

DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
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February 26, 2021

TESTIMONY TO THE SENATE COMMITTEE ON WAYS AND MEANS

Senate Bill 793, SD1 – Relating to the Minimum Wage

The Disability and Communication Access Board (DCAB) supports Senate Bill 793, SD1, relating to the Minimum Wage, which repeals the exemption of persons with disabilities from minimum wage requirements.

Sub-minimum wage laws for workers with disabilities are pre-Civil Rights era laws intended to serve as a vehicle to full gainful employment. Given that no person in Hawaii is currently paid a sub-minimum wage, DCAB supports Senate Bill 793, SD1, because such laws no longer serve the purpose for which they were originally enacted. It is time for this practice to come to an end.

We urge passage of this bill. Thank you for this opportunity to offer testimony.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
February 26, 2021

The Honorable Senator Donovan Dela Cruz, Chair
Senate Committee on Ways and Means
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Dela Cruz and Committee Members:

SUBJECT: SB0793 SD1 Relating to the Minimum Wage

The Hawaii State Council on Developmental Disabilities **STRONGLY SUPPORTS SB0793 SD1** which repeals the exemption of persons with disabilities from minimum wage requirements.

Under the law, being “disabled” or “handicapped” allows an individual to be considered exempt from minimum wage within the State of Hawaii. The subminimum-wage law for workers with disabilities was enacted as part of the Fair Labor Standards Act (FLSA) in 1938, before the civil rights era. This Depression-era law was supposed to act as a steppingstone to full gainful employment. Sub-minimum wage was never intended to act as a safety net for individuals considered unable to work a minimum wage job. The Council finds sub-minimum wage as an employment tool to be archaic and a clear violation of individuals with disabilities civil rights.

We are aware that there are non-profit agencies that currently hold 14c certificates. However, our understanding is that these agencies only do so because they are required under the procurement code to be considered a “Qualified Community Rehabilitation Program” (QCRP). The contracts that are given to QCRPs do not require the payment of sub-minimum wage.

The Council has followed up regarding who and how many individuals with disabilities are being employed at sub-minimum wage. In the 2020 legislative session, we stated that no single person was being employed at sub-minimum wage. We have followed up again as recently as two months ago and found that there is still no one in the State of Hawaii being paid sub-minimum wage. Sub-minimum wage is a dated practice that is not even fulfilling its original intent. It is time that this practice was ended.

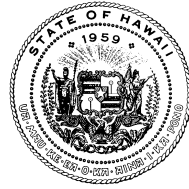
Thank you for the opportunity to submit testimony **strongly supporting SB0793 SD1**.

The Honorable Senator Donovan Dela Cruz, Chair
Senate Committee on Ways and Means
SB0793 SD1 Relating to the Minimum Wage
February 26, 2021
Page 2 of 2

Sincerely,



Daintry Bartoldus
Executive Administrator



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB793 SD1
RELATING TO MINIMUM WAGE.**

SENATOR DONAVAN M. DELA CRUZ, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS

SENATOR GILBERT S.C. KEITH-AGARAN, VICE CHAIR
SENATE COMMITTEE ON WAYS AND MEANS

Hearing Date: February 26, 2021

Room Number: VIA
TELECONFERENCE

1 **Department Position:** The Department of Health (Department) **SUPPORTS** this Measure.

2 **Department Testimony:** The subject matter of this measure falls within the scope of the
3 Department's Behavioral Health Administration (BHA) whose statutory mandate is to assure a
4 comprehensive statewide behavioral health care system by leveraging and coordinating public,
5 private and community resources. Through the BHA, the Department is committed to carrying
6 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and
7 person centered. The BHA's Developmental Disabilities Division (DDD) provides the following
8 testimony on behalf of the Department.

9 Under current law, being "disabled" or "handicapped" allows an individual to be considered
10 exempt from minimum wage within the State of Hawaii. Sub-minimum wage for persons with
11 disabilities began as a transitional tool to employ individuals with disabilities. This practice
12 began in the 1930s and was supposed to act as a stepping stone to full gainful employment. Sub-
13 minimum wage was never intended to act as a safety net for individuals considered unable to
14 work a minimum wage job. DDD finds sub-minimum wage as an employment tool to be archaic
15 and a detriment for individuals with disabilities to having the same rights as everyone else in

1 society. DDD is aware that there are non-profit agencies that currently hold 14c certificates.
2 However, these agencies only do so because they are required under the procurement code to be
3 considered a “Qualified Community Rehabilitation Program” (QCRP). The contracts that are
4 given to QCRPs do not require the payment of sub-minimum wage.

