



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 21, 2016

To: The Honorable Karl Rhoads, Chair,
The Honorable Joy A. San Buenaventura, Vice Chair, and
Members of the House Committee on Judiciary

Date: Tuesday, March 22, 2016
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

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

Re: S.B. No. 2723, S.D. 1, H.D.1 Relating to Enforcement of Wage Laws

I. OVERVIEW OF PROPOSED LEGISLATION

SB2723 SD1HD1 proposes to amend chapter 104, Hawaii Revised Statutes (HRS), to change the penalties due for violations of Hawaii's prevailing wage law from ten percent of back wages due or \$25 per offense to ten percent of back wages due or \$1,000 per offense for a first violation, and for a 2nd violation from the amount of wages due or \$100 per offense to 50% of the amount of wages due and \$5,000 per offense, and for a 3rd violation, from twice the amount of wages due or \$200 per offense to the amount of wages due and \$10,000 per offense.

The proposal expands the amount of time between the second and the third violations from two years to three years.

DLIR strongly supports increasing the penalties for violations of chapter 104, especially as restoration of the department's enforcement capacity after 2009 has not occurred.

II. CURRENT LAW

Act 251 (SLH, 1999) amended the penalty amounts in section 104-24, HRS, from, "... not more than \$1,000 for each offense." to a penalty of \$25 per offense or 10% of the back wages due for a first violation. Act 251 also changed the penalty amounts from 10% of the contract amount to \$100 for each offense or the amount of back wages due for a second violation. The penalty amount is the greater of the

two options, for a first or second violation, and for a third violation the penalty is twice the amount due or \$200 per violation and suspension for 3 years from public works.

III. COMMENTS ON THE SENATE BILL

The department strongly supports the increase in penalties for chapter 104 violations. Currently, making determinations and issuing any penalties has approximately a three year backlog in these complex investigations. The Wage Standards Division (WSD) had twenty-eight (28) authorized positions when Act 251 changed the penalties for first and second violations in 1999. WSD currently has seventeen (17) authorized positions at a time when public works construction is booming.

DLIR suggests that insufficient staffing prevents WSD from enforcing the law in a manner that provides sufficient deterrence as intended by the law. 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 the law.

In 2014, the Legislature recognized the lack of enforcement capacity in enacting Act 130. Act 130 increased the penalties imposed under §104-22(b), HRS, on a contractor who interferes with or delays an investigation from \$1,000 to \$10,000 and from \$100 to \$1,000 per day for continuing to obstruct an investigation as well as immediate suspension.

In the last five years, WSD has issued thirty-seven (37) Notices of Violation (NOVs) for violations of section 104-24(a) and four (4) 2nd NOVs for violations of section 104-24(b), and two (2) 3rd NOVs for violations of section 104-24(c). In addition, during that time nineteen (19) NOVs were issued that included suspension from working on public works for falsification or obstruction under section 104-25(a)(3).

Expanding the amount of time from two to three years addresses the staffing capacity and length of investigations, which has impeded the Division's ability to issue subsequent Notice of Violations (NOVs) after the first one.



general contractor license #ABC 21576

Sent Via E-mail to JUDtestimony@capitol.hawaii.gov
Via Fax to 808-586-6531

March 21, 2016

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE JOY A. SAN BUENAVENTURA,
VICE CHAIR, HOUSE COMMITTEE ON THE JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, HD1 RELATING TO ENFORCEMENT OF WAGE LAWS.** Requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal fifty per cent to the amount of back wages found due and \$5,000 for the second offense. Effective July 16, 2016. (HD1)

HEARING

DATE: Tuesday, March 22, 2016
TIME: 2:00 p.m.
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair San Buenaventura and Members,

While we support the application of Chapter 104 where required, we **oppose** S.B. 2723. SD1, HD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. **The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do.** This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; and for a second violation, whether on the same contract or another, within two years of the first notice of violation with fifty per cent of the back wages due and \$5,000 (up from \$100 per offense) for each violation. Also this measure proposes to extend the time in which a contractor can be hit with a third notice of violation by changing it from two to three years of the second notice of violation which would require suspension and payment of a penalty of full back wage and \$10,000 for each offense.

Proponents of this measure argue that such increase in penalties are necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations.

