



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

Testimony by:  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
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EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

March 18, 2016  
10:00 a.m.  
State Capitol, Room 312

**S.B. 2724, S.D. 2  
RELATING TO PREVAILING WAGES**

House Committee(s) on Labor and Public Employment &  
Human Services

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The Department of Transportation (DOT) **opposes** S.B. 2724, S.D. 2 which seeks to expand the current provisions of Hawaii's prevailing wage law, in particular the provisions of Chapter 104 of the Hawaii Revised Statutes, to private businesses who lease land or building space for their businesses on public lands.

While the DOT seeks to follow the provisions of Chapter 104, this proposed amendment would effectively increase the operating costs of businesses who lease lands from DOT or any other government agency. The requirement of private lessees to adhere to prevailing wages detracts interested parties from leasing lands from DOT which in turn impacts DOT's ability to generate revenue from its properties. DOT works to maximize revenues from its Harbors and Airports lands to support funding Harbors and Airports infrastructure.

As an example, in the case of our Airports Division, Federal grant-funding provisions for our airports mandate that the DOT not only effectively meet the needs of our travelers but the DOT must also maximize our public airport revenues through our leases of lands and/or building spaces. To do otherwise threatens the loss of federal grants that support our public airports which are special funded.

Since most of the airport concessions providing services at our airports are typically only 5 to 10 year leases, it would add an extra and possibly impossible cost burden for some of these small-business leases to be required to follow the provisions of Chapter 104 requiring the payment of higher labor wages and benefits. It would be difficult to amortize such higher costs over the short-term of the leases.

Further, if such requirements are imposed and thus higher lease-rental costs to the businesses, our DOT will receive less in the way of rental income. Or rather than

operate on airport property and face such requirements one or more of these businesses could chose to operate on private lands off airport which don't have such restrictions. In either case, should this occur, the Airports Division will not be meeting its FAA-grant requirements of maximizing revenues from airport property and providing services meeting the needs of our travelers.

Some of our airport properties as well as other properties managed by the DOT are set aside for future public purposes and at times in competition with other land owners for purposes of generating revenues. Such restrictions as to leasing such lands or buildings will put the DOT at a competitive disadvantage with such private land owners. Rather than be at such disadvantage and not generate revenues the DOT could sell such lands and buildings and avoid such vacancies and losses of any income. But then selling such lands and buildings are often not in the long-term best interest of the DOT or our State.

While we understand and appreciate the intent and purpose of the bill, for the reasons stated and given the competing public interests and federal-grant requirements, we respectfully ask that the bill not pass seeking to expand the present law.

If the sense of the committee is to pass the bill as currently written, the DOT requests that the language be amended to exempt projects conducted on DOT airports or harbors property by private entities that are tenants of the DOT airports or harbors in order to assure that revenue sources for operations and maintenance of facilities at the airports or harbors are not adversely impacted.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEKOA KALUHIWA**  
FIRST DEPUTY

**JEFFREY T. PEARSON, P.E.**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
LABOR AND PUBLIC EMPLOYMENT**

**Friday, March 18, 2016  
10:00 A.M.  
State Capitol, Room 309**

**In consideration of  
SENATE BILL NO. 2724, SENATE DRAFT 2  
RELATING TO PREVAILING WAGES**

Senate Bill 2724, Senate Draft 2, proposes to broaden Chapter 104 (wages and hours of employees on public works), Hawaii Revised Statutes, to include private businesses that lease state or county lands without any involvement or interest of the state or county in the businesses. **The Department of Land and Natural Resources (Department) opposes this bill.**

The current law applies to projects built by or for, or funded by, the state or county, such as government offices, schools, libraries, courthouses, and other government facilities. Senate Bill 2724, Senate Draft 2 expands the law to include private projects located on leases of public lands under the jurisdiction of the Department. The Department currently has leases issued to lessees for private operations such as hotels, industrial and warehouse operations, and retail centers. Examples of these leases include the Sand Island Industrial Park and West Ridge Mall on Oahu, and the Naniloa and Hilo Hawaiian hotels and HPM hardware store in Hilo, which are all leases of public lands. The Department has no interest in these private businesses. If private businesses on public lands are going to be subject to this legislation, then perhaps all projects, whether located on public or private land, should be made subject to the law. Otherwise, public lands will be placed at a significant disadvantage in the marketplace for resort, industrial, and commercial operations. Business may choose to locate their operations on private land, which will ultimately lead to a reduction in ceded land revenues for the State as well as the Office of Hawaiian Affairs.

