



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
www.labor.hawaii.gov

March 30, 2022

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Scot Z. Matayoshi, Vice Chair, and
Members of the House Committee on Judiciary & Hawaiian Affairs

Date: Wednesday, March 30, 2022

Time: 2:00 p.m.

Place: Via Videoconference, Conference Room 325, State Capitol

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. 3223 S.D.1 H.D.1 RELATING TO PUBLIC WORKS

I. OVERVIEW OF PROPOSED LEGISLATION

SB3223 SD1 HD1 proposes to amend Sections 104-24 and 104-25, Hawaii Revised Statutes (HRS). Sections 104-24(b) and (c) and 104-25(a) and (c) are amended to impose 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. Subsection 104-24(e) and 104-25(d) defines the term "Person" to include a sole proprietor and the responsible managing employee and holder of the construction license as provided under chapter 444.

The DLIR supports this measure but notes that it may create unintended consequences that the department is currently unaware of.

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 SENATE BILL

Defining the term "person" in the statute to include a sole proprietor and the responsible managing employee and holder of the construction license as provided under chapter 444, HRS, Hawaii's law governing contractors, clarifies the parties whom penalties are imposed on for repeat violations of Chapter 104, HRS.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Thirty-First Legislature, State of Hawai'i
Hawai'i State House of Representatives
Committee on Judiciary & Hawaiian Affairs

Testimony by
Hawai'i State AFL-CIO
March 30, 2022

S.B. 3223 S.D. 1, H.D. 1 – RELATING TO
PUBLIC WORKS

The Hawai'i State AFL-CIO is a state federation of 74 affiliate local unions and councils with over 68,000 members across both public and private sectors. We appreciate the opportunity to testify in **support** of S.B. 3223 S.D. 1, H.D. 1.

Holding both persons and firms accountable for violations of Chapter 104, Hawaii Revised Statutes, is important to avoid repeat offenses by persons who may continually violate Chapter 104 through new entities. This measure effectively puts unscrupulous persons and firms on notice that repeat offenders will lose the privilege of working on public works projects.

Equally important, this protects workers from having to recover unpaid wages.

We appreciate your favorable consideration of our testimony and strongly urge passage of S.B. 3223 S.D. 1, H.D. 1.

Respectfully submitted,

Randy Perreira
President

RP/dd

SB-3223-HD-1

Submitted on: 3/28/2022 1:17:15 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Pride at Work - Hawaii	Pride @ Work - Hawaii	Support	Written Testimony Only

Comments:

Aloha Representatives,

Pride at Work - Hawai'i, the state-wide chapter of Pride At Work (a constituency group of the national AFL-CIO) and an affiliate of the Hawai'i State AFL-CIO, supports SB 3223 SD 1 HD 1.

Mahalo nui loa for your time and consideration,

Pride at Work - Hawai'i



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Judiciary and Hawaiian Affairs

Testimony by
Hawaii Government Employees Association

March 30, 2022

S.B. 3223, S.D. 1, H.D. 1 – RELATING
TO PUBLIC WORKS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 3223, S.D. 1, H.D. 1 which imposes penalties on both the individual and the firm that repeatedly violate state laws governing wages and hours of employees on public works.

It's entirely unacceptable when firms violate wage and hour law, let alone become repeat offenders. These actions harm not only the workers who perform their duties but also the public's trust. We are hopeful that this amendment to Ch. 104, Hawaii Revised Statutes will decrease the amount and frequency of violations as individuals will be held accountable for both their own and their firm's actions.

Thank you for the opportunity to testify in support of S.B. 3223, S.D. 1, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



Daniel Ross, RN
President

Gary Nuber
Director of Field Services

1600 Ala Moana Blvd Suite 100
Honolulu, HI 96815

Tel: (808) 531-1628
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The Thirty-First Legislature, State of Hawai'i
Hawai'i State House of Representative
Committee on Judiciary & Hawaiian Affairs

Testimony by
Hawaii Nurses Association
March 29, 2022


S.B. 3223 – RELATING TO PUBLIC WORKS

The Hawai'i Nurses Association -OPEIU Local 50 is affiliated with the AFL-CIO, was founded in 1917 and represents 4,000 nurses in the State of Hawaii. We are grateful to testify in **support** of S.B. 3223.