This bill would mandate a minimum fine of \$5,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. For the reasons mentioned, we are **opposed** to this measure and request that this measure be deferred.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular stamp.

James N. Kurita
Vice President/ Chief Operating Officer

March 21, 2016

Via Email: <http://www.capitol.hawaii.gov/submittestimony.asp>

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE
JOY A. SAN BUENAVENTURA, VICE CHAIR, HOUSE
COMMITTEE ON THE JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 2723, S.D. 501 RELATING TO
ENFORCEMENT OF WAGE LAWS.** Requires government
contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent
of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first
offense; and a penalty equal fifty per cent to the amount of back wages found due and
\$5,000 for the second offense. Effective July 16, 2016. (501)

HEARING DATE: Tuesday, March 22, 2016

TIME: 2:00 p.m.

PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair San Buenaventura and Members,

While HSI Mechanical, Inc. supports the application of Chapter 104 where required, we oppose
S.B. 2723, S.D. 501, which proposes to unreasonably increase penalties against contractors that
could have an inadvertent error on a certified payroll submission. The main goal of addressing Chapter
104 violations should be to make the employee whole, not cause a contractor to go completely out of
business, which is what this bill could do. This bill proposes to amend Section 104-24, Hawaii
Revised Statutes, the law which governs penalties for payment of prevailing wages for public works
construction. The bill proposes to increase the monetary penalties for a first violation with ten percent
of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense),
whichever is greater; and for a second violation, whether on the same contract or another, within two
years of the first notice of violation with fifty per cent of the back wages due and \$5,000 (up from
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the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd
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whether the actual violation was for a very small amount of unpaid wages or if it was for an
inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of

requirements that are submitted on a weekly basis and there are times when inadvertent errors can
License happen. For the reasons mentioned, HSI Mechanical, Inc. is opposed to this measure and request
227 Pu'uohala Road, Honolulu, HI 96819
that this measure be deferred.

Ph.: (808) 845-5432 • Fax: 841-5516 • Cell: 478-8482

E-mail: fmoore@hsimechanical.com

Website: www.hsimechanical.net

OUR VISION

"hsi mechanical, inc. provides high customer satisfaction, quality, and dependability."



From the desk of:
~~Please~~ contact me at 808-478-8482 or ~~For more, email~~
fmoore@hsimechanical.com should you have any questions regarding
this correspondence.

With Aloha, Fred Moore

hsi mechanical, inc.

License BC-24578

227 Pu'uhale Road, Honolulu, HI 96819

Ph.: (808) 845-5432 • Fax: 841-5516 • Cell: 478-8482

E-mail: fmoore@hsimechanical.com

Website: www.hsimechanical.net

OUR VISION

“hsi mechanical, inc. provides high customer satisfaction, quality, and dependability.”

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 22, 2016

Testimony To: House Committee on Judiciary
Representative Karl Rhoads, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2723, SD 1, HD 1 - RELATING TO ENFORCEMENT OF WAGE LAWS.

Chair Rhoads and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. We have comments and a suggestion for an amendment on this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

Our concern is that we are afraid that "offense" might be different than a "violation". In an instance where a bookkeeper has transposed a figure of \$40.61 to \$40.16, it may technically be an offense of the wage law however it may not ultimately wind up in a finding of a "violation". As such, we would ask for two things. One, to change the word "offense" to "violation" and secondly, to also add some discretionary language since there is no discretionary language in the statute or in the administrative rules. We would suggest a change in the language from "the Department shall assess" to "the Department may assess".

Thank you for the opportunity to testify.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Tuesday, March 22, 2016 at 2:00 P.M.
Conference Room 325, State Capitol**

**RE: SENATE BILL 2723 SD1 HD1 RELATING TO ENFORCEMENT OF WAGE
LAWS**

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns** regarding SB 2723 SD1 HD1, which requires government contractors who violate wages and hours laws to pay a penalty that is equal to 10% of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal to the amount of 50% back wages found due and \$5,000 for each offense, for the second offense; and a penalty equal to the amount of back wages found due and \$10,000 for each offense, for the third offense within three years of the second notification of violation. (SB2723 HD1)

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber understands the needs to look at changes in penalties, but has concerns on the proposed amounts. The penalty for the second offense is steep – ten percent is a significant amount, especially for smaller projects. Sparse statistics of second time violations seem to suggest the law deters violators and no urgent need to change the law exists. While again we understand the need to adjust the penalties we believe that these penalties goes too far and is excessive.