Furthermore, the bill would require the Department to have oversight over lessees and sublessees above and beyond any rights afforded to and responsibilities required of landlords. The

Department's land management staff would have to ensure that its lessees and any sublessees are complying with labor law requirements<sup>1</sup>.

Senate Bill 2724, Senate Draft 2 raises legal, economic and implementation issues for the Department. The Department respectfully requests that this bill be deferred.

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<sup>1</sup> This could be problematic and require a reorganization and consultation with the union for the land management division because the staff are land managers and not labor law specialists. Position descriptions and class specifications may need to be changed, which may make it difficult for current staffers to qualify for the position with the added labor law requirements. With the impact of reduced revenues, it will be very difficult financially for the land management division to afford adding new positions or contracting for labor law specialists.

Testimony of  
Pacific Resource Partnership

Hawaii State House of Representatives  
Committee on Labor & Public Employment  
Representative Mark Nakashima, Chair  
Representative Jarrett Keohokalole, Vice Chair

Committee on Human Services  
Representative Dee Morikawa, Chair  
Representative Bertrand Kobayashi, Vice Chair

SB 2724, SD2 – Prevailing Wages

Friday, March 18, 2016  
10:00 A.M.  
State Capitol – Room 309

Aloha Chairs Nakashima & Morikawa, Vice Chairs Keohokalole & Kobayashi and members of the Committees:

By way of background, the administrative rules of the Department of Labor and Industrial Relations (DLIR) provides for the payment of prevailing wages when there is construction undertaken through the use of "... land, or other resources of the state or any county." And while the Department's Administrative rules are clear and aligned with the spirit and intent of Hawaii's Little Davis-Bacon law, there remains a grey area in HRS 104; and it is the intent of this bill to close this loop hole which developers are currently using to avoid the payment of prevailing wage on construction projects that take place on public lands that are leased privately.

Prevailing wages lead to a larger, stronger, property tax base for government, and reduce the reliance on safety net services like food stamps, healthcare, and subsidized housing. Additionally, prevailing wages help grow the middle class and make it harder for cheaters to operate in the underground economy, a sector known for unsafe working conditions and evasion of taxes and mandatory health coverage for workers.

At a time when the middle class is slipping further away from the 1%, it is critical that policies are in place to protect living wages from degradation. Clarifying that prevailing wages must be applied to private projects which take place on State and County owned land is good for construction workers, union and non-union, and beneficial to other sectors as it shores up the wage floor for all.



**(Continued From Page 1)**

The spirit of the federal Davis-Bacon Act and locally Hawaii's Little-Davis Bacon law is based on the principle that State and County resources and assets should not be used in a manner which degrades living wages of a community. Put simply, public lands shouldn't be used to impoverish local workers.

We respectfully ask for your **support** on SB 2724, SD2 and ask that this measure take effect upon its approval.

Thank you for the opportunity to share our views with you.

About PRP

*Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.*



## HAWAII REGIONAL COUNCIL OF CARPENTERS

March 17, 2016

The Honorable Representative Mark Nakashima, Chair  
The Honorable Reprensentitive Jarett Keohokalole, Vice Chair, and  
Members of the Committee on Labor

### **Statement of the Hawaii Regional Council of Carpenters on SB 2724 – Prevailing Wages**

Friday, March 18, 2016  
10:00 a.m., State Capitol, Room 309

Dear Chair Nakashima, Vice Chair Keohokalole, and members of the Committee,

The Hawaii Regional Council of Carpenters (HRCC) strongly supports SB 2724, which requires contracts for construction on public lands to comply with wage and hour requirements set forth in Chapter 104, HRS.

Currently, the administrative rules provide that prevailing wages are to be paid for construction undertaken through the use of "...land or other resources of the State or any county..." State land is used for a variety of private activities, calling for SB 2724 to provide the clarification that is needed for enforcement.

