



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII'
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

January 31, 2023

To: The Honorable Scot Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett, Vice Chair, and
Members of the House Committee on Labor & Government Operations

Date: Tuesday, January 31, 2023
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 168 RELATING TO PUBLIC WORKS

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports the intent and offers comments**. HB168 proposes to amend Sections 104-24 and 104-25, Hawaii Revised Statutes (HRS) by imposing progressively increasing penalties on both the person **and** firm upon finding of repeat violations of Hawaii's Wages and Hours of Employees on Public Works Law (Chap. 104). Subsection 104-24(e) defines the term "Person" to include a sole proprietor and the principal responsible managing employee and holders of the construction license as provided under chapter 444; provided that for subsection (c)(2) (relating to suspension from doing any new work on public works projects), "person" also includes all subordinate responsible managing employees.

II. CURRENT LAW

Sections 104-24(b) and (c), and Section 104-25, HRS, imposes progressively increasing penalties on the person **or** firm upon finding repeat violations of Hawaii's Wages and Hours of Employees on Public Works Law.

III. COMMENTS ON THE HOUSE BILL

This proposal seeks to eliminate the circumvention of the law by entities that transfer key personnel to a separate company and continue business under a new name to avoid the suspension from work provision of Chapter 104. However, the department notes that it may create unintended consequences that the department does not fully understand. Defining the term "person" in the statute to include a sole proprietor and the principal responsible managing employee that holds the contractor license of the firm clarifies the parties to whom penalties are imposed on

for repeat violations of Chapter 104, HRS. However, the department is unsure that suspending the firm and the principal responsible managing employee will result in eliminating an entity from being able to perform work on public work projects. Furthermore, it is unclear if the principal responsible managing employee and the contractor license holder are the same person.



January 31, 2023

TO: HONORABLE SCOT MATAYOSHI, CHAIR, HONORABLE ANDREW GARRETT, VICE CHAIR, COMMITTEE ON LABOR & GOVERNMENT OPERATIONS

SUBJECT: **COMMENTS ON H.B. 168, RELATING TO PUBLIC WORKS.** Imposes penalties, including suspension, on the person and the firm upon a finding of violations of state law governing wages and hours of employees on public works projects.

HEARING

DATE: Tuesday, January 31, 2023
TIME: 9:00 a.m.
PLACE: Capitol Room 309

Dear Chair Matayoshi, Vice Chair Garrett and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA provides comments on H.B. 168, which imposes penalties, including suspension, on the person and the firm upon a finding of violations of state law governing wages and hours of employees on public works projects.

GCA understands the issue the measure attempts to address, but is concerned of the unintended consequences of this bill. First, an individual may be an RME for more than one contracting entity. This measure could indirectly impose a penalty on another contracting entity who was not involved with the project.

Second, GCA is concerned that the movement of employees amongst firms would be problematic for enforcement. For example, a subordinate RME could join the firm after the second notice of violation and be immediately suspended if the firm receives a third notice of violation. It may also be difficult for DLIR to determine if the record at PVL is current and accurate at the time of the alleged violations vs at the time when the investigation is conducted.



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January 31, 2023

Senate Committee on Labor & Government Operations
Representative Scot Matayoshi, Chair
Representative Andrew Garrett, Vice Chair

TESTIMONY IN SUPPORT
House Bill 168, Relating to Public Works

Aloha Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

Thank you for the opportunity to submit testimony on behalf of the Hawaii Operating Engineers Industry Stabilization Fund Political Action Committee (HOEISF PAC). The HOEISF PAC is a non-profit labor management organization whose core mission is to represent the interests of the Operating Engineers Local Union No. 3 and Hawaii's leading contractors and ensure that the industry is thriving and sustainable for the future.

We are writing in **support of HB168**, which imposes penalties, including suspension, on the person and the firm upon a finding of violations of state law governing wages and hours of employees on public works projects.

As you know, Hawaii is a national leader in prevailing wage laws. However, there are still occurrences where contractors do not pay workers their fair and entitled wage on public works projects. In those instances, a "three strike" policy is in statute to allow the contractor the opportunity to correct this practice, but if a contractor receives a third strike, they are suspended from being able to bid on public works projects for three years.

While the law has generally served its purpose as a deterrent, there have been recent examples of companies receiving a third strike and then moving their key personnel into a new company in order to continue bidding on public works projects. This undermines the important purpose of the "three strike" policy.

What Hb168 seeks to do is end this practice by ensuring that the violation is attached to both the firm and the person. The bill also clearly defines "person", so the appropriate individual(s) are held responsible and there are not unintended consequences of attaching violations to people who are connected to the firm but not responsible for the specific violation.

Thank you for the opportunity to provide our testimony in support and we strongly urge you to pass this measure.