5 New best practices of employment supports are customized and supported employment.
6 Individuals with disabilities have the right to have opportunities to seek employment in
7 integrated settings and to be paid competitive wages. The intent of employment supports is to
8 maximize the individual’s skills, talents, abilities and interests to gain access to and maintain
9 employment in the community, to advance in desired fields and to explore new employment
10 options. Employment supports are provided in collaboration with Employment Specialists who
11 have specialized training and the knowledge and competency to facilitate the coordination and
12 delivery of customized and supported employment.

13 In a proclamation, recognizing October as National Disability Employment Awareness Month,
14 Governor David Ige proclaimed Hawaii as an Employment First State. As an Employment First
15 State, it is essential to provide equal rights and opportunities to individuals with disabilities to
16 have access to competitive integrated employment.

17 Thank you for the opportunity to testify.

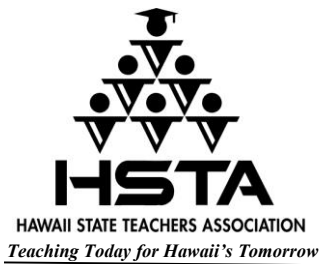
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Corey Rosenlee
President
Osa Tui Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON WAYS & MEANS
RE: SB 793, SD1 – RELATING TO THE MINIMUM WAGE

FRIDAY, FEBRUARY 26, 2021

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

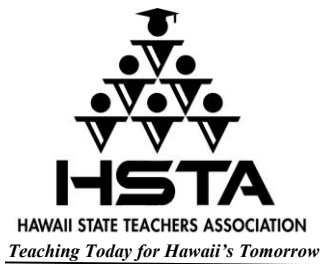
Chair Dela Cruz and Members of the Committee:

The Hawaii State Teachers Association **strongly supports SB 793, SD1**, relating to the minimum wage. This bill repeals the exemption of persons with disabilities from minimum wage requirements. Takes effect on 1/1/2022.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Minimum wage workers in the islands must complete 116 hours of work per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom, which amounts to working 20 hours a day with no days off all year. **That's impossible for anyone, especially for individuals with disabilities with the current minimum wage exemption that allows them to be paid subminimum wages. This exemption needs to be repealed.**

It is unacceptable that we allow disabled individuals to be paid a subminimum wage. Many of these individuals were once special education students, who were guaranteed a free and appropriate education under the Individuals with Disabilities Education Act and promised a life filled with opportunities to realize their full potential. Yet, written in 1938, the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by permitting employers to pay disabled workers less than the federal minimum wage. This provision is echoed in HRS §387-9, but **is based on the mistaken idea that disabled employees are less productive than their able-bodied colleagues.** Many employment programs have come about since the mid-20th Century to assist people with disabilities in acquiring and using essential job skills.

A subminimum wage disrespects the contributions of disabled workers. Research shows that the subminimum wage model costs more, while inspiring lower rates of productivity. After more than seventy-five years of demonstrated failure, it is time to invest in more effective models of employment that are successful at advancing the workplace prospects of disabled individuals who were previously—and egregiously—thought to be unemployable.



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Osa Tui Jr.
Vice President

Logan Okita
Secretary-Treasurer

Wilbert Holck
Executive Director

We believe that lawmakers have a moral responsibility to eliminate the subminimum wage for all workers, regardless of disability, so that everyone is treated equally under the law. Minimum wages are low enough, and problematic to begin with, thus allowing anyone to be paid subminimum wage is even worse.

To ensure that our special needs children receive equal economic opportunities upon entering the workforce, the Hawaii State Teachers Association asks your committee to support this bill.

SB-793-SD-1

Submitted on: 2/24/2021 3:01:42 PM

Testimony for WAM on 2/26/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments:

A few years ago when this issue was being considered we expressed some concerns. In the intervening time, those concerns have been adequately addressed. Our understanding is that either literally nobody or virtually nobody in the state is being paid a sub-minimum wage.