In the example of the Naniloa Hotel on Banyan Drive in Hilo, the benefit of using State oceanfront land should not become a part of depressing area standard wages and benefits for construction workers. Prevailing wages are not being required for construction work in that case, including construction required by the State in the agreement for the use of the land.

Hawaii contractors who contribute to skilled craft training are at a disadvantage when prevailing wages are not required to "level the playing field." Hawaii contractors that lessen the burdens on government and the community by providing fringe benefits and fair wages are at a huge disadvantage.

The fact that agreements are reached and documented prior to the use of the land, and prior to the start of construction, provides the mechanism for the administration of the Chapter 104 provision.

Thank you for your consideration of our support for the passage of SB 2724.

#### STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu, Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 841-0300  
HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576  
KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376  
MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961  
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**GCA of Hawaii**  
GENERAL CONTRACTORS ASSOCIATION OF HAWAII  
Quality People. Quality Projects.

Uploaded via Capitol Website

March 18, 2016

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALO, VICE CHAIR, HOUSE COMMITTEE ON LABOR AND PUBLIC  
EMPLOYMENT

SUBJECT: **STRONG OPPOSITION REGARDING S.B. 2724, SD2 RELATING TO  
PREVAILING WAGE.** Expands the types of projects that must comply with wage  
and hour requirements under chapter 104, HRS, including construction projects  
on public lands regardless of whether the work is paid from public funds, and  
projects for which public lands are used as security for financing. Exempts certain  
projects from chapter 104, HRS. Establishes requirements that apply in situations  
involving private lessees of public land who contract for certain projects on public  
land. Appropriates funds for enforcement of chapter 104, HRS. Effective  
1/7/2059, except section 5, which takes effect 7/1/2059. (SD2)

HEARING

DATE: Friday, March 18, 2016  
TIME: 10:00 a.m.  
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole 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.

GCA is **strongly opposed to S.B. 2724, SD2** because it proposes to expand the reach of Chapter  
104 wages to lessees to with long term leases on state lands. There are a number of questions that  
must be asked: How will current lessees feel about this measure - do they even know how this  
bill will affect them? What contracting agency will collect the weekly submissions of certified  
payroll and whether such expansion of the law comports with the intent of the original for  
enactment of this statute . The requirements of Chapter 104 compliance include penalties for  
non-compliance. This law would require that any construction improvement over \$2,000 would  
be subject to these Chapter 104 requirements. See attached Hawaii Department of Labor and  
Industrial Relations Chapter 104 weekly certified payroll requirements. Furthermore, in March  
2014 the U.S. District Court for the District of Columbia rejected a determination by the U.S.  
Department of Labor (DOL) applying the Davis-Bacon Act (DBA) to a privately-funded  
construction project. In [\*District of Columbia v. Department of Labor et al.\*<sup>1</sup>](#), 1:13-cv-00730, the  
court held that development of CityCenter DC, a large-scale urban redevelopment project in  
downtown Washington, DC, owned by the District of Columbia, did not involve construction of  
a “public building or public work” and therefore was not subject to DBA coverage.

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<sup>1</sup> <http://image.exct.net/lib/fe7d167774640c/d/1/4.7 Govt K DDC DoL DBA Opinion.pdf>



S.B. 2724, SD2 will unfairly expand the application of prevailing wage rates for laborers and mechanics, also known as “Little Davis Bacon” to include construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing. While there are some exemptions, it will still have a significant impact on current leaseholders on public state lands.

Under federal law the Davis Bacon Act requires that “each contract over \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair of **public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classification of laborers and mechanics employed under contract.**” 21 U.S.C. 113. Hawaii’s law defines “public work” in Section 104-1, Hawaii Revised Statute similar to federal law as:

any project, including development of any housing pursuant to section 46-15 or chapter 201H and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, **where the funds or resources required to undertake the project are to any extent derived, either directly or indirectly, from public revenues of the State or any county**, or from the sale of securities and bonds whose interest or dividends are exempt from state or federal taxes.

