



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

March 12, 2024

To: The Honorable Scot Z. Matayoshi, Chair,  
The Honorable Andrew Takuya Garrett, Vice Chair, and  
Members of the House Committee on Labor & Government Operations

Date: Tuesday, March 12, 2024  
Time: 9:30 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: S.B. 2351 SD2 RELATING TO WORKFORCE DEVELOPMENT**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The **DLIR opposes** the SD2 of this measure and strongly prefers HB2199 HD2. SB2351 SD2 contains significant inconsistencies with the federal Workforce Innovation and Opportunity Act (WIOA) and reflects a misunderstanding of the intent and purpose of the WIOA, especially the governance structure and the use of federal funds.

The WIOA is intended to increase access to and opportunities for the employment, education, training, and support services that individuals need, particularly those with barriers to employment. Thus, the WIOA provides priority services to veterans, low-income youth, low-income adults, and dislocated workers.

20 CFR Part 679 *Statewide and Local Governance of the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act* outlines the purpose of the State Workforce Development Board (§ 679.100) and the functions (§ 679.130), the latter of which is mirrored in 202-2, HRS. WIOA requires a private sector-led state board composed of owners and other high-level employees to guide the training opportunities, "that include high-quality, work-relevant training and development in in-demand industry sectors or occupations..." so those with barriers to employment obtain skills needed by employers and attain gainful employment and living wages.

Neither the Federal nor State law intends the State Workforce Development Board to function as a federal grant-distributing, pass-through entity. These laws are not designed to have the volunteer, private sector-led state board responsible for complex, federal oversight functions. This proposal would expose the State to increased liability in stewarding federal funds and require general funds to cure.

SB2351 HD2 proposes to:

- Conform the law to the conflict-of-interest provisions and nomenclature found in the WIOA and corresponding federal regulations,
- Amend the state workforce development board law to be consistent with the terminology used in the WIOA and Code of Federal Regulations,
- Amend the duties of the state board to add functions inconsistent with 20 CFR § 679.130,
- Restore the program identification number and positions of the Hawaii Workforce Development Council transferred by the General Appropriations Act of 2021 to the Hawaii Workforce Development Board,
- Authorize the board to hire staff exempt from Civil Service Law (Chapter 76, HRS),
- Appropriate general funds for the hiring of an unspecified number of staff, and
- Repeal the necessity for the DLIR to report on the activities of the K-12 agriculture workforce development pipeline initiative (§ 371-12(d)).

## II. **CURRENT LAW**

The General Appropriations Act of 2021, eliminated the program identification number of the Workforce Development Council and transferred its appropriation and positions to the Workforce Development Division.

20 CFR § 679.130 specifies that the State Workforce Development Board is to assist the Governor in development and implementation of a Unified State Plan for the WIOA and assist in achieving the State's strategic and operational vision and goals outlined in the plan, including service delivery to the Local Areas that expend WIOA formula funds and the development of effective local workforce development boards to oversee local levels of performance and fiscal integrity.

2 CFR Part 200 & 29 CFR Part 2900 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish uniform administrative requirements, cost principles, and audit requirements for federal awards to non-federal entities (Part 2900 is U.S. DOL specific).

The WIOA and related regulations found in 2 CFR Part 200, 29 CFR Part 2900 and § 97.36, 20 CFR Part 683 (Administrative Provisions Under Title I of the WIOA), and Part 679 address conflicts of interest for non-federal entities and for recipients and subrecipients of federal awards under Title I of the WIOA.

20 CFR part 683 requires that state and local workforce development board and standing committee members cannot vote on or participate in any decision-making capacity on the provision of services or any matter that would provide direct financial benefit to that member or the member's family.

20 CFR §§ 679.140 & 679.390 require State and Local Boards to conduct business in an open manner under the Sunshine Provision of the WIOA.

29 CFR Part 93 prohibits the use of federal funds for lobbying.

### **III. COMMENTS ON THE SENATE BILL**

The DLIR strongly opposes SB2351 SD2 as:

- SB2351 SD2 is contrary to the legislative intent for HRS 202 as approved by the Legislature in the General Appropriations Act of 2021.
- Pg. 4, lines 11-13: § 202-5 already places the state board within the DLIR for administrative purposes and states it, "shall act in an advisory capacity to the governor."
- Pg. 4, line 16: the DLIR suggests referencing 20 CFR § 679.130 instead of 29 U.S.C. 3101 et. seq. as it is more specific.
- Act 57 (SLH, 2016) provided a temporary exemption to the quorum requirement of Chapter 92 (Sunshine Law) as Act 57 expanded the membership of the board by 11 members. This exemption to the Sunshine law should be deleted (Pg. 6 line 18 to Pg. 7 line 2) as it is inconsistent with the intent and purpose of the Sunshine Law.
- Considering the Sunshine Law quorum challenges of the board, the department suggests reducing the membership of the board as was suggested by the House position on HB2159 during the 2022 Session. Currently, the board is comprised of 41 members whereas the federal law only requires 29 members. To reduce the membership on the board the DLIR suggests deleting § 202-1 (3) the private sector chairpersons of the four county workforce development boards as those representatives are not required by the WIOA (which would also allow the local chairs and representatives of the mayors to meet without contravening the Sunshine Law) and reducing the number of representatives in § 202-1 (4) & (5).
- Pg. 8, lines 1-4 contains language that is inconsistent with 20 CFR § 679.130 and is already contained in the pre-existing paragraphs (2), (3), & (4) of § 202-2.

