



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

March 27, 2024

To: The Honorable Henry J.C. Aquino, Chair,
The Honorable Sharon Y. Moriwaki, Vice Chair, and
Members of the Senate Committee on Labor and Technology

Date: Wednesday, March 27, 2024
Time: 3:00 p.m.
Place: Conference Room 224, State Capitol

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

Re: S.C.R. 33/ S.R. 22 REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE AN INTERAGENCY ENFORCEMENT TASK FORCE TO COMBAT THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION.

The **DLIR supports the intent** of this measure, suggests amendments, and defers to the other entities named in the resolution regarding their participation. Worker misclassification occurs when an employer treats individuals as independent contractors when they are employees. The DLIR administers programs designed to increase the economic security, physical and economic well-being, and productivity of workers and recognizes there exists substantial non-compliance with the laws it administers.

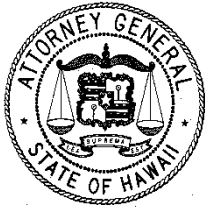
Over time repeated cuts and limited restoration of capacity has significantly degraded the capacity of the department to administer its laws to both protect workers and help ensure a level playing field for employers. The following table reflects numbers of generally funded positions for some of the department's divisions involved in enforcement activities:

Program	FY1993-94	FY2023-24
HIOSH	56	18
Wage Standards	33	19
Disability Compensation	135	87

The DLIR suggests the following amendments:

- The DLIR Director serve as Chairperson,

- The task force identifies the number and type of positions required to restore the capacity of the DLIR to meaningfully administer its existing laws,
- Reduce the scope of the task force by deleting on pages 4-5 subparagraphs (5), (7), and (8), and
- Consider narrowing the scope to include an industrial sector as opposed to all industrial sectors i.e., the whole economy.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.C.R. NO. 33 AND S.R. NO. 22, REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE AN INTERAGENCY ENFORCEMENT TASK FORCE TO COMBAT THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION IN THE STATE.

BEFORE THE:

SENATE COMMITTEE ON LABOR AND TECHNOLOGY

DATE: Wednesday, March 27, 2024 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Jack W. Relf, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General provides the following comments on these resolutions.

The purpose of these resolutions is to request the Department of Labor and Industrial Relations (DLIR) to convene an "interagency enforcement task force" to combat the underground economy and the misclassification of employees as independent contractors in the State. This task force is to be chaired by the Director or the Deputy Director of DLIR and composed of various listed invitees of the chairperson. (See SCR and SR pages 5-7).

While most officials who are to be invitees are listed as the official "or the [official's] designee" (see SCR page 6, lines 8-41; SR page 6, lines 5-38), the Attorney General is a listed invitee without the alternative designee wording (see SCR page 7, line 1; SR page 6, line 40). We request that these resolutions be amended to indicate that the "Attorney General or the Attorney General's designee" be invited to the task force.

Additionally, these resolutions provide that the task force will serve as the State's "enforcement entity" (SCR page 3, line 12; SR page 3, line 8), but because it appears that the purpose of the task force is to encourage discussion regarding the above

issues, as would be appropriate for a resolution instead of enforcement activity that would be required to be set forth in a bill, and because a resolution lacks the force of law and cannot authorize enforcement powers, we recommend amending these resolutions to remove references to the task force serving as the State's "enforcement" entity (SCR page 3, line 12; SR page 3, line 8). If the word "enforcement" is deleted in the description of the task force, it may be desirable to indicate in the name of the task force the subject that the task force will focus on, such as the "Underground Economy Interagency Task Force."

Finally, we note that it is unusual for a task force of this size without any formal official status or budget or staff to operate for the indefinite future establishing unofficial procedures for prosecutorial referrals, in addition to a wide variety of other tasks.

Thank you for the opportunity to provide these comments.

Testimony of
Pacific Resource Partnership

Senate Committee On Labor And Technology
Senator Henry J.C. Aquino, Chair
Senator Sharon Y. Moriwake, Vice Chair

SCR 33/SR 22—Requesting the Department of Labor and Industrial Relations to Convene an Interagency Enforcement Task Force to Combat the Underground Economy and Employee Misclassification
Wednesday, March 27, 2024
3:00 P.M.

Aloha Chair Aquino, Vice Chair Moriwake, and Members of the Committee:

Pacific Resource Partnership (PRP) is a nonprofit organization that represents the Hawai'i Regional Council of Carpenters, the largest construction union in the state with approximately 6,000 members, in addition to more than 250 diverse contractors ranging from mom-and-pop owned businesses to national companies.