This measure has a far reaching impact and could escalate costs for State lease holders, many of whom are small businesses. Currently, those that are required to comply with Chapter 104, Hawaii Revised Statute, are required to submit weekly certified payroll affidavits and are punishable by fines for violations. Additionally, any work done on weekends or state holidays could be subject to overtime that may be equal to double or triple the cost of prevailing wage rates due to the passage of [Act 165 \(2015\)](#) passed last year. Will these leaseholders be subject to same?

GCA is **strongly opposed** to this proposal and objects to the potentially detrimental and far reaching effect this measure will have, particularly to those leaseholders, including Hawaii’s small businesses and farmers that may be on state leased lands.

**While GCA agrees that the prevailing wage should be paid when applicable, GCA cannot support this proposal as it exceeds the reach of what the prevailing wage law was intended to cover.** For these reasons, we respectfully request this measure be held.

## **Requirements of Chapter 104, HRS**

### **Wages and Hours of Employees on Public Works Law**

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Chapter 104, HRS, applies to every public works construction project over \$2,000, regardless of the method of procurement or financing (purchase order, voucher, bid, contract, lease arrangement, warranty).

#### **Rate of Wages for Laborers and Mechanics**

- Minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules, shall be paid to the various classes of laborers and mechanics working on the job site. [§104-2(a), (b), Hawaii Revised Statutes (HRS)]
- If the Director of Labor determines that prevailing wages have increased during the performance of a public works contract, the rate of pay of laborers and mechanics shall be raised accordingly. [§104-2(a) and (b), HRS; §12-22-3(d) Hawaii Administrative Rules (HAR)]

#### **Overtime**

- Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight hours a day on any other day shall be paid overtime compensation at one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. [§§104-1(5), 104-2(c), HRS]

#### **Weekly Pay**

- Laborers and mechanics employed on the job site shall be paid their full wages at least once a week, without deduction or rebate, except for legal deductions, within five working days after the cutoff date. [§104-2(d), HRS]

#### **Posting of Wage Rate Schedules**

- Wage rate schedules shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the entire wage rate schedule shall be given to each laborer and mechanic employed under the contract, except when the employee is covered by a collective bargaining agreement. [§104-2(d), HRS]

#### **Withholding of Accrued Payments**

- If necessary, the contracting agency may withhold accrued payments to the contractor to pay to laborers and mechanics employed by the contractor or subcontractor on the job site any difference between the wages required by the public works contract or specifications and the wages received. [§104-2(e), HRS]

#### **Certified Weekly Payrolls and Payroll Records**

- A certified copy of all payrolls shall be submitted weekly to the contracting agency.
- The contractor is responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates listed are not less than the applicable rates contained in the applicable wage rate schedule, and that the classifications for each laborer or mechanic conform with the work the laborer or mechanic performed. [§104-3(a), HRS]
- Payroll records shall be maintained by the contractor and subcontractors for three years after completion of construction. The records shall contain:
  - the name and home address of each employee
  - the employee's correct classification
  - rate of pay (basic hourly rate + fringe benefits)
  - daily and weekly hours worked
  - weekly straight time and overtime earnings
  - amount and type of deductions
  - actual wages paid
  - date of payment
- Records shall be made available for inspection by the contracting agency, the Department of Labor and Industrial Relations, and any of its authorized representatives, who may also interview employees during working hours on the job. [§104-3(b), HRS]

## Termination of Work on Failure to Pay Wages

- If the contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has not been paid prevailing wages or overtime, the contracting agency may, by written notice to the contractor, terminate the contractor's or subcontractor's right to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid. The contracting agency may complete this work by contract or otherwise, and the contractor or contractor's sureties shall be liable to the contracting agency for any excess costs incurred. [§104-4, HRS]

## Apprentices and Trainees

- In order to be paid apprentice or trainee rates, apprentices and trainees must be parties to an agreement either registered with or recognized as a USDOL nationally approved apprenticeship program by the Department of Labor and Industrial Relations, Workforce Development Division. [§12-22-6(1), HAR]
- The number of apprentices or trainees on any public work in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work may not exceed the ratio allowed under the apprenticeship or trainee standards registered with or recognized by the Department of Labor and Industrial Relations. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [§12-22-6(2), HAR]