In light of that, it makes good sense to repeal it. It has become more and more a vestige of an older era and has ceased to serve the purpose for which it was originally created. The trend nationally is to generally eliminate it or at least phase this out in states where it may be more common. Given its lack of utilization anyway ,it would be a good opportunity for Hawaii to showcase a leadership role on the issue.

Brandon G. Young

980 Maunawili Rd.

Kailua, HI 96734

Phone: (808) 351-6676

Email: young.brandon4@gmail.com

31st Regular Session of the State Legislature of the State of Hawaii

Senate Committee on Ways and Means

Testimony for Support of SB 793 SD1 on Friday, February 26th at 9:30 A.M.

Dear Chair and Vice-Chairs,

My name is Brandon Young, and I am a member of the National Federation of the Blind of Hawaii. I am submitting testimony in support of the passage of SB 793 SD 1. This bill would eliminate the usage of the Section 14C certificates as a part of the Fair Labor Standards Act (FLSA), and the ability and practice of paying people with disabilities less than the minimum wage here in Hawaii.

I have been a part of the process of ending the practice of paying people with disabilities less than the minimum wage here in Hawaii for several years now. I am glad that others in the disability have stepped up and joined our movement. I am proud to tell you that the Community Rehabilitation Providers (CRP) agencies have decided to end the practice of paying their workers who are disabled less than the minimum wage here in Hawaii. We now need to amend the state law that requires these agencies to hold Section 14C certificates in order to do business with the State of Hawaii. Once we can change this part of the law, then the practice of paying people with disabilities here in Hawaii less than the minimum wage will go away for good. I want to thank you for taking the time to consider this measure for passage, and for taking the time to read my testimony in support of this bill. I look forward to working with you and your colleagues in the state legislature when we are able to visit in person again. Much Mahalo for all of your hard work and the time that it takes to be leaders here in our state.



SB 793, SD 1, RELATING TO THE MINIMUM WAGE

FEBRUARY 26, 2021 · SENATE WAYS AND MEANS
COMMITTEE · CHAIR SEN. DONOVAN DELA CRUZ

POSITION: Support.

RATIONALE: Imua Alliance supports SB 793, SD 1, relating to the minimum wage, which repeals the exemption of persons with disabilities from minimum wage requirements.

A living wage is a human right. According to the Department of Business, Economic Development, and Tourism, a single adult required an income of \$35,143 to achieve self-sufficiency in Hawai'i in 2018, while a single parent with one child required \$59,428. Adjusted for inflation, DBEDT's reporting shows that in 2020, a single minimum wage worker must earn at least \$17.63 to survive on our shores, a number that rises to \$18.22 for Honolulu. At our current statewide minimum wage rate of \$10.10 per hour, however, a full-time minimum-wage employee earns only \$21,008 annually, \$15,000 less than what's needed to meet her basic needs. If our cost of living returns to standard pre-COVID inflation of roughly 3 percent per year, then the minimum wage needed for a single individual to survive in Hawai'i in 2024 could be \$19.85/hour or \$41,288/year.

It is unconscionable, then, that state and federal laws include a loophole allowing disabled individuals to be paid less than the minimum wage. Current labor laws unjustly prohibit workers with disabilities from reaching their full vocational and socioeconomic potential. Written in 1938, Section 14(c) of the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by empowering the Secretary of Labor to grant Special Wage Certificates to employers, permitting them to pay disabled workers less than the federal minimum wage. This provision, mirrored in

Hawai'i Revised Statutes §387-9, is based on the immoral assumption that disabled employees are less productive than their able-bodied coworkers. Successful employment models have emerged in the last seventy-five years to assist people with significant disabilities in acquiring the job skills needed for competitive work, giving lie to the theoretical framework for paying disabled employees a subminimum wage.

