

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

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

March 21, 2023

To: The Honorable David A. Tarnas, Chair,
The Honorable Gregg Takayama, Vice Chair, and
Members of the House Committee on Judiciary & Hawaiian Affairs

Date: Tuesday, March 21, 2023
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

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

Re: S.B. 435 S.D.1 H.D. 1 RELATING TO PUBLIC WORKS

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this measure. SB435 SD1 HD1 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(f) defines the term "Person" to include a sole proprietor and the principal responsible managing employee that holds the contractor's license of the firm; provided that for subsection (c)(2), "person" also includes all subordinate responsible managing employees who are employed during the calendar period being investigated.

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

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.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 21, 2023

Testimony To: House Committee on Judiciary and Hawaiian Affairs
Representative David A. Tarnas, Chair

Presented By: Tim Lyons, President

Subject: S.B. 435, S.D. 1, H.D. 1 – RELATING TO PUBLIC WORKS.

Chair Tarnas and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are not in favor of this bill, as written. When this Committee heard a similar bill (H.B. 168, H.D. 2), it deleted those portions of the bill effecting subordinate responsible managing employees and, at this time, we would like to request a similar amendment to this bill.

Of course we do not condone violation of the wage and hour law however we note that this bill directly affects the principal RME who may or may not even be a shareholder in the corporation. The RME may not have any financial responsibilities within the company and no ownership of the company in order to control what the owner may dictate.

We suggest that the principal RME be included only if it can be established that the RME has some responsibility for the actions or inactions taken.

Thank you.



March 21, 2023

TO: HONORABLE DAVID A. TARNAS, CHAIR, HONORABLE GREGG TAKAYAMA, VICE CHAIR, COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

SUBJECT: **COMMENTS ON S.B. 435 SD1 HD1, RELATING TO PUBLIC WORKS.**
Imposes the penalty on both the person and the firm upon the finding of repeat violations of the state law governing wages and hours of employees on public works. Requires each notice of violation to contain the names of the person and the firm. Makes conforming amendments.

HEARING

DATE: Tuesday, March 21, 2023
TIME: 2:00 p.m.
PLACE: Capitol Room 325

Dear Chair Tarnas, Vice Chair Takayama 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 S.B. 435 SD1, which imposes the penalty on both the person and the firm upon the finding of repeat violations of the state law governing wages and hours of employees on public works. Requires each notice of violation to contain the names of the person and the firm. Makes conforming amendments.

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, this measure would attempt to close one loophole by not allowing the principal RME to start another firm and bid on public works projects, but it would not prevent subordinate RME's or owners from doing so.

Thank you for the opportunity to provide comments.



Hawaii Operating Engineers Industry
Stabilization Fund PAC
2181 Lauwiliwili Street
Kapolei, HI 96707
Phone: (808) 845-6221
Website: www.hoeisf.com

March 21, 2023

House Committee on Judiciary & Hawaiian Affairs
Representative David Tarnas, Chair
Representative Gregg Takayama, Vice Chair

TESTIMONY IN SUPPORT
Senate Bill 435, SD1, HD1 Relating to Public Works

Aloha Chair Tarnas, Vice Chair Takayama, 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 SB435, SD1, HD1** which imposes the penalty on both the person and the firm upon the finding of repeat violations of the state law governing wages and hours of employees on public works and requires each notice of violation to contain the names of the person and the firm.

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 SB435, SD1, HD1 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.