Thank you for the opportunity to testify.

March 21, 2016

The Honorable Karl Rhoads, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
and members
House Committee on Judiciary
Hawai'i State Legislature
Honolulu, Hawai'i 96813

RE: Strong Support for SB2723 HD1, Relating to Enforcement of Wage Laws

Dear Chair Rhoads, Vice Chair San Buenaventura, 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** SB2723 HD1, relating to enforcement of wage laws. This bill would change the penalties for contractors on public works projects who violate HRS Chapter 104, also known as the "Little Davis-Bacon Law," by increasing penalties to:

- 10% of the amount of back wages due or \$1,000 per offense, whichever is greater, for a first offense;
- The amount of back wages due and \$5,000 per offense for a second offense; and
- The amount of back wages due and \$10,000 per offense for a third offense.

As a result of our current fine structure, violations of HRS Chapter 104 are far too common, and the Department of Labor struggles to keep up with the numerous complaints which come in. With the current construction boom, and with the legislature's funding of more public works and infrastructure projects, we fear that unscrupulous contractors will continue to violate the law, unless the fine structure is changed.

We firmly believe that contractors who bid on and win public works contracts should be held to the highest standard of responsibility when it comes to paying Hawai'i workers properly for their skills and labor. Increasing the fine structure will deter unscrupulous contractors from deliberately using public dollars to steal from the pockets of Hawai'i workers.

We note that opportunities are provided to contractors to correct so-called "inadvertent" errors before notices of violation are issued and penalties are assessed. Furthermore, ample opportunities are provided to contractors to learn about Chapter 104 through training programs offered by DLIR. Most recently, a workshop on Chapter 104 was offered on October 1, 2015, and another will be provided on April 12, 2016. These workshops provide contractors who are bidding on and performing public works projects with the opportunity to learn about "penalty and appeal provisions; the do's and don'ts of certified payrolls; examples of the most common mistakes to avoid; and Wage Standards Division procedures."

Therefore, we strongly urge you to pass **SB2723 HD1, relating to enforcement of wage laws**, and thank you for the opportunity to provide this testimony.

Mahalo,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is fluid and cursive, with the first name "Tyler" being the most prominent.

Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



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

LATE

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March 22, 2016

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE JOY A. SAN
BUENAVENTURA, VICE CHAIR, HOUSE COMMITTEE ON THE JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, HD1 RELATING TO ENFORCEMENT OF WAGE LAWS.** Requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal fifty per cent to the amount of back wages found due and \$5,000 for the second offense. Effective July 16, 2016. (HD1)

HEARING

DATE: Tuesday, March 22, 2016
TIME: 2:00 p.m.
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair San Buenaventura and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred 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. The 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.

While GCA agrees that the prevailing wage law should be enforced, this bill will unfairly apply harsh and unnecessary penalties that could penalize contractors for inadvertent mistakes in certified payroll submissions. GCA opposes S.B. 2723, SD1, HD1, which proposes to egregiously increase fines and penalties for chapter 104 violations. GCA prefers H.B. 2472 which provides appropriations for five law enforcement positions within the Department of Labor and Industrial Relations to address its backlog of complaints and to further investigate employers who may be in non-compliance with Chapter 104.

S.B. 2723, SD1, HD1, unfairly proposes to amend Section 104-24, Hawaii Revised Statutes, which governs penalties for prevailing wages violations affecting public works construction. Such violations could include filing a certified payroll late, misclassifying workers, failing to recognize overtime rates and other erroneous procedural requirements. This measure proposes to amend monetary penalties for a first violation by requiring ten percent of the back wages found due or \$1,000 per offense, whichever is greater (**current law is \$25.00 per offense**); and for a second violation, whether on the same contract or another, within two years of the first notice of violation with fifty per cent of the back wages due and \$5,000 for each offense (current law is \$100 per offense). The HD1 version of this bill also amends the third notice of violation by extending the time between a second violation and a third violation from two to three years to prolong the 2 year statute of limitations now in place of bringing such violations to fruition. The

proposed amendment would extend the time to three years plus requires full amount of back wages and increases the monetary penalty of \$10,000 for each offense (up from current law of \$200) for the third notice of violation, plus suspension from doing new public work.

