



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

February 27, 2020

The Honorable Senator Donovan Dela Cruz, Chair
Senate Committee on Ways and Means
Thirtieth Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Dela Cruz and Members of the Committees:

SUBJECT: SB 2468 SD1 – Relating to Qualified Community Rehabilitation Programs (QCRP).

The State Council on Developmental Disabilities **SUPPORTS SB 2468 SD1**, which allows community rehabilitation programs for persons with disabilities to be considered qualified under the State's procurement code without requiring federal and state certification that authorizes the payment of subminimum wage to workers in their program.

Following the 2019 legislative session, the Council followed up with the approximate 75 individuals reportedly being paid sub-minimum wage according to the Department of Labor and Industrial Relationships. We found:

- As of September 30, 2019, after speaking with every agency qualified to pay subminimum wage, all agencies had changed their practice and were paying, at or above minimum wage. The agencies reported the only reason they currently held the 14c certificate and state sub-minimum wage certificates were to have access to government contracts that required these agencies to be "Qualified Community Rehabilitation Programs". To be a QCRP current procurement regulation require these agencies to hold the 14c certificate.
- Kauai was the only County that did not participate in hiring individuals with disabilities at sub-minimum wage.
- The passing of this bill would not affect any other form of legal sub-minimum wage in regards to stipends, apprenticeships, and learners.
- Customized Employment can be used as a tool that individualizes the relationship between job seekers and employers in ways that meet the needs of both. Each job seeker's unique strengths, needs, and interests are fully utilized and the employer can create entry level positions that match the skills of the individual with the needs of their business.
- On line data sources that report the number of workers who are being paid subminimum wages are not meant to track the current number of workers being paid at subminimum wages but the number of workers the QCRP intended to pay subminimum wages at the time of their application.

Now that we know, a for-profit agency or business cannot legally pay sub-minimum wage to an employee, a job can be customized to support individuals with disabilities to earn a minimum wage through the creation of new entry level positions, we need to support Qualified

Community Rehabilitation Programs to provide training and customized employment to individuals with disabilities without forcing QCRP's to pay subminimum wage.

Thank you for the opportunity to submit testimony **strongly supporting, SB 2468 SD1.**

Sincerely,

A handwritten signature in blue ink that reads "Daintry Bartoldus". The signature is written in a cursive, flowing style.

Daintry Bartoldus
Executive Administrator

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI
DIRECTOR

ANNE -EUSTAQUIO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

February 27, 2020

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, February 27, 2020
Time: 10:35 a.m.
Place: Conference Room 211, State Capitol

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

**Re: S.B. No. 2468 S.D.1 RELATING TO QUALIFIED COMMUNITY
REHABILITATION PROGRAMS**

I. OVERVIEW OF PROPOSED LEGISLATION

SB2468 SD1 proposes to amend the definition of a "qualified community rehabilitation program" under section 103D-1001, Hawaii Revised Statutes (HRS), by repealing the requirement that the qualified community rehabilitation program hold federal and state certificates that authorizes the payment of subminimum wages to employees, and adding a requirement that the program maintains a disabled to non-disabled employee ratio equal to or in excess of three-to-one for work hours of direct labor while on a government contract.

The DLIR offers comments on this measure.

II. CURRENT LAW

Section 103D-1001, HRS, provides for preference in procurement for a bona fide "qualified community rehabilitation program," which is a nonprofit community rehabilitation program for persons with disabilities that meets certain requirements. One of the requirements is that the nonprofit organization be certified by the DLIR under section 387-9, HRS, relating to special minimum wages for certain individuals,

and the United States Department of Labor pursuant to Title 29 United States Code section 214(c).

III. COMMENTS ON THE SENATE BILL

Section 387-9, HRS, provides for the employment of “individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, under special certificates issued by the director,” at wages lower than the statutory minimum wage.

Currently there are five sheltered workshops with active special certificates permitting the payment of subminimum wages. Of the five sheltered workshops, four are paying all employees at least the statutory minimum wage required under section 387-2, HRS. A special certificate is not required for these organizations since they pay at least the minimum wage. One sheltered workshop has a special minimum wage certificate for 2 individuals.