## Enforcement

- To ensure compliance with the law, DLIR and the contracting agency will conduct investigations of contractors and subcontractors. If a contractor or subcontractor violates the law, the penalties are:
  - First Violation Equal to 10% of back wages found due or \$25 per offense, whichever is greater.
  - Second Violation Equal to amount of back wages found due or \$100 for each offense, whichever is greater.
  - Third Violation Equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and  
Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the **first notification of violation**, and a third violation if it occurs within two years of **the second notification of violation**.
- Suspension. For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, **except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.** [§§104-24, 104-25]
- Any contractor who fails to make payroll records accessible or provide requested information within 10 days, or fails to keep or falsifies any required record, shall be assessed a penalty as provided in Section 104-22(b), HRS. [§104-3(c)]
- If any contractor interferes with or delays any investigation, the contracting agency shall withhold further payments until the delay has ceased. Interference or delay includes failure to provide requested records or information within ten days, failure to allow employees to be interviewed during working hours on the job, and falsification of payroll records. The department shall assess a penalty of \$1,000 per project, and \$100 per day thereafter, for interference or delay. [§104-22(b)]

For additional information, visit the department's website at <http://dlir.state.hi.us/> or contact any of the following DLIR offices:



Oahu (Wage Standards Division) .....	586-8777
Maui .....	243-5322
Hilo .....	974-6464
West Hawaii .....	322-4808
Kauai .....	274-3351



Randy Pereira  
President

# HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

The Twenty-Eighth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Labor and Public Employment

Telephone: (808) 597-1441  
Fax: (808) 593-2149

Testimony by  
Hawaii State AFL-CIO  
March 18, 2016

## S.B. 2724, S.D.2 – RELATING TO PREVAILING WAGES

The Hawaii State AFL-CIO strongly supports S.B. 2724, S.D.2, which expands the types of projects that must comply with wage and hour requirements under Chapter 104, HRS, including construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing.

Prevailing wages ensure, at a minimum, construction workers including other workers are paid appropriate wages and benefits in their local jurisdiction. Prevailing wages encourage a more productive workforce which helps ensure projects are constructed efficiently, safely and with quality craftsmanship. At a time with lower wages and fewer benefits, prevailing wages help keep the economy moving forward by guaranteeing workers are provided with above-average wages which in turn leads to more economic spending.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Pereira  
President

## LABtestimony

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, March 16, 2016 9:55 AM  
To: LABtestimony  
Cc: stab625@yahoo.com  
Subject: \*Submitted testimony for SB2724 on Mar 18, 2016 10:00AM\*

Follow Up Flag: Follow up  
Flag Status: Flagged

### **SB2724**

Submitted on: 3/16/2016

Testimony for LAB on Mar 18, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Arnold	Individual	Support	No

### Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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

830 PUNCHBOWL STREET, ROOM 321

HONOLULU, HAWAII 96813

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March 18, 2016

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

Date: Friday, March 18, 2016

Time: 10:00 a.m.

Place: Conference Room 309, State Capitol

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

**Re: S.B. No. 2724, S.D. 1 Relating to Prevailing Wages**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2724 SD1 proposes to amend chapter 104, Hawaii Revised Statutes (HRS) to clarify that Hawaii's prevailing wage statute and administrative rules apply to construction on lands the State or a county leases to private entities, or where public land is used as collateral in financing. The measure also defines the lessor agency as the governmental contracting agency for the purposes of chapter 104, HRS.

The proposal also exempts residential construction less than \$100,000, or construction costing less than \$500,000 for certain agricultural construction. It also provides that the director may terminate the work of any contractor or subcontractor where the contractor or subcontractor has not paid prevailing wages on a public work. Appropriates a blank amount to the DLIR for enforcement of Chapter 104, HRS.

The existing definition of "public work" was last modified in statute in 1992 and in rules in 1996. DLIR believes that the very broad, existing definition in chapter 104 already covers the intended purpose of the measure, but also believes dialogue pertaining to this matter is beneficial for the public good and is eager to participate in the discussions as the measure moves through the legislative process.