In 1999, when this body amended the law pursuant to Act 251 (1999) and did away with the \$1,000 per offense for first notice of violation and 10% of the contract award for the second notice of violation, the House Committee on Judiciary and Hawaiian Affairs said:

[y]our committee finds that the suspension provisions and imposition of penalties including a flat penalty of ten percent of the contract amount for a second violation in current laws *are harsh and inequitable*. Your Committee believes that amendments to this measure will deter nonpayment of wages in a fair and reasonable manner. STAND. COM. REP. NO. 1763 (1999) (*Emphasis added.*).

The proposed amendments in this measure are *harsh and inequitable* as well. The question to ask is whether a change of the law is necessary, given that there the Department's statistics show that in the last five years, the Department of Labor has issued only 37 First notice of violations, and only four Second Notice of Violations. See attached Department of Labor and Industrial Relations Diagram detailing the number of second notice of violations since 2008. This Diagram suggests that the current law may be working.

While GCA agrees that the prevailing wage should be paid when applicable, the proposed increased penalties are unreasonable and fails to correlate the amount of the violation to the unpaid amount of back wages. Furthermore, the way the bill is drafted -- the minimum fine for a second notice of violation will be more than \$5,000 regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. As indicated in Section 104-24(e) "each 'offense' means each section of this chapter under which a contractor is cited; provided that, with respect to prevailing wage and overtime citations under section 104-2, each employee and each project shall be considered a separate offense."

In order to exemplify how these offenses could penalize a contractor, whether a general or subcontractor, take this example: a contractor inadvertently misclassifies one worker who is working on two separate projects, but could be penalized with two notices of violations making him or her subject to a minimum \$5,000 fine. The statistics of second time violators indicate that such violations are few and far between, furthermore it is not clear whether the second time violations are for failure to pay prevailing wage or for other reasons, such as interference or inability to pay fines and back wages.

Other questions that must be raised include how many total violators exist and what has the outcome of any investigation been? Are those violations due to inadvertent misclassification of laborers and mechanics, inadequate recordkeeping or other reasons? In the preamble of the preferred measure, H.B. 2472 which funds five law enforcement position it mentions that the Department has a backlog of 420 complaints as of October 9, 2015, while the "wage standards division receives an average of 56 prevailing wage complaints per year." If these statistics are true, one must ask how many of the 420 complaints that are backlogged are related to prevailing wage complaints and of those how many are for second time violations? If such violations are rampant, it may be a better idea to provide the department with more resources to not only

investigate violators of Chapter 104, but also complete investigations in a timely manner to avoid such backlogs. These backlogs could be accomplished if H.B. 2472, which proposes to fund up to five additional labor law enforcement positions, was considered.

For the reasons mentioned, GCA remains opposed to the SD1, HD1 version of S.B. 2723 and requests that this measure be deferred. Thank you the opportunity to share our opposition to this measure.

2016 OFFICERS

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LATE

Testimony to the House Committee on Judiciary
Tuesday, March 22, 2016
2:00 p.m.
State Capitol - Conference Room 325

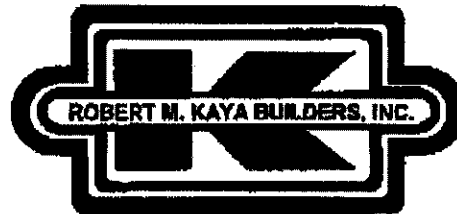
RE: S.B. 2723 S.D. 1: Relating to Enforcement of Wage Laws.

Dear Chair Rhoads, Vice-Chair San Buenaventura, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is in opposition to S.B. 2723 S.D. 1. While we understand the need to look at changes in penalties, the proposed amounts are problematic. The penalty for the second offense is a significant amount, especially for smaller projects. Again, while we understand the need to adjust the penalties, we believe that the amount goes too far and is excessive.

Thank you for the opportunity to express our views on this matter.