The subminimum wage model is an affront to the economic contributions of disabled workers. Data shows that less than 5 percent of the 400,000 workers with disabilities in segregated subminimum wage workshops will transition into competitive integrated work. Moreover, research shows that the subminimum wage model costs more, while promoting less productivity. In fact, workers paid a subminimum wage often must unlearn the habits they acquire in such workshops in order to obtain and carry out meaningful employment, which they repeatedly prove able to do. It is poor policy to reward failed programs with wage exemptions. After more than seven decades of the abhorrent subminimum wage practice, it is time to invest in proven, effective job models for disabled workers—such as “supported” or “customized” employment—that successfully advance positive, competitive, and integrated employment outcomes for individuals once deemed to be unemployable. Disabled workers deserve to be paid what they've earned, not discriminated against and cast into financial hardship.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org



PROTECTING HAWAII'S OHANA, CHILDREN, UNDER SERVED, ELDERLY AND DISABLED

February 24, 2021

TO: Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the Senate Committee on Ways and Means

FROM: Christy MacPherson, Director, PHOCUSED

SUBJECT: Testimony: Relating to the Minimum Wage

Hearing: February 26, 2021 at 9:30 am
Via videoconference

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee on Ways and Means,

Thank you for the opportunity to provide testimony in strong **support** of SB 793, SD1 with amendments.

PHOCUSED is a nonpartisan project of Hawai'i Appleseed Center for Law and Economic Justice and comprises health and human service organizations and the people they serve across the State of Hawai'i. We have been collaborating on advocacy with members of the disabled community, particularly focused on employment opportunities and self-sufficiency issues.

We believe that every worker in Hawai'i should be paid equally for equal work. Removing the sub-minimum wage certificate requirement needed in order to meet the definition of a QCRP is clearly the right thing to do in ensuring that employers are not in violation of the rights of persons with disabilities.

PHOCUSED recommends the following amendment:

- Remove lines 4-10 on page 4 since they are not necessary and would make the bill cleaner if removed.

Thank you for the opportunity to submit testimony on this issue.

PHOCUSED IS A PROJECT OF HAWAII APPLESEED

733 BISHOP STREET, SUITE 1180 • HONOLULU, HI 96813 • (808) 587-7605 • PHOCUSED.ORG



SENATE BILL 793, SD 1, RELATING TO THE MINIMUM WAGE

FEBRUARY 26, 2021 · SENATE WAYS AND MEANS
COMMITTEE · CHAIR SEN. DONOVAN DELA CRUZ

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports** SB 793, SD 1, relating to the minimum wage, which repeals the exemption of persons with disabilities from minimum wage requirements.

A living wage is a human right. According to the Department of Business, Economic Development, and Tourism, a single adult required an income of \$35,143 to achieve self-sufficiency in Hawai'i in 2018, while a single parent with one child required \$59,428. Adjusted for inflation, DBEDT's reporting shows that in 2020, a single minimum wage worker must earn at least \$17.63 to survive on our shores, a number that rises to \$18.22 for Honolulu. At our current statewide minimum wage rate of \$10.10 per hour, however, a full-time minimum-wage employee earns only \$21,008 annually, \$15,000 less than what's needed to meet her basic needs. If our cost of living returns to standard pre-COVID inflation of roughly 3 percent per year, then the minimum wage needed for a single individual to survive in Hawai'i in 2024 could be \$19.85/hour or \$41,288/year.

It is unconscionable, then, that state and federal laws include a loophole allowing disabled individuals to be paid less than the minimum wage. Current labor laws unjustly prohibit workers with disabilities from reaching their full vocational and socioeconomic potential. Written in 1938,

Section 14(c) of the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by empowering the Secretary of Labor to grant Special Wage Certificates to employers, permitting them to pay disabled workers less than the federal minimum wage. This provision, mirrored in Hawai'i Revised Statutes §387-9, is based on the immoral assumption that disabled employees are less productive than their able-bodied coworkers. Successful employment models have emerged in the last seventy-five years to assist people with significant disabilities in acquiring the job skills needed for competitive work, giving lie to the theoretical framework for paying disabled employees a subminimum wage.

The subminimum wage model is an affront to the economic contributions of disabled workers. Data shows that less than 5 percent of the 400,000 workers with disabilities in segregated subminimum wage workshops will transition into competitive integrated work. Moreover, research shows that the subminimum wage model costs more, while promoting less productivity. In fact, workers paid a subminimum wage often must unlearn the habits they acquire in such workshops in order to obtain and carry out meaningful employment, which they repeatedly prove able to do. It is poor policy to reward failed programs with wage exemptions. After more than seven decades of the abhorrent subminimum wage practice, it is time to invest in proven, effective job models for disabled workers—such as “supported” or “customized” employment—that successfully advance positive, competitive, and integrated employment outcomes for individuals once deemed to be unemployable. Disabled workers deserve to be paid what they've earned, not discriminated against and cast into financial hardship.

