

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

April 9, 2024

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

Date: Thursday, April 11, 2024
Time: 9:15 a.m.
Place: Conference Room 309, State Capitol

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

Re: S.C.R. 33, S.D. 1, REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE AN INTERAGENCY TASK FORCE TO COMBAT THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION IN THE STATE'S CONSTRUCTION INDUSTRY.

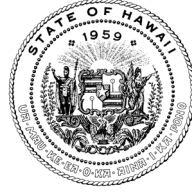
The **DLIR supports** this measure which narrows the scope to the construction industry and acknowledges the capacity of the DLIR to restore positions needed to administer applicable laws.

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

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.

The DLIR defers to the other entities named in the resolution regarding their participation.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
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LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Labor & Government Operations
Thursday, April 11, 2024
9:15 a.m.
Conference Room 309 & Videoconference**

**On the following measure:
S.C.R. 33, S.D. 1, REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL
RELATIONS TO CONVENE AN INTERAGENCY TASK FORCE TO COMBAT THE
UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION IN THE
STATE'S CONSTRUCTION INDUSTRY.**

Chair Matayoshi and Members of the Committee:

My name is Ahlani Quiogue, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department), Professional and Vocational Licensing Division (Division). The Department supports the intent of this resolution and offers comments.

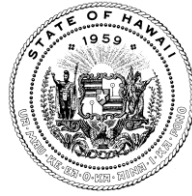
The purpose of this resolution is to request that the Department of Labor and Industrial Relations convene an Interagency Task Force to combat the underground economy and employee misclassification in the State's construction industry.

The Interagency Task Force will have a beneficial impact on the safety and welfare of workers; however, the Division respectfully requests to be removed as a participant. Although the Division licenses various trades in the construction industry,

Testimony of DCCA
S.C.R. 33, S.D. 1
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we do not have the expertise in areas such as tax evasion, payroll fraud, and proper payment of wages.

Thank you for the opportunity to testify on this resolution.



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Labor & Government Operations
Thursday, April 11, 2024
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On the following measure:
S.C.R. 33, S.D.1, REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE AN INTERAGENCY TASK FORCE TO COMBAT THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION IN THE STATE'S CONSTRUCTION INDUSTRY

WRITTEN TESTIMONY ONLY

Chair Matayoshi and Members of the Committee:

My name is Esther Brown and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO), an agency within the Department of Commerce and Consumer Affairs (Department). Because of a scheduling conflict I am unavailable to testify in person this morning. **RICO offers comments on the measure and requests an amendment.**

The resolution proposes that the Department of Labor and Industrial Relations (DLIR) convene an Interagency Task Force (Task Force) to combat the underground economy and employee misclassification in the State's construction industry.

We appreciate the resolution and its stated purpose but respectfully request that RICO be removed as an invited Task Force participant.

The focus of the resolution is to identify and combat an underground economy based largely on concealment or misclassification of employee status, which may impact

employer responsibilities regarding wages, payroll taxes, and so forth. The DLIR, rather than RICO, has primary enforcement authority over such matters. RICO lacks any depth and expertise in the substance, specifics, and nuances of the employer-employee relationship, payroll matters, employee classifications, tax evasion, payroll fraud, under-the-table work, wage theft, and so forth.

Second, RICO, together with the various professional and vocational licensing boards attached to the Department, regulates fifty-two (52) separate industries. RICO's jurisdiction, therefore, is vast. The contracting vocation is just one of the fifty-two (52) industries that we oversee. In fact, each year we receive, and must process, on average 2,500 new complaints that range from health care, real estate, building and construction, and motor vehicle matters, and everything else in between. RICO, like other agencies, has also experienced high turn-over in recent years so our resources are stretched.

RICO has a process in place to intake and review complaints alleging inappropriate activity by licensees in all fifty-two (52) industries, including the contracting industry. The process will continue to be available to everyone going forward.

In the past RICO has received tips and other information from the DLIR related to employment-violations, and our agency will continue to be receptive to such information.

Finally, even if RICO is not an invited member of the Task Force, we will be available to the Task Force as a resource if/when needed.

For these reasons, we respectfully request the following amendment at page 6, beginning at line 15:

~~(8) — Complaints and Enforcement Officer of the Regulated
— Industries Complaints Office of the Department of
— Commerce and Consumer Affairs or the Complaints and
— Enforcement Officer's designee;~~

Thank you for the opportunity to testify.

Testimony of
Pacific Resource Partnership

House Committee On Labor & Government Operations
Representative Scot Z. Matayoshi, Chair
Representative Andrew Takuya Garrett, Vice Chair

SCR 33, SD1—Requesting the Department of Labor and Industrial Relations to Convene an Interagency Task Force to Combat the Underground Economy and Employee Misclassification in the State’s Construction Industry
Thursday, April 11, 2024
9:15 A.M.

Aloha Chair Matayoshi, Vice Chair Garrett, 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 **strong support** of SCR 33, SD1.

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 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.



(Continued From Page 1)

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.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Thirty-Second Legislature
House of Representatives
Committee on Labor & Government Operations

Testimony by
Hawaii State AFL-CIO

April 11, 2024

TESTIMONY ON SCR33 SD1 - 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 Matayoshi, Vice Chair Garrett, and members of the committee:

The Hawaii State AFL-CIO is a federation of 74 affiliate labor organizations representing 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 state and county government branches.

The Hawaii State AFL-CIO supports SCR33 SD1, 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,

A handwritten signature in black ink, appearing to read 'Randy Perreira'.

Randy Perreira
President