SB-2468-SD-1

Submitted on: 2/25/2020 5:01:19 PM

Testimony for WAM on 2/27/2020 10:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
james gashel	Testifying for national federation of the blind of hawaii	Support	No

Comments:

NATIONAL FEDERATION OF THE BLIND

Testimony before the Committee on Ways and Means

Hawaii State Senate

The Thirtieth Legislature

Regular Session of 2020

February 27, 2020, 10:30 AM hearing on SB2468

Good morning Mr. chairman, vice chair, and committee members. My name is James Gashel. I am a resident of Honolulu and live at 2801 Coconut Avenue. It is an honor for me to present this testimony both in my individual capacity as a citizen of our state and on behalf of the National Federation of the Blind of Hawaii.

Today I want to tell you why the NFB of Hawaii and I personally strongly support S B 2468. Thank you to the introducers of this bill. Mahalo for the interest you are showing in this subject on employment of people with disabilities.

This bill proposes to make a simple but substantive change in section 103D-1001 of the Hawaii Revised Statutes. Section 103D is the public procurement law, and subsection 1001 is a list of definitions. The definition of interest in this bill is "qualified community rehabilitation program."

In general, you can think of a qualified community rehabilitation program as a place where people with disabilities may go to work. Organizations such as the ARC of Hawaii and Goodwill Hawaii are perhaps the most prominent examples of qualified community rehabilitation programs. This definition has significance in section 103D-1010 and 103D-1011, which offer qualified community rehabilitation programs favorable terms in selling to the state.

The present law in section 103D-1001 specifies that a qualified community rehabilitation program must be a nonprofit organization for persons with disabilities. Five requirements must then be met, including: that the organization must be located in Hawaii; the organization is operated in the interest of and employs persons with disabilities; the organization's net income does not inure to shareholders; the organization complies with health and safety standards; and finally, that the organization is certified by federal and state authorities to pay disabled workers below the minimum wage.

Notice the last requirement. A community rehabilitation program must be certified (or approved) to pay disabled workers less than the minimum wage. The program may have a policy of paying all disabled workers the minimum wage or above, but in order to be qualified as a community rehabilitation program under our state procurement law, the program must be approved to pay less than the minimum wage, whether it wants to do so or not.

SB2468 would remove this fifth requirement regarding paying disabled workers below the minimum wage; a very good thing to do. In place of this requirement, the amendment made by SD1 would move language from section 103D-1010 requiring the qualified community rehabilitation program to maintain a ratio of 3 disabled workers to every nondisabled worker. This is not a new requirement but merely moved from another section in to the basic definition.

The point of SB2468 is to remove the requirement for community rehabilitation programs to have certification to pay disabled workers less than the minimum wage. On its own this bill would not require these employers to pay disabled workers at least the minimum wage, which would be a question left for another day. Nonetheless, we strongly support SB2468 in its present form. If you pass this bill, community rehabilitation programs will be able to obtain state contracts without regard to their wage payment policy. Many don't believe in paying below the minimum wage and will be

happy the requirement in section 103D-1001 has been removed. There would be no revenue or cost implications for the state whatsoever.

Mr. chairman, vice chair and committee members, in supporting the definition change called for in SB2468, we ask you to share this value: the state should not use the power of its procurement law to require employers to pay (or be approved to pay) disabled workers less than the minimum wage. This value is consistent with the position of the National Council on Disability, appointed by the president and the Congress, recommending phased elimination of the subminimum wage authority under federal law altogether. More to the point, the view that procurement laws should not favor employment at subminimum wages is consistent with the expressed position of the federal AbilityOne Commission appointed to oversee the federal government's purchasing of products and services from organizations employing the blind and other persons with disabilities. A letter sent from the chair of the AbilityOne Commission, detailing the current effort to end use of subminimum wages in federal contracting, appears below this statement for your review.

In passing SB2468, let's be sure that Hawaii is among several other states and the federal government itself now moving to make employment of workers with disabilities at subminimum wages a policy of the past. Mahalo for your favorable action on this bill.

AbilityOne Commission letter

U.S. ABILITYONE COMMISSION

February 19, 2019

PHONE: 703-603-7740 1401 S. Clark Street, Suite 715

FAX : 703-603-0655 Arlington, Virginia 22202-4149

SENT VIA E-MAIL

Mr. Norman Lorentz

Chairman of the Board

SourceAmerica

8401 Old Courthouse Road

Vienna, VA 22182

Dear Mr. Lorentz:

The imperative to end the payment of subminimum wages in the AbilityOne Program is growing in strength and momentum with every passing year. It is time to pay at least the federal minimum wage, or state minimum wage if higher, to all employees who are blind or have significant disabilities working on AbilityOne contracts.

