. Dela Cruz, Chair,  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Thursday, March 28, 2019  
Time: 10:15 a.m.  
Place: Conference Room 211, State Capitol

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

**Re: H.B. No. 34 H. D. 1 S. D. 1 RELATING TO WAGES**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB34HD1SD1 amends the Wages and Hours of Employees on Public Works Law, section 104-2, Hawaii Revised Statutes (HRS), by adding a foreperson classification required to be reported on the certified payrolls for public works construction.

DLIR provides comments.

**II. CURRENT LAW**

Currently forepersons working at the construction site are included under the classification of work they are participating in. Supervisory forepersons who are not working as a laborer or mechanic at the public work site are not required to be reported on the certified payrolls. 104-1 states "Basic hourly rate" means the hourly wage paid to a laborer or mechanic..." 104-1 states, in part, that a "Public work..." is "...where the funds or resources required to undertake the project are to any extent derived, whether directly or indirectly, from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes."

**III. COMMENTS ON THE HOUSE BILL**

DLIR believes that the law currently captures, but does not require coverage of,

working forepersons on the job as most prevailing rates in Hawaii are covered under a collective bargaining agreement. Collective bargaining agreements may distinguish between “working foremen” and “foreman”. The Department suggests a modification to the definition of foreperson as follows:

“For the purposes of this subsection, “foreperson” means a laborer or mechanic who works on the project and directs the work of other laborers or mechanics.”

The proposal states, “... follow the requirements stated in the collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement;”. The Department suggests seeking clarification about the collective bargaining requirements, and whether they should be stated in the measure? For example, including collective requirements as to when a foreman must be designated by an employer. DLIR also notes that collective bargaining agreements have varying requirements and any change to such agreements may bind the State and cause conflicts with other provisions of Hawaii’s Prevailing Wage Law.

For example, some collective bargaining agreements require one and a half times the regular pay on a Sunday, while others require double time. Which rate would the Department enforce?

Lastly, due to the lapse of time between the alleged violation and the filing and investigation of the complaint the Department may encounter difficulty ascertaining which laborer or mechanic is directing the other laborers and mechanics on a public works construction project.

House Committee on Ways and Means

Honorable Senator Donovan Dela Cruz, Chair

Honorable Senator Gilbert S.C. Keith-Agaran, Vice Chair

Honorable Members of the Senate Committee on Ways and Means

March 25, 2019

RE: **SUPPORT OF H.B. 34 HD1 SD1- RELATING TO WAGES**

Dear Chair Dela Cruz, Vice Chair Agaran, and Members of the Committee,

Hawaii Operating Engineers Local 3 **supports Bill HB34 HD1 SD1 with comments**, which requires that the foreperson classification be recognized in wage and hour requirements contained in statute and in collective bargaining agreements for laborers and mechanics on public works projects. (HB34 HD1)

The Foreperson position is a key role on any construction site. A good foreperson is said by many engineers to be the keystone to their projects. Typically, the foreperson is a person with specialist knowledge of a given trade who has moved into the position and is now focused on an overall management of his trade on the job site. He or she is responsible for providing proper documentation to his workers so they can proceed with their tasks. To put it simply, if the project supervisor is the coach, the foreperson is the quarterback that executes the play. Making sure that a foreperson is working on site with their crews is key to keeping projects on time and on budget.

During our visits to many job sites around the state and in reviewing certified payrolls for these job sites, we have encountered many instances where the foreperson or working foreperson classification has not been recognized in certified payrolls. Due to the importance of this position we find it hard to believe that there is no foreperson assigned to a construction project, although this could be the case for some projects. What we do find egregious is that workers who have assumed this role of responsibly are not being paid their correct wages.

The importance of foreperson position cannot be understated on a construction project and making sure that this type of position is reported in all state and county construction projects certified payroll are important to the interest of the contractor doing the job, the labor organization representing the worker, and most especially the state or city department managing the project.

Mahalo for the opportunity to provide our testimony of support.