- The preamble states that the purpose of this measure is to clarify that the state board is administratively attached to the DLIR, which it already is pursuant to § 202-5. Further, the preamble states the purpose of the measure is to transfer the board's program ID, appropriations, and positions from the Workforce Development Division. The WIOA and corresponding Code of Federal Regulations do not require a program ID, appropriations or positions for the state board. 20 CFR § 679.160 states, "the State WDB may hire a director and other staff to assist in carrying out the functions described in WIOA sec. 101(d) and § 679.130...".
- The DLIR Director is the WIOA grant recipient and signatory to the conditions of the awards, which includes ensuring compliance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), 29 CFR Part 2900 and § 97.36, and 20 CFR Part 683 (Administrative Provisions Under Title I of the WIOA) as described above in the II. Current Law section.
- Therefore, this proposal appears to intend to have the voluntary, private sector led state board and/or executive director to take on these complex, federal oversight responsibilities carried out by experienced, knowledgeable civil service fiscal and administrative staff. This subjects the State to increased liability for sanctions for the unlawful use of federal funds, which would require the Director to request general funds from the Legislature to cure.

**SB-2351-SD-2**

Submitted on: 3/11/2024 1:21:45 PM

Testimony for LGO on 3/12/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Alan S. Hayashi	Individual	Support	Written Testimony Only

Comments:

ALAN S. HAYASHI

207-4 KAWAIHAE STREET

HONOLULU, HAWAII 96825



Honorable Representative Scott Z. Matayoshi, Chair

Honorable Representative Andrew T. Garrett, Vice Chair

House Committee on Labor and Government Operations

State Capitol / Honolulu, Hawaii

Subject: Testimony on SB2351 SD2 on March 12, 2024

Chair Matayoshi, Vice Chair Garrett, and Members of the House Committee on Labor and Government Operations

My name is Alan Hayashi, past chair of the Workforce Development Council (WDC), and interested citizen regarding the future of the WDC. I am here to make comments on, and am in Support of the intent of SB2351 SD2, and the future structure of the WDC from the perspective of one who spent 8 years on the WDC, under the original and current revised structure.

I personally do not have any reservations with enacting portions of some proposed legislation regarding (Ethics/Conflict of interest policy, WDC Board Composition, Governor’s appointment of the Chairperson, etc.).

However, I do feel the current and some other proposed legislative structure of WDC, and the interpretation of some legislative provisions by DLIR staff are destructive to the WDC, and its ability and extensive capability, to perform its function and attract new high-powered members. In short, I recommend the 2024 Legislature return the WDC to its original “authority type” structure, and allow it to function to full capability.

1. WDC has much capability as envisioned by the Legislature that created the WDC to oversee the implementation of the Workforce Innovation Opportunity ACT (WIOA). WDC was established to have a diverse board composed of private, and public sector to represent Hawaii's Employers, Labor Unions, Government (City and State), and the Military's needs. This highly qualified Board can have much to offer the State of Hawaii, if it is allowed to perform its functions as originally conceived and structured. In the last 3 years the WDC has been emasculated by past "partial" legislation, and WDC Board members are disheartened. Many have left the organization for other Boards and Commissions where their talents are welcomed, and put to good use. Under current circumstances, I strongly recommend the WDC be administratively attached to the Department of Business Economic Development & Tourism (DBEDT), which has the mission and research facilities and capability, to cooperatively, develop good workforce policy driven by economic goals and objectives.

I recommend the restoration of the WDC budget line with original semi-autonomous organizational structure. Additionally, if the WDC is to oversee Workforce Development programs, it will need the ability to hire staff to perform this function, and must be enabled to do so by restoring budget line and hiring authority.

1. to the secondary issue of the descriptive name of the WDC....my personal preference is to recognize the WDC as a "Council" rather than a Board. The designation as a Board confuses many with the existence of four (4) other county Workforce Development Boards. I believe there is language in the Federal act (WIOA) that allows utilization of designation as either "Council", or "Board".
1. the Legislature is unwilling to return the WDC's autonomy and provide willing and collaborative administrative support, I am concerned that more WDC Board members will leave and eventually it will be even more ineffective. No new members will want to join the WDC if it is ineffective and incapable of fulfilling its promise. These "volunteer" WDC Board members with their varied economic sector talents can be a very powerful asset for the State in its planning for future economic growth and a sustainable future. I sincerely wish you all the best, and much Aloha.

Ken H Loui  
816 Ekoa Place  
Honolulu, HI 96821

11 March 2024

**LATE**

**House Committee on Labor & Government Operations**

**Subject: Testimony for S.B. No. 2351 SD2**

My name is Ken Loui, the current Chair of the State of Hawaii Workforce Development Council (WDC). Testifying on my own behalf, I am supportive of S.B. No. 2351 SD2.