This important topic was addressed by the Commission in its “Declaration in Support of Minimum Wage for All People Who Are Blind or Have Significant Disabilities,” issued on March 18, 2016.

Since then, the issue of 14(c) has gained a greater sense of urgency both within and outside the AbilityOne Program. The Commission, Central Nonprofit Agencies, and Nonprofit Agencies should be vigorous role models for employing people who are blind or have other significant disabilities.

To do this, we must act. We call on SourceAmerica to provide the following to the Commission:

- By the end of March 2019, provide SourceAmerica’s intent for achieving the goal of all SourceAmerica associated nonprofit agencies paying at least the federal minimum wage, or state minimum wage if higher, on AbilityOne contracts.
- By the end of April 2019, provide a strategic plan on what SourceAmerica is going to do, and when, to achieve this goal – e.g., implementation actions and milestones.
- Specifically, this strategic plan should address the steps to assist and facilitate your associated nonprofit agencies to pay all employees who have significant disabilities working on AbilityOne contracts (1) at least the federal minimum wage, or state minimum wage if higher, within three years, and (2) no less than the full prevailing wage or better within six years.

TESTIMONY BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS

RE: SB 2468, SD1 - RELATING TO QUALIFIED COMMUNITY
REHABILITATION PROGRAMS

THURSDAY, FEBRUARY 27, 2020

MITZIE HIGA, LEGISLATIVE CHAIR
DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS

Chair Dela Cruz and Members of the Committee:

The Democratic Party of Hawaii Labor Caucus **supports SB 2468, SD1**, with suggested amendments. This bill removes the requirement that community rehabilitation programs (CRP's) for persons with disabilities have federal and state certification that authorizes the payment of subminimum wages, such as seven cents per hour, to workers in their program in order to be considered qualified under the State's procurement code.

Currently, the law requires that CRP's have federal and state certification authorizing the payment of subminimum wages to workers with disabilities in order to be considered qualified under the State's procurement code.

We firmly believe that the payment of subminimum wages, such as seven cents per hour, to workers with disabilities is unfair, discriminatory, and immoral. This is a discriminatory practice for those with disabilities. Not only has our state been allowing it to happen—we have been requiring it for CRP's to be qualified under the State's procurement code! Our state already dedicates resources to training and rehabilitating workers with disabilities so that they can be productive contributors in our community, so removing this requirement from the State's procurement code will promote a better Hawaii where no worker is paid below minimum wage in the state programs to raise up workers with disabilities, when even our existing minimum wage of \$10.10 is already not enough to begin with in the first place.

If the committee is willing and able to complete the job of eliminating the practice of subminimum wages with an amendment to this bill, we respectfully request an amendment adding another section to this bill, which can be taken directly from SB 336, SB 349, SB 358, SB 789 HD 2, HB 232, HB 693, and other current bills; however, if you are unable to put it in this particular bill as noted in the committee report from the last hearing, we ask that you find another way, or another bill to eliminate the subminimum wage by amending the section of HRS below.

SECTION 2. Section 387-9, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"§387-9 Special minimum wages for learners; apprentices; full-time students; paroled wards of Hawaii youth correctional facility[; ~~handicapped workers~~]. (a) Notwithstanding the provisions of section 387-2, the director may by rule provide for the employment[;

- (1) ~~Of~~ of learners, of apprentices, of part-time employees who are full-time students attending public or private schools other than colleges, universities, business schools, or technical schools, and of wards paroled from the Hawaii youth correctional facility, under special certificates issued by the director, at [~~such~~] wages lower than the applicable minimum wage and subject to [~~such~~] limitations as to time, number, proportion, and length of service as the director shall prescribe[; ~~and~~
- (2) ~~Of individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the applicable minimum wage and for such period as shall be fixed in the certificates]."~~

To provide a fair wage to all workers in Hawaii, including those who are disabled, the Labor Caucus asks your committee to **support** this bill with suggested amendments.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law & Economic Justice
In Support of SB 2468, SD1 – Relating to Qualified Community Rehabilitation Programs
Senate Committee on Ways and Means
Thursday, February 27, 2020, 10:35 AM, conference room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **SB 2468, SD1**, which would allow community rehabilitation programs for persons with disabilities to be considered qualified under the State's procurement code without requiring federal and state certification that authorizes the payment of subminimum wage to workers in their program.

