



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 12, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor and Public Employment

Date: February 13, 2015
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 952 Relating to Wages and Hours on Public Works Law

I. OVERVIEW OF PROPOSED LEGISLATION

Amends the Hawaii prevailing wage law to allow the Department of Labor and Industrial Relations (DLIR) to limit investigations under the Wages and Hours of Employees on Public Works Law, chapter 104, Hawaii Revised Statutes (HRS), to complaints filed within one year from the date wages were due and provide confidentiality to complainants and witnesses interviewed. Effective July 1, 2015.

The Department strongly supports this Administrative proposal.

II. CURRENT LAW

The current period for investigations is within three years from the date of filing a complaint with the DLIR. There is no statutory requirement to maintain confidentiality of the identity of a person filing a complaint.

III. COMMENTS ON THE HOUSE BILL

This proposal conforms the time limitation period for the filing of prevailing wage complaints with those complaints filed under chapter 388, HRS, Payment of Wages and Other Compensation Law. Under current practice, prevailing wage complaints filed with the DLIR generally require a review of up to three years of payroll records. In addition to the fading memories of witnesses, this three-year review period extends the time needed to investigate the time and payment records.

Extending confidentiality to the complainant from disclosure and to information provided by witnesses interviewed encourages the timely reporting of alleged prevailing wage violations by lessening concerns regarding employer retribution. The confidentiality will assist the DLIR in conducting a full investigation that can be supported in the instance of appeal.

The department notes that the Wage Standards Division (WSD) is one of the general funded programs that has not obtained any restoration in capacity since the 2009 Reduction-in-Force (RIF). Twice since the RIF (HB2766, 2012 and SB3039, 2014) the Legislature has deliberated on creating a public works special fund in recognition of the reduced capacity of the department to conduct timely chapter 104 investigations. Both measures perished in conference committee.

This measure, if enacted, will facilitate and make investigations easier because payroll and other records requiring review will cover a much shorter period of time (up to one year instead of three). Similarly, witnesses may be more readily available.



A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

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KIKA G. BUKOSKI
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February 12, 2015

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Honorable Representative Mark Nakashima, Chair
Honorable Representative Jarrett Keohokalole, Vice Chair
Members of the Committee on Labor & Public Employment
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **IN OPPOSITION** TO HB952 RELATING TO WAGE AND HOUR ON PUBLIC WORKS LAW
Hearing: Friday, February 13, 2015, 9:30 a.m. Conference Room 309

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO (HBCTC) is a chartered member of the Building and Construction Trades Department, AFL-CIO which was first organized in 1908 and is comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 15,000 members locally. Our primary mission being to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council respectfully OPPOSES HB952, which requires laborers and mechanics working on public works to file complaints within one year of the date the payment was due and ensure confidentiality of the complainant or witness.

The Department of Labor and Industrial Relations in recent testimony on a similar measure (SB1121; dated February 10, 2015) states that, "this proposal conforms the time limitation period for the filing of prevailing wage complaints with those complaints filed under chapter 388, HRS".

Provisions found in chapter(s) 387 and 388, HRS intended to protect employees rights as they relate to wage and hour differ from those found in chapter 104, HRS as they relate specifically to employees on public works projects and the process by which violations are identified, investigated and adjudicated.

A recent article (Honolulu Star Advertiser, Tuesday, February 10, 2015) reported that a Honolulu-based contractor was found in violation of wage and hour laws and ordered to pay \$305,000 in back wages and damages.

Reducing the time allowed to file a claim in the face of such a backlog and lack of timely enforcement, further encourages contractors who knowingly violate the law by misclassifying workers on public works projects in an attempt to increase profit margins at the expense of public safety and public taxpayer dollars.

Also please note, in recent testimony provided by the Department of Labor and Industrial Relations on HB713, HD1 Relating to Contractors as heard on February 11, 2015, the Department voluntarily admits to a significant backlog in complaints related to prevailing wage law (chapter 104, HRS), and that quote..., "the AVERAGE" age of the pending 187 complaints is 688 days old."

Knowing such information, it does not appear logical or fair to support a reduction in the time allowed for victims of wage and hour violations to seek damages and/or back wages they may rightfully be owed from contractors.

HBCTC strongly supports language that serves to protect the identities of those victims who report contractors that violate the law. Such protections will not only prevent retaliation which is very difficult to prevent and/or prove, but will also serve to discourage such illegal and unethical practices from re-occurring.

We respectfully request that you HOLD HB952 in its current form. Mahalo.