PRP writes in **support** of SCR 33/SR 22 with a proposed amendment. **We are requesting the Committee to amend both resolutions to include the Department of Commerce and Consumer Affairs, Insurance Division, Insurance Commissioner, or the Commissioner's designee to serve as a member of the underground economy and employee misclassification task force.**

The hard-working men and women in the counties are victimized by an “underground economy” and “employee misclassification” where individuals and businesses utilize schemes to conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to wages, payroll taxes, insurance, licensing, safety, or other regulatory requirements. The Maile Sky Court hotel-condo project in Waikiki is an example of the underground economy at work in the state. This was a \$25 million renovation project awarded to unscrupulous contractors who violated labor and licensing laws. On August 29, 2016, the joint enforcement working group raided the project which resulted in the following:

- Department of Labor and Industrial Relations issued a \$767,095 fine to R&R Construction for failing to provide prepaid health care, temporary disability, and workers' compensation insurance to employees.
- The U.S. Department of Labor ordered R&R Construction to pay workers \$371,376 in back wages and damages for overtime violations.
- RICO issued Selby Construction Services a \$25,000 fine for unlicensed activity.
- Ron's Electrical Services (sub) issued a \$10,000 fine for unlicensed activity.
- RICO issued TRG Construction a \$25,000 fine for unlicensed activity.

Another example occurred during the COVID-19 pandemic when out-of-state workers entered Kaua'i to work on a hotel renovation at the Westin Princeville Ocean Resort Villas that led to a U.S. Department of Labor (USDOL) investigation of S&A Industries Inc. The USDOL found S&A in violation of the Fair Labor Standards Act (FLSA) for failing to pay overtime wages to workers and was able to recover \$693,000 in back wages and damages for such violations (See Attachment). It was because of their illegal employment/payroll scheme



(Continued From Page 1)

that S&A Industries Inc. was able to win the work and deprive local reputable contractors, like Shioi Construction, and their workers from working on this project.

These types of cases occur far too often in every county throughout the state as unscrupulous contractors take advantage of workers by not paying them appropriate wages and overtime required by law. This unlawful practice is often accompanied by other forms of cheating, such as evading state and federal taxes by paying workers off the books and not paying the required unemployment benefits, medical insurance, social security, and workers' compensation. When contractors and businesses do not play by the rules, it hurts all of us resulting in lower wages, unsafe workplaces, and less funding for community services. Ultimately, many of these factors play a role in whether Hawai'i residents remain in the islands or leave for the mainland, as has been the case since 2019 with a total population decline of more than 15,000 people.

As such, we respectfully request your favorable decision on this measure. Thank you for this opportunity to submit written testimony.

SCR-33

Submitted on: 3/26/2024 2:30:33 PM

Testimony for LBT on 3/27/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nathaniel Kinney	Testifying for Hawaii Regional Council of Carpenters	Support	In Person

Comments:

HRCC is in support of this important resolution that will bring together federal, state, and county officials to combat tax fraud in the construction industry. Employers that flagrantly flout state and federal wage laws and tax regulations pose a significant threat to local workers and their families that are struggling to make it in Hawaii.

HRCC hopes that the Labor Committee could also include the Hawaii State Insurance Commissioner to be added to the list of participants, as many of these bad contractors often are committing workers compensation insurance fraud.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Thirty-Second Legislature
The Senate
Committee on Labor and Technology

Testimony by
Hawaii State AFL-CIO

March 27, 2024

TESTIMONY ON SCR33 - REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO
CONVENE AN INTERAGENCY ENFORCEMENT TASK FORCE TO COMBAT THE UNDERGROUND ECONOMY
AND EMPLOYEE MISCLASSIFICATION IN THE STATE

Chair Aquino, Vice Chair Moriwaki, and members of the committee:

The Hawaii State AFL-CIO is a federation of 74 affiliate labor organizations that represent over 68,000 union members in the State of Hawaii. The AFL-CIO serves its affiliates by advocating for workers and their families before the state legislature and other branches of state and county government.

The Hawaii State AFL-CIO supports SCR33, which requests the Department of Labor and Industrial Relations to convene an interagency enforcement task force to combat the underground economy and employee misclassification in the State.

For far too long, workers have been exploited, and some businesses have evaded their responsibilities through deceptive practices that undermine the rights and protections afforded by our labor laws. The underground economy not only robs the state of vital tax revenues but also erodes the dignity and well-being of our workforce.

Through collaboration and coordination among stakeholders, including labor organizations, business leaders, and community advocates, we can ensure that every worker is treated fairly, paid a living wage, and provided with a safe working environment. This resolution is a crucial step towards achieving that goal.

We urge the committee to support this resolution and send a clear message that Hawaii stands united in its commitment to protecting the rights and dignity of all workers. Thank you for your attention to this important matter.

Respectfully submitted,

Randy Perreira
President