The subminimum wage for workers with disabilities was first written into federal law over 80 years ago, when there were almost no technologies available to help such workers be as productive as others. As a result, many of these workers have been segregated into workshops where their labor is exploited, with some employers paying only pennies per hour.

In this day and age, there are technologies available that can enable people with disabilities to be productive contributors in our community. Several successful models have been developed that help people with disabilities gain the skills needed to perform competitive work.

Six states have passed laws to end the subminimum wage for workers with disabilities, and the Democratic and Republican party platforms in 2016 both called for the end of subminimum wages for workers with disabilities.

Our state commits significant resources to rehabilitating and training workers with disabilities. Removing this obsolete requirement from the procurement code will support the mission of community rehabilitation programs to help workers with disabilities reach their full vocational and socioeconomic potential.

Mahalo for your consideration of this testimony.

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

NATIONAL FEDERATION OF THE BLIND of Hawaii

Testimony before the Committee on Ways and Means

Hawaii State Senate

The Thirtieth Legislature

Regular Session of 2020

February 27, 2020, 10:30 AM hearing on SB2468



Aloha,

My name is Virgil Stinnett. I am writing in support of SB2468 as both a resident of Hawaii and the President of the National Federation of the Blind of Hawaii. (NFBH)

I support S.B. No. 2468 because it will amend HRS Section 103D-1001 that will give people with disabilities an equal opportunity in the workforce to earn at least the minimum wage rather than the subminimum wage. As we all know, the cost of living in Hawaii is higher than any other place in our country. People with disability already have the disadvantage of being disabled. Why continue the practice of allowing anyone to have the ability to pay people with disability less than the minimum wage?

This is a great opportunity for you our legislators to fix the wrong that has been done to the disability community.

What are we, the State of Hawaii, implying to the disabled community.

What is the dignity and worth of a person are we implying to people with disabilities, if this bill is not passed?

By amending S.B. No. 2468, people with disabilities can gain self-worth knowing that their employment was appreciated. I urge the committee to pass S.B. No. 2468.

Mahalo, for giving me this opportunity to testify.

NATIONAL FEDERATION OF THE BLIND of Hawaii

LATE

Senate Committee on Ways and Means, Hawaii State Capitol

February 27, 2020, 10:30 AM

Testimony in support of SB2468 RELATING TO QUALIFIED COMMUNITY REHABILITATION PROGRAMS.

Allows community rehabilitation programs for persons with disabilities to be considered qualified under the State's procurement code without requiring federal and state certification that authorizes the payment of subminimum wage to workers in their program.

Good Morning Chair, Vice Chair and committee members, My name is Katie Keim residing at 2943 Kalakaua Ave., a citizen of Hawaii, an officer of the National Federation of the Blind of Hawaii and a blind business woman. I am in support of SB2468 which will amend HRS Section 103D-1001 enabling disabled citizens in the work force the opportunity to receive at least the minimum wage.

Mahalo for your work in legislation and the interest you are showing in this important subject on equal employment of people with disabilities.

At the age of 36 while in a full career of my choosing as a fully sighted individual, I became blind and disabled. I was sent to a community rehabilitation program to receive vocational counseling and training. Even with my college education, a strong and successful background in business and design, I was considered unable to work merely because I was now blind. I was considered for a program that was menial work at less than minimum wage with no promise to support me in any opportunities for upward mobility or a full career of my choosing. No offer for further education or vocational accommodations were made. I had been referred to exactly one of the community rehabilitation programs addressed in this legislation for an evaluation of my knowledge, skills and abilities based on my past work. It was obvious to me at the onset of their evaluation that they were not taking into consideration anything except their limited ideas on what a disabled individual can do rather than the opportunities for an individual to work and dream at their true capacity. My self-worth and dignity were being questioned not my abilities. We already as people with disabilities have the disadvantage of being disabled. Why continue

the practice of allowing anyone to have the ability to pay people with disabilities less than the minimum wage? It is a law that is archaic and out of date. What a great opportunity for you our legislators to fix the wrong that has been done to the disability community of Hawaii.