S.B. 3223 will help protect Hawai'i's workers from wage theft. Holding employers who violate wage and hour laws accountable is in the best interest of everyone.

Thank you for your consideration and we urge you to pass this legislation.

Respectfully,



Daniel Ross
President

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 28, 2022

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE SCOTT MATAYOSHI, VICE CHAIR, COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

SUBJECT: **OPPOSITION OF S.B. 3223 SD1 HD1, RELATING TO PUBLIC WORKS.**
Imposes penalty on both the person and firm upon finding of repeat violations of state law governing wages and hours of employees on public works.

HEARING

DATE: Wednesday, March 30, 2022
TIME: 2:00 p.m.
PLACE: Capitol Room 325

Dear Chair Nakashima, Vice Chair Matayoshi 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 is in **opposition** of S.B. 3223 SD1 HD1, which imposes a penalty on both the person and firm upon finding of repeat violations of state law governing wages and hours of employees on public works.

GCA understands the issue the measure attempts to address, but is concerned of the unintended consequences of this bill. First, the definition of "person" includes a sole proprietor and the responsible managing employee (RME) and holder of the construction license as provided under Chapter 444, HRS. Assuming that an RME is the appropriate person to cite, this measure does not consider that firms often have multiple RME's, including a principal RME. Does this mean that all RME's are in violation? RME's are not tied to specific projects, but are tied to the firm.

Second, an individual may be an RME for more than one contracting entity. This measure would indirectly impose a penalty on another contracting entity who was not involved with the project.

Third, the measure does not specify if the intent is to require that the penalties are paid at least twice. If there are four RME's at a firm, do they each pay the penalty? The current draft requires that the firm and the person(s) each pay the penalty equal to the amount of back wages or \$500 for each offense, up to \$5,000, whichever is greater for the same contract for a second violation. The penalties increase for a third violation.

We believe that these unintended consequences and technical issues can be avoided while assuring that intent of the measure is achieved by simply just amending subsection 104-24(c) to read:

(c) Where the department finds that a third violation of this chapter has been committed, whether on the same or another contract, within three years of the second notification of violation, the department, after proper notice and opportunity for hearing, shall order the ~~[person or firm in violation]~~:

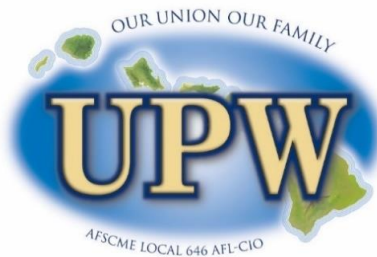
- (1) ~~[The]~~ Person or firm in violation to pay a penalty equal to two times the amount of back wages found due or \$1,000 for each offense, up to \$10,000, whichever is greater; and
- (2) ~~[The]~~ Person and Firm to be suspended from doing any new work on any public work of a governmental contracting agency for a period of three years except as provided in section 104-25(a)(2). "New work on any public work" includes any public works project in which the suspended person or firm has not begun work at the job site as of the date of the suspension order. The suspension shall be effective on the later of the twenty-first day after the notification of violation has been sent, or upon the issuance of a decision pursuant to section 104-23(c).

(d) A first, second, or third violation refers to each project in which the department finds that a contractor has failed to comply with this chapter.

(e) ~~[For purposes of this section, "offense"]~~ As used in this section:

"Offense" means each section of this chapter under which the contractor is cited; provided that, with respect to prevailing wage and overtime citations under section 104-2, each employee and each project shall be considered a separate offense.

"Person" includes a sole proprietor and the principal responsible managing employee and holder of the construction license as provided under chapter 444."



**HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022**

Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, March 30, 2022, 2:00PM
Conference Room 325 and via Videoconference

Re: Testimony in SUPPORT of SB3223, SD1, HD1 – RELATING TO PUBLIC WORKS

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

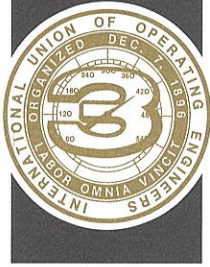
UPW **supports** SB3223, SD1, HD1, which imposes a penalty on both the person and firm upon finding of certain violations of state law governing wages and hours of employees on public works.

Safeguarding and holding a person or firm accountable for any violations of Chapter 104, Hawaii Revised Statute, are important to avoid offenses and ensure that there are no repeat offenders. These violations not only harm the workers performing these jobs, but also diminishes the public’s trust. Ensuring that these offenders are appropriately punished for their actions will help to ensure that repeat offenders will not have the privilege of working on public works projects in the future.

Thank you for the opportunity to provide testimony.

Sincerely,

Kalani Werner
State Director



OPERATING ENGINEERS LOCAL UNION No. 3

2181 LAUWILIWILI STREET, KAPOLEI, HI 96707 • (808) 845-7871 • FAX (808) 682-0906
Jurisdiction: Northern California, Northern Nevada, Utah, Hawaii, and the Mid-Pacific Islands

LATE

March 28, 2022

House Committee on Judiciary & Hawaiian Affairs

Honorable Mark M. Nakashima, Chair

Honorable Scot Z. Matayoshi, Vice Chair

Honorable Members of the House Committee on Judiciary & Hawaiian Affairs

RE: SUPPORT OF S.B. 3223 SD1 HD1 IMPOSES PENALTY ON BOTH THE PERSON AND FIRM UPON FINDING OF REPEAT VIOLATIONS OF STATE LAW GOVERNING WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS. (HD1)

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

Hawaii Operating Engineers Local 3 **supports SB3223 SD1 HD1** which imposes penalty on both the person and firm upon finding of repeat violations of state law governing wages and hours of employees on public works.

Hawaii has the best prevailing wage laws in the nation. For years, Hawaii Revised Statutes 104 has been the gold standard for prevailing wage laws in the United States.

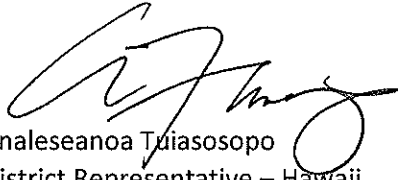
Yet, despite Hawaii Revised Statutes 104 (HRS1004) being a law in Hawaii for decades, there are still contractors who violate this law, and do not pay their workers the wages they are entitled to on public works projects. In HRS 104, there is a “three strike” policy in place, which gives contractors three opportunities to alter their illegal practices and comply with HRS 104. In fact, a violating contractor is required to sign a document recognizing their violation and state that they will not violate the law. If a contractor does commit their third and final violation of HRS 104, they are suspended from bidding on public works projects for three years.

This three-year suspension from bidding on public works projects has been a strong deterrent for many years and generally works well. However, we still see companies that have been cited for their third strike, get suspended, and then proceed to move their key leaders and personnel to another company and continue their business under a new name. This type of corporate shell game defeats the purpose and intent of HRS 104.

SB3223 SD1 HD1 incorporates key language to ensure that that a person will also be suspended, and that a suspension will follow them despite a transfer to another company. We feel that this language will assist the Department of Labor and Industrial Relations in their responsibility to investigate and suspend violators of Hawaii HRS 104 law and give them the foundation to enact Administrative Rule amendments to strengthen their investigation and suspension processes.

Thank you for this opportunity to testify in support of SB3223 SD1 HD1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Analeseanoa Tuiaosopo', written in a cursive style.

Analeseanoa Tuiaosopo
District Representative – Hawaii
Operating Engineers Union Local 3