



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
[www.labor.hawaii.gov](http://www.labor.hawaii.gov)

March 22, 2022

To: The Honorable Richard H.K. Onishi, Chair,  
The Honorable Jackson D. Sayama, Vice Chair, and  
Members of the House Committee on Labor & Tourism

Date: Tuesday, March 22, 2022

Time: 9:00 a.m.

Place: Conference Room 312 & Via Videoconference

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

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

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB3223 SD1 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) defines the term "Firm" to include the contractor, corporation, limited liability company, partnership, and limited partnership. The term "Person" is defined to include the officers and directors of a corporation, managers and members of a limited liability company, and partners, and limited partners of a partnership.

Section 104-25, HRS, is amended by adding subsection (d) to define the term "Firm" to include the contractor, corporation, limited liability company, partnership, and limited partnership. Further the term "Person" is defined to include the officers and directors of a corporation, managers and members of a limited liability company, partners, and limited partners of a partnership.

The DLIR offers comments on this measure.

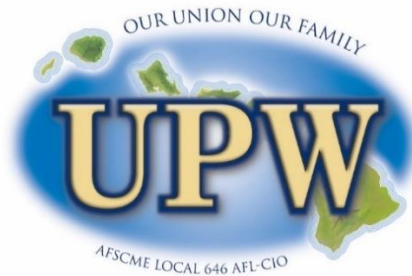
**II. CURRENT LAW**

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**

The intent of the current language in Hawaii's Prevailing Wage Law was for "person" to mean a sole proprietor and "firm" as all other registered business entities. The original intent of "person" was not meant to be all individuals listed as officers, managers, or partners of a business entity.

We suggest deletion of the proposed definition of "Firm" to allow the current flexibility in the type of business entities the chapter applies to and to substitute but not limit the definition of "Person" to include a sole proprietor and the Responsible Managing Employee and holder of the construction license as provided within Chapter 444, HRS, Hawaii's Law governing contractors as they are generally the ones responsible for what transpires on the construction job site.



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

**Committee on Labor and Tourism**  
Representative Richard H.K. Onishi, Chair  
Representative Jackson D. Sayama, Vice Chair

Tuesday, March 22, 2022, 9:00AM  
Conference Room 312 and via Videoconference

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

Chair Onishi, Vice Chair Sayama, 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, 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

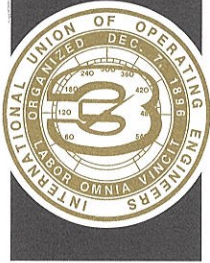
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# OPERATING ENGINEERS LOCAL UNION No. 3

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

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March 21, 2022

House Committee on Labor & Tourism  
Honorable Richard H.K. Onishi, Chair  
Honorable Jackson D. Sayama, Vice Chair  
Honorable Members of the House Committee on Labor & Tourism

**RE: SUPPORT OF S.B. 3223 SD1, 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.**

Dear Chair Onishi, Vice Chair Sayama, and Members of the Committee,

Hawaii Operating Engineers Local 3 **supports SB3223 SD1** 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 and would **like to propose the following amendments.**

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 HRS 104 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.

It is the position of Operating Engineers Local 3, which further amending the Hawaii Revised Statutes, section 104-24 and 104-25 to the amendments below will help strengthen our prevailing wage laws.

Amendments:

SECTION 1. Section 104-24, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) Where the department finds that a second violation of this chapter has been committed, whether on the same or another contract, within two years of the first notification of violation, the department, after proper notice and opportunity for hearing, shall order the person ~~[or]~~ and firm in violation to pay a penalty equal to the amount of back wages found due or \$500 for each offense, up to \$5,000, whichever is greater.

(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]~~ and firm in violation ~~[to]~~ to:

(1) ~~[To pay]~~ 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) ~~[To be]~~ 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)."

2. By amending subsection (e) to read:

"(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 responsible managing employee and holder of the construction license as provided under chapter 444."

SECTION 2. Section 104-25, Hawaii Revised Statutes, is amended to read as follows:

**"§104-25 Suspension.** (a) The director shall suspend a person [~~or~~] and firm as follows:

(1) For a first or second violation, if a person or firm fails to pay wages found due[;] or any penalty assessed, or both, the person [~~or~~] and firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full;

(2) For a third violation, the suspension shall be as prescribed in section 104-24(c); provided that, if the person or firm continues to violate this chapter or fails to pay wages found due or any penalty assessed, or both, then the person [~~or~~] and firm shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory three-year period. If after the three-year suspension period the wages found due or penalties assessed are still unpaid, the suspension shall remain in force until payment is made in full; or

(3) For falsification of records, or for delay or interference with an investigation pursuant to section 104-22, the person [~~or~~] and firm shall be immediately suspended for a period of three years.

(b) The director shall immediately notify the governmental contracting agency, comptroller, the auditor or director of finance of the county, and in the case of a suspended subcontractor, the general contractor of any suspension order.

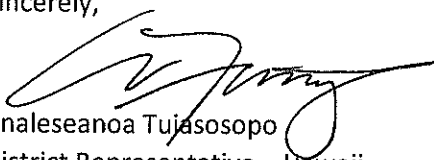
(c) No contract shall be awarded to the person ~~[or]~~ and firm so suspended or to any firm, corporation, partnership, or association in which the person or firm has an interest, direct or indirect, until three years have elapsed from the date of suspension, unless the period of suspension is reduced as herein provided. Any contract awarded in violation of this subsection shall be void.

(d) As used in this section, "person" shall have the same meaning as in section 104-24."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on December 25, 2040.

Sincerely,

  
Analeseanoa Tuiasosopo  
District Representative – Hawaii  
Operating Engineers Local Union No. 3