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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 15, 2016

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Thursday, March 17, 2016
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2472, H.D. 2 Relating to the Department of
Labor and Industrial Relations**

I. OVERVIEW OF PROPOSED LEGISLATION

HB2472 HD1 proposes to restore five full-time, permanent, Labor Law Enforcement Specialist (LLES) positions in the Wage Standards Division (WSD) that were cut during the Reduction-in- Force (RIF) of 2009, and appropriates a blank amount to DLIR.

The department supports adding additional LLES positions in WSD if its passage does not replace or adversely impact priorities indicated in the Governor's Supplemental Budget request.

II. CURRENT LAW

The Wage Standards Division currently has seventeen (17) positions statewide with nine (9) in the Compliance Branch including:

- three (3) LLES IV positions on Oahu, plus two (2) LLES supervisors and one (1) Compliance Branch Chief ,
- one (1) on Maui,

- one (1) on Kauai and
- one (1) in Kona.

All of these positions help enforce the following laws:

- 1) Chapter 104 Wages and Hours of Employees on Public Works
- 2) Chapter 378, Part II Employment Practices, Lie Detector Tests
- 3) Chapter 387 Wage and Hour
- 4) Chapter 388 Payment of Wages and Other Compensation
- 5) Chapter 390 Child Labor
- 6) Chapter 398 Family Leave

The 2009 RIF included the loss of seven (7) LLES positions, which has significantly contributed to the large backlog of cases in the Compliance Branch. The Compliance Branch currently (3/14/16) has 365 pending cases—195 are complaints filed under chapter 104, Hawaii Revised Statutes (HRS). The 195 cases represent 140 investigations of 54 employers awaiting investigation by the six LLES's under chapter 104, HRS.

III. COMMENTS ON THE HOUSE BILL

The loss in personnel has contributed to an increasing number of pending cases in the Compliance Branch (green line in chart below) because more cases are filed (Blue line in chart below) than can be resolved (red line in chart below). Until resolved cases outnumber complaints, as in 2006, 2007 and 2008, when there was a full complement of seasoned specialists, WSD cannot efficiently and effectively enforce the six laws under its jurisdiction.

The lack of sufficient staffing penalizes the innocent worker rather than the employer. Contractors undertaking public works projects are incentivized to cheat until caught because chapter 104 cases can take up to three years to make a determination. The inability to resolve cases in a timely fashion is highly problematic because the employers who allegedly violate wage laws often are able to close shop or run away before the resolution to the case. In many cases, DLIR is not able to ensure that workers receive fair compensation as provided for in by the law.

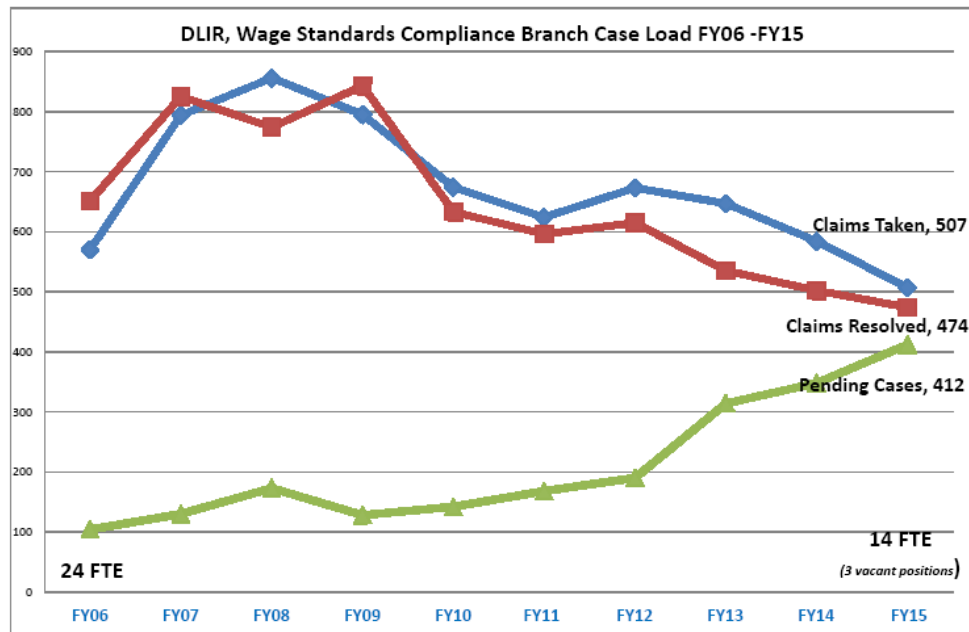
The average time a complaint has been on the chapter 104 pending claim list is 854 days with the median age of the cases 834 days waiting to be resolved. With a full staff the goal was to complete these cases in 180 days. The current average resolution time is 959 days from filing to resolution.

