



**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



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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.