DLIR notes that sub-lessee's are not subject to chapter 104 by the administrative

rules.

## II. CURRENT LAW

Chapter 104, HRS, currently applies to the construction of all public works in excess of \$2,000, and construction financed by special purpose revenue bonds. The definition of public work in section 104-1, HRS, reads as follows:

"Public work" means any project, including development of any housing pursuant to section 46-15 or chapter 201H and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived, either directly or indirectly, from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

The Hawaii Administrative Rules (HAR) Title 12, Chapter 22, refines this definition of public work as follows:

"Public work" shall be as defined in section 104-2(a)\*, Hawaii Revised Statutes, and includes without limitation: (1) Any building, structure, road, or real property, the construction of which is undertaken:

**(A) By authority of; and**

**(B)** Through the use of funds, grants, loans, bonds, **land**, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. However, subsequent construction to fixtures or appurtenances attached to the assigned space of an individual occupant, lessee, or tenant of the building or structure, contracted by other than a state or county agency or instrumentality thereof, shall not be subject to chapter 104, Hawaii Revised Statutes.

*\* Note: The definition for "Public Work" was recently moved from §104-2(a), HRS, to the main definition section (§104-1, HRS). [See Act 130, 2014]*

## III. COMMENTS ON THE SENATE BILL

Construction undertaken through the use of State or county land is already subject to the requirements of chapter 104. Compliance has been blocked when land owning agencies hold that lands leased to private parties are not State lands, and/or that the land is not a resource through which construction is undertaken. The course for resolution has not been clear thus far, nor has the question of how to administer the requirements across varied land uses.

As in other cases where State or county resources provide a benefit realized through construction, the following items need to be clarified or otherwise established:

- Documented notice of the requirements, such as specifying the prevailing

wage requirements in lease provisions.

- The method of reporting and filing of the requirement documentation, i.e. the submittal of the certified payroll records.

Without recovery of lost staff positions after 2009, the department is unable to investigate a number of the complaints related to chapter 104, HRS, filed each year, resulting in a backlog for investigation and further proceedings. Without information on the lands and public works these proposed amendments would apply to, it is difficult to quantify a request for the additional staffing that would be required.



# KING & NEEL, INC.

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Sent Via E-mail to LABtestimony@capitol.hawaii.gov

Via Fax to 808-586-8544

NATIONAL ASSOCIATE MEMBER



March 18, 2016

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALO, VICE CHAIR, HOUSE COMMITTEE ON LABOR AND PUBLIC  
EMPLOYMENT

SUBJECT: **OPPOSITION TO S.B. 2724, SD2 RELATING TO PREVAILING WAGE.**  
Expands the types of projects that must comply with wage and hour requirements under chapter 104, HRS, including construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing. Exempts certain projects from chapter 104, HRS. Establishes requirements that apply in situations involving private lessees of public land who contract for certain projects on public land. Appropriates funds for enforcement of chapter 104, HRS. Effective 1/7/2059, except section 5, which takes effect 7/1/2059. (SD2)

## HEARING

DATE: Friday, March 18, 2016

TIME: 10:00 a.m.

PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole and Members,

King & Neel, Inc. **opposes** S.B. 2724, SD2, which proposes to expand the application of Chapter 104 (Prevailing Wage and Certified Payroll) to lessees on state owned land. This bill would require any improvements on publicly leased lands costing \$2,000 or more to pay prevailing wages and to comply with Chapter 104 certified payroll requirements and thus be subject to penalties for non-compliance. While there are some exemptions, it will still have a significant impact on current leaseholders on public state lands, including any existing leases with any state agency.

This measure has a far reaching impact and could escalate costs for State lease holders, many of whom are small businesses and therefore could be passed on to the everyday consumer too. Currently, those that are required to comply with Chapter 104, Hawaii Revised Statute, are required to submit weekly certified payroll affidavits and are punishable by fines for violations. Additionally, any work done on weekends or state holidays could be subject to overtime that may be equal to double or triple the cost of prevailing wage rates due to the passage of Act 165 (2015) passed last year. Will these leaseholders be subject to same?