Please take this opportunity and vote in favor of amending S.B. No. 2468. Currently All citizens of Hawaii have the right to equal minimum wage except those of us with disabilities. Please seriously consider taking this important first step to leveling the playing field for disabled individuals in the work force by passing S.B. No. 2468.

Mahalo, for your kokua and the opportunity to testify.

To: Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair
and Members of the Committees of the Ways and Means

From: Deannie Nakaza, Member of the National of the Blind, Honolulu Chapter

Date: Thursday, February 27, 2020

Time: 10:35 am

Place: Conference Room 211, State Capitol

Subject: In Support of H.B. No. 2468 Relating to Qualified Community
Rehabilitation Program

I am a member of the National Federation of the Blind, Honolulu Chapter. Also, I am a student earning my Master's degree at the Myron B. Thompson School Social of Work. I am writing in support of S.B. No. 2468.

I support S.B. No. 2468 because it will amend HRS Section 103D-1001 that will give people with disabilities an equal opportunity in the workforce to earn at least the minimum wage rather than the subminimum wage. As we all know, the cost of living in Hawaii is a REAL and so is the struggle.

In an article published in the Hawaii Free Press by Michael Tada, it describes how people with disabilities hard work and intelligence is being exploited for a pretty penny. Another article published by Tada in the City Beat describes the economic injustice for people with disabilities all for a shiny dime. Can you imagine yourself getting paid \$1.00 or even .50 cents an hour as a State Representative because you have a disability and performing equally on the job?

Although, I have a disability, I am earning a Master's degree in Social work and also, I have an accounting, paralegal degree. My career goal will be to work in an environment where I am able to use my skills and share my knowledge to assist people with disabilities.

It is very discouraging that the subminimum wage may apply to me, even though I spent my time earning a degree to better my life and those around me.

What ever happened to EEOC to all employees? Where did Hawaii astray from “Unfair treatment because of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information?” What kind of dignity and worth of a person are we implying to people with disabilities, if this bill is not passed?

Therefore, by amending S.B. No. 2468, people with disabilities can gain self-worth knowing that their employment was appreciated. I urge the committee to pass S.B. No. 2468.

Thank you for this opportunity to testify.

SB-2468-SD-1

Submitted on: 2/25/2020 5:09:52 PM

Testimony for WAM on 2/27/2020 10:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Justin Salisbury	Individual	Support	No

Comments:

Aloha Chair Dela Cruz and Members of the Committee,

Mahalo for the opportunity to testify in support of SB 2468 SD 1.

Currently, the law requires that CRPs have federal and state certification authorizing the payment of subminimum wages to workers with disabilities in order to be considered qualified under the State's procurement code. This makes it easier for CRPs to qualify and disentangles the contracting processes from a labor practice that is unfair, discriminatory, and immoral.

As many people in our state have been advocating to repeal the language in HRS Section 387-9 that allows the payment of disability-based subminimum wages, one of the points of opposition has been that CRPs have been worried that they would lose their contracts. Most of the bills that would end the payment of subminimum wages to workers with disabilities in Hawaii also included a section that would remove the contracting requirement that CRPs use the state-level disability-based subminimum wage program, but those bills didn't remove the requirement for the federal certificate. I believe this bill, by striking out that whole item, is stronger. It further separates the payment of disability-based subminimum wages from the contracting processes.

The State of Hawaii already dedicates resources to training and rehabilitating workers with disabilities so that they can be productive contributors in our community, so removing this requirement from the State's procurement code will promote lokahi in the state programs to raise up workers with disabilities.

I have heard multiple CEOs of CRPs say that they can afford to pay a full minimum wage to all of their employees, but they are simply not willing to lose their contracts. Once this change in procurement is enacted, it will enable those CRPs to voluntarily get rid of the certificates that allow them to pay subminimum wages to workers with disabilities while keeping their contracts.

Chair, I was thrilled at the town hall meeting on May 9, 2019, at Wahiawa Middle School, when you responded to a prompt about ending the practice of paying subminimum wages to workers with disabilities:
“I agree that we shouldn’t have this two-tiered system for those that are disabled and those that are [able-bodied] people ... We need to have fairness in that”

Mahalo nui loa for your support for equality for workers with disabilities!

Justin Mark Hideaki Salisbury