WSD has deployed a number of strategies as stopgap measures. The temporary

measures include modifications to the investigative process, which have produced shorter investigations with smaller amounts due. WSD also has to rely on contractors to conduct self-audits to correct identified issues. The modifications to the investigative process also result in reduced penalties that are paid into the general fund. From FY 2014 to FY 2015 penalties to the State decreased from \$41,326 for eight (8) notice of violations to \$5,138 for fourteen (14) notice of violations.

Authorizing overtime for our LLES IVs and Vs has reduced the backlog from 412 cases in October 2015 to 365 cases in March 2016, despite a 15% increase in the total number of complaints filed.

Nonetheless, DLIR is not in the position to ensure the protections afforded by wage laws until the allocation of additional resources. Therefore, the department supports this measure, if its passage does not replace or adversely impact priorities indicated in the Governor's Supplemental Budget request.



2/10/2016

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GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

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March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE
SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND
LABOR

SUBJECT: **COMMENTS REGARDING H.B. 2472, HD1, RELATING TO THE
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.** Appropriates
funds for five additional labor law enforcement specialist positions in the
department of labor and industrial relations to protect Hawaii employees' wages
and enforce Hawaii's labor laws, including wage and hour laws on public works
construction projects. (HB2472 HD1)

HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran and Vice Chair Shimabukuro and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

H.B. 2472, HD1 proposes to fund five positions in the wage standards division to enforce Hawaii's wage and hour law under Chapter 104, Hawaii Revised Statute, along with other areas of wage and hour. Furthermore, this measure is a much better solution than H.B. 2473, Relating to Enforcement of Wage laws, which unfairly increases penalties for second notices of violation to \$10,000 per offense. It appears that the funding of five labor law enforcement specialists would be to restore the pre-2009 positions that were subject to cuts under the Reduction in Force procedures. These positions would allow DLIR the proper resources to speed up investigations to enforce prevailing wage provisions already provided in the law. While the statistics per the Department of Labor of second notice of violations seem minimal, the backlog of investigations per this measure's preamble appear high, however it is unclear how much of the back log is related to prevailing wage violations.

In lieu of H.B. 2473 (and its bad companion SB 2723, SD1), which proposes to unfairly and egregiously increase fines and penalties for chapter 104 violations, GCA prefers this measure in its place.

Thank you for the opportunity to share our testimony regarding H.B. 2472, HD1.

Hawai'i Construction Alliance

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March 11, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
and members
Committee on Judiciary and Labor
Hawai'i State Senate
Honolulu, Hawai'i 96813

RE: Strong Support for HB2472 HD1, Relating to the Department of Labor and Industrial Relations

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support HB2472 HD1, Relating to the Department of Labor and Industrial Relations**. The bill would appropriate an unspecified amount of funds for five additional labor law enforcement specialist positions in the Department of Labor and Industrial Relations to protect Hawai'i employees' wages and enforce Hawai'i's labor laws, including wage and hour laws on public works construction projects.

Simply put: the backlog on prevailing wage complaints is far too large. As a result, the State has not received fines that it is owed, Hawai'i workers haven't received back wages, and cheating contractors continue to be able to bid on and win public works jobs. With 387 wage standards complaints in the backlog and 140 prevailing wage investigations pending as of February 10, it is clear that more staff and resources are needed for the department to effectively enforce Hawai'i's wage laws.

Therefore, we strongly urge your committee's **favorable action on HB2472 HD1, Relating to the Department of Labor and Industrial Relations**.

Mahalo,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
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Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Eighth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
March 17, 2016

H.B. 2472, H.D. 1 – RELATING TO
THE DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS

The Hawaii State AFL-CIO supports H.B. 2472, H.D. 1, which appropriates funds for five additional labor law enforcement specialist positions in the Department of Labor and Industrial Relations (DLIR) to protect Hawaii employees' wages and enforce Hawaii's labor laws, including wage and hour laws on public works construction projects.

Appropriating funds for five additional labor law enforcement specialists will help reduce the DLIR's Wage Standards Division backlog and ensure contractors comply with the law.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President