LATE



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Via Fax to 808-588-6531

March 21, 2016

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE JOY A. SAN
BUENAVENTURA, VICE CHAIR, HOUSE COMMITTEE ON THE JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, HD1 RELATING TO ENFORCEMENT OF WAGE LAWS.** Requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal fifty per cent to the amount of back wages found due and \$5,000 for the second offense. Effective July 16, 2016. (HD1)

HEARING

DATE: Tuesday, March 22, 2016
TIME: 2:00 p.m.
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair San Buenaventura and Members,

While ROBERT M. KAYA BUILDERS, INC. supports the application of Chapter 104 where required, we **oppose** S.B. 2723, SD1, HD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. **The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do.** This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; and for a second violation, whether on the same contract or another, within two years of the first notice of violation with fifty per cent of the back wages due and \$5,000 (up from \$100 per offense) for each violation. Also this measure proposes to extend the time in which a contractor can be hit with a third notice of violation by changing it from two to three years of the second notice of violation which would require suspension and payment of a penalty of full back wage and \$10,000 for each offense.

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HOUSE COMMITTEE ON THE JUDICIARY
OPPOSITION TO S.B. 2723, SD1, HD1
March 21, 2016
Page Two

and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations.

This bill would mandate a minimum fine of \$5,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. For the reasons mentioned, we are opposed to this measure and request that this measure be deferred.

Yours truly,

ROBERT M. KAYA BUILDERS, INC.


Scott I. Higa
President



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

LATE

Sent Via E-mail to JUDICestimony@capitol.hawaii.gov
Via Fax to 808-586-8531

March 22, 2016

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR, HOUSE COMMITTEE ON THE JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 2723, SD1, HD1 RELATING TO ENFORCEMENT OF WAGE LAWS.**
Requires government contractors who violate wages and hours laws to pay a penalty that is equal to ten per cent of the amount of back wages due or \$1,000 per offense, whichever is greater, for the first offense; and a penalty equal fifty per cent to the amount of back wages found due and \$5,000 for the second offense. Effective July 16, 2016. (HD1)

HEARING

DATE: Tuesday, March 22, 2016
TIME: 2:00 p.m.
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair San Buenaventura and Members,

While we support the application of Chapter 104 where required, we oppose S.B. 2723, SD1, HD1, which proposes to unreasonably increase penalties against contractors that could have an inadvertent error on a certified payroll submission. The main goal of addressing Chapter 104 violations should be to make the employee whole, not cause a contractor to go completely out of business, which is what this bill could do. This bill proposes to amend Section 104-24, Hawaii Revised Statutes, the law which governs penalties for payment of prevailing wages for public works construction. The bill proposes to increase the monetary penalties for a first violation with ten percent of the back wages found due or \$1,000 per offense (up from current law of \$25.00 per offense), whichever is greater; and for a second violation, whether on the same contract or another, within two years of the first notice of violation with fifty per cent of the back wages due and \$5,000 (up from \$100 per offense) for each violation. Also this measure proposes to extend the time in which a contractor can be hit with a third notice of violation by changing it from two to three years of the second notice of violation which would require suspension and payment of a penalty of full back wage and \$10,000 for each offense.

Proponents of this measure argue that such increase in penalties are necessary to deter those that fail to pay prevailing wages on public works construction projects, but the question is whether there is really a need to change the law? The statistics from the Department of Labor and Industrial Relations (Department of Labor) indicate that such violations are few and far between. Statistics show that in the last five years, the Department of Labor has issued 37 1st Notice of violations, and four 2nd Notice of Violations.

This bill would mandate a minimum fine of \$5,000 for a second notice of violation regardless of whether the actual violation was for a very small amount of unpaid wages or if it was for an inadvertent mistake or possible late filing of certified payroll. Certified payrolls include lots of requirements that are submitted on a weekly basis and there are times when inadvertent errors can happen. For the reasons mentioned, we are opposed to this measure and request that this measure be deferred.

Very truly yours,
S&M Sakamoto, Inc.

Gerard Sakamoto
Chairman of the Board

LATE

Lindemann Construction Inc.
500 Ala Kapa St. #216-J
Honolulu, HI 96817

Sent Via E-mail to JUDtestimony@capitol.hawaii.gov
Via Fax to 808-586-6531

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