Kris Coffield · Chairperson, Democratic Party of Hawai'i Education Caucus ·

(808) 679-7454 · kriscoffield@gmail.com

P.O. Box 4777
Kaneohe, HI 96744

February 26, 2021

The Honorable Donovan Dela Cruz Chair
Senate Committee on Ways and Means
Hawaii State Capitol
415 South Beretania Street, Room 211
Honolulu, Hawaii 96813

Re: Support for Senate Bill 793, SD1 - Relating to Minimum Wage

Dear Chair Dela Cruz and members of the Senate Committee on Ways and Means,

I support Senate Bill 793, SD1 - Relating to Minimum Wage which repeals the exemption of persons with disabilities from minimum wage requirements.

As a person with a disability and a disability advocate, who is also a retired employee of the Disability and Communication Access Board (while working, I provided technical assistance on Title I of the Americans with Disabilities Act (ADA) relating to employment), I support this bill. Any person who applies for and obtains competitive employment should be paid the same wage as any other employee doing the same work, and held to the same performance standards. The ADA states that the person must be qualified for the position and able to the job with or without a reasonable accommodation.

When this state law as originally passed, the purpose was to train people with disabilities to move into competitive employment. As they do so, these individuals need to be paid an equitable salary as other employees who do the same work.

This law is obsolete, and should be repealed in order to provide qualified individuals with disabilities equal access when entering competitive employment. Repealing this statute will not require any additional state revenue, with the research by the State Council on Developmental Disabilities showing that although Qualified Community Rehabilitation Program have the required certification to pay sub-minimum wage to employees with disabilities. Although these programs obtain the required certification, per state law, they do pay employees with disabilities minimum wage.

Thank you for the opportunity to testify.

Respectfully,



Debra L. Jackson, M.S.
Disability Advocate

Melissa Gerber
975 A'e St #212
Kapole, HI 96707
Phone: 808-227-4271
mgerber@auhawaii.org

Testimony before Ways and Means Committee
The Honorable Senator Donovan Dela Cruz and Senator Gilbert Keith-Agaran
Hawaii State Senate Thirty-First Legislature, Regular Session of 2021
February 26, 2021, 9:30AM, hearing on SB793

Dear Committee Chair Senator Dela Cruz and Vice-Chair Senator Keith-Agaran,

My name is Melissa Gerber, I am the 1st Vice President of the National Federation of the Blind of Hawaii. I am also a professional in the Vocational Rehabilitation industry. I create and manage employment programs and services for individuals with disabilities. I am in support of bill SB793. Currently to my knowledge none of Hawaii's CRP's are paying subminimum wage, therefore; passing SB793 comes at no cost to anyone. We must continue raising the standards for individuals with disabilities and industry service providers. The goal for individuals with disabilities must be integrated competitive employment at minimum wage or higher. Giving agencies the option of paying subminimum wage in some cases can promote substandard performance in both the consumers and the training program and or agency. Doing away with the requirement of a 14(c) certificate will force agencies to create training programs with better outcomes for industry standard training services and pre-employment classes.

As an individual with a disability, if I did not have higher aspirations and standards set I would still be on public assistance. Please vote in support for Bill SB793. The effects will be far reaching across the industry to the ultimate benefit of both employers and individuals with disabilities.

Sincerely,

Melissa Gerber

Melissa Gerber

LATE

SB-793-SD-1

Submitted on: 2/25/2021 4:48:33 PM

Testimony for WAM on 2/26/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Will Caron	Individual	Support	No

Comments:

Aloha committee members,

I strongly support this bill as a matter of basic workers' dignity and human rights. A person with disabilities deserve the same respect and labor protections as any other person and it is an injustice that current law allows them to paid a subminimum wage. Workers with disabilities deserve solidarity and the opportunity to earn a minimum wage. Please pass this bill!

Mahalo!