Chapter 202, Section 2:

Conflict of Interest: Support (though it is redundant to HRS 84-14)

Chapter 202-1, Section 4:

Rename of WD Council to WD Board: Support (though "Council" helps to differentiate it from the Local Area Boards)

Additionally, I would like to express my support for the reinstatement of the program identification number for the Workforce Development Council as the WDC does not have the funding as well as staffing it needs to support its work.

The WDC is comprised of forty-one members from the private and public sectors including representatives from our state's executive and legislative branches, mayors or their designees, local workforce development boards, leaders from educational system, labor organizations, nonprofit organizations and businesses. Prior to the elimination of the program identification number, the WDC had a staff of more than 10 administrative personnel but now has a staff comprising of the executive director and one administrative assistant which is insufficient to support its many duties and responsibilities.

I am concerned that the continued lack of staffing and funding for the WDC will negatively impact its ability to attract and retain members to serve on WDC, thus jeopardizing its mission and purpose.

One option/amendment for consideration would be to move the WDC to the Department of Business Economic Development & Tourism (DBEDT) as there is a good deal of synergy as much the data that the WDC utilizes for its analyses (such as data for the State Plan) is prepared by DBEDT.

Sincerely,  
Ken H Loui

TO: Chair Matayoshi, Vice Chair Garrett, and Members of the House Committee on Labor & Government Operations

FROM: Marilyn A. Matsunaga, MBA  
Former Executive Director, Oahu Workforce Development Board

Date: Tuesday, March 12, 2024 at 9:30 am  
Place: Hawaii State Capitol, Room 309 and Videoconference

RE: **SB2351, SD2 RELATING TO WORKFORCE DEVELOPMENT**

**LATE**

Good morning, Chair Matayoshi, Vice Chair Garrett, and Members of the House Committee on Labor & Government Operations. Apologies for my late testimony. I just happened to see this bill last night and rushed to write testimony.

My name is Marilyn Matsunaga and I am testifying in **SUPPORT WITH AMENDMENTS** of SB2351, SD2 Relating to Workforce Development.

For eight years, I served as the executive director of the Oahu Workforce Development Board for the City and County of Honolulu. During those years, the federal Workforce Innovation and Opportunity Act (WIOA) was signed into law. As the nation's workforce development system moved from the old Workforce Investment Act (WIA) to the new WIOA, I was invited by the CEO of the National Association of Workforce Boards in Washington, DC to participate in a small group meeting with the Congressional staff who drafted the new WIOA to learn about how best to implement it.

Hawaii is not alone in having to make changes to how its boards are organized to avoid conflict-of-interest violations.

DLIR is the Board's vendor to run its American Job Centers. It is awkward at best to have the Board administratively attached and reporting to its current vendor. This is a conflict-of-interest problem that was also faced by other organizations.

The City and County of Honolulu solved this conflict-of-interest problem by moving its Board. Instead of being administratively attached to its vendor (the Department of Community Services), the City moved the Board and attached it to the City's Department of Budget and Fiscal Services, an entity that would never submit a proposal to be selected as the Board's vendor to run its job centers.

Please amend this bill to remove the Board from DLIR and instead place it with a neutral Department such as the Department of Budget and Finance (B&F) or the Department of Business, Economic Development, and Tourism (DBEDT). This is the clearest way to avoid any conflict-of-interest violations.

Thank you for your thoughtful consideration of my testimony.





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Thirty-Second Legislature, State of Hawai'i  
Regular Session of 2024  
House Committee on Labor and Government Operations

Testimony by IATSE 665  
March 12th, 2024

**S.B. 2351 SD 2 - RELATING TO WORKFORCE DEVELOPMENT**

Aloha Chair Matayoshi, Vice Chair Garrett, and members of the House Committee,

My name is Tuia'ana Scanlan, International Trustee and president of IATSE Local 665, the union representing technicians in the entertainment industry in Hawai'i. **Local 665 supports SB 2351 SD2**, relating to workforce development.

The Workforce Innovation and Opportunities Act (WIOA) of 2014 is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA requires that states establish a workforce development board to be a planning and policy advisor to the Governor on workforce issues. Additionally, these advisory boards are intended to serve as an informational "clearinghouse" for all workforce development programs in the state and were originally intended to be the primary architects of overall state workforce strategy. It is only when these, among other, milestones are met that the state of Hawai'i can continue to receive federal workforce development funds. By engaging all stakeholders, a fully funded state unified plan on workforce development can holistically prepare Hawai'i's job seekers to be competitive in the global market and positively impact the state's economy.

The goals of WIOA are both lofty and worthy. I've witnessed firsthand the dedication and professionalism of the Hawai'i Workforce Development Council in their journey towards achieving these goals. **IATSE 665 asks for your committee's support of SB 2351 SD2.** Thank you for the opportunity to testify.

In Solidarity,

A handwritten signature in black ink, appearing to read 'Tuia'ana Scanlan'.

Tuia'ana Scanlan  
International Trustee  
President, IATSE 665  
(he/him/his)