

SAH - Subcontractors Association of Hawaii

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February 24, 2023

Testimony To: Senate Committee on Judiciary
Senator Karl Rhoads, Chair

Presented By: Tim Lyons, President

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

Chair Rhoads 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.

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, as well as all subordinate RME's regardless of their decision making authority for the company. Additionally, their specialty license could be suspended when the violation has nothing to do with that particular license. This is unfair and an overreach. The RME may not have any responsibilities within the company and no ownership of the company in order to control what the owner may dictate.

We suggest that only 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.



February 22, 2023

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE MIKE GABBARD,
VICE CHAIR, COMMITTEE ON JUDICIARY

SUBJECT: **COMMENTS ON S.B. 435 SD1, 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: Friday, February 24, 2023
TIME: 3:00 p.m.
PLACE: Capitol Room 309

Dear Chair Rhoads, Vice Chair Gabbard 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 from doing so.

GCA prefers the language contained in HB 168 as introduced because it ensures that the subordinate RME's receive proper notice of all violations at the firm.

Thank you for the opportunity to provide comments.



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

February 24, 2023

To: The Honorable Karl Rhoads, Chair,
The Honorable Mike Gabbard, Vice Chair, and
Members of the Senate Committee on Judiciary

Date: Friday, February 24, 2023
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports the intent and offers an amendment.** SB435 SD1 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 construction license of the firm; provided that for subsection (c)(2), "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 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.

The DLIR respectfully requests that the proposed definition of "person" on Page 3, lines 15 through 19 be amended to clarify that a responsible managing employee hold the contractor license as provided under chapter 444, instead of a

construction license and clarify that the subordinate responsible managing employees are those employed during the calendar period being investigated.



Hawaii Operating Engineers Industry
Stabilization Fund PAC
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February 24, 2023

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

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

Aloha Chair Rhoads, Vice Chair Gabbard, 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** 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 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.