King & Neel, Inc. is **opposed** to this proposal and objects to the potentially detrimental and far reaching effect this measure will have, particularly to those leaseholders, including Hawaii's small businesses that may be on state leased lands.

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**Testimony to the House Committee on Labor and Public Employment**  
**Friday, March 18, 2016**  
**10:00 a.m.**  
**State Capitol - Conference Room 309**

**RE: S.B. 2724 S.D. 2: Relating to Prevailing Wage**

:-

Dear Chair Nakashima, Vice-Chair Keohokalole, 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 strong **opposition** to S.B. 2724 S.D. 2, which expands the types of projects that must comply with wage and hour requirements under HRS Chapter 104, including construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing. The bill also exempts certain projects from HRS Chapter 104, establishes requirements that apply in situations involving private lessees of public land who contract for certain projects on public land, and appropriates funds for enforcement of HRS Chapter 104.

Pursuant to HRS Chapter 171-2, the following are not considered "public lands:"

- Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- Lands set aside pursuant to law for the use of the United States;
- Lands being used for roads and streets;
- Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- Lands to which the University of Hawaii holds title;
- Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- Lands to which the Hawaii community development authority in its corporate capacity holds title;
- Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- Lands to which the high technology development corporation in its corporate capacity holds title.

The proposed bill would impose vastly different requirements on any entity leasing lands from DLNR, DOT (Airports, Harbors, Highways), and the Department of Agriculture, as opposed to entities leasing lands from any of the agencies listed in HRS Chapter 171-2.

The statute apparently recognizes the difference between the use of state or county funds versus the use of state or county lands. Imposing the Chapter 104 requirement on lessees of “public lands” would render these leases “less attractive” to potential lessees and could result in lower returns and lease rents than comparable properties in a similar market.

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

# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

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March 18, 2016

The Honorable Mark M. Nakashima, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
and members  
House Committee on Labor and Public Employment  
415 South Beretania Street  
Honolulu, Hawai'i 96813

## **RE: Strong Support for SB2724 SD2, Relating to Prevailing Wages**

Dear Chair Nakashima, Vice Chair Keohokalole, 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 SB2724 SD2, relating to prevailing wages**. SB2724 SD2 would:

- Clarify that for the purposes of Chapter 104, all development, construction, renovation, and maintenance upon state land or the use of state land to secure financing for development, construction, renovation, or maintenance shall constitute a "public work" for which prevailing wages would apply;
- Create two additional exemptions for de minimis work on single- and multi-family dwellings and also projects for farm dwellings and accessory improvements on agricultural properties;
- Clarify that projects caused, initiated, or contracted for by lessees of the State for the development, construction, renovation, or maintenance of any real or personal property located on public lands are subject to Chapter 104;
- Clarify that the Director of DLIR, and the governmental contracting agency (if applicable), has enforcement powers for Chapter 104; and
- Appropriate additional funds for the effectuation of the bill and enforcement of Chapter 104.

This bill is necessary, as it would provide more clarity for an unresolved question of how to treat state lands that are leased to private developers with regard to Chapter 104.

Because there has been a lack of uniform implementation of Chapter 104 on state lands that are leased to private developers, private developers have underpaid and exploited Hawai'i workers by not providing them with wages commensurate to their skills and labor.

SB2724 SD2 seeks to ensure uniform implementation of Chapter 104 and seeks to strengthen Hawai'i's prevailing wage or "Little Davis-Bacon" standards. Prevailing wages are important, as they ensure that local construction workers are paid properly, at living wages, for their skills and labor.

Because of the reporting requirements in Chapter 104, it is more difficult for unscrupulous contractors to cheat on worker protections like licensing, insurance, and workers compensation coverage. Additionally, local contractors benefit when it comes to bidding on jobs, because they can't be undercut by mainland contractors and their out-of-state workers who are paid at a lower rate.

We thank you for the opportunity to provide this testimony, and **respectfully request that your committee pass SB2724 SD2, relating to prevailing wages.**

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](mailto:execdir@hawaiiconstructionalliance.org)

From: mailinglist@capitol.hawaii.gov  
Sent: Thursday, March 17, 2016 5:46 PM  
To: LABtestimony  
Cc: jmas808@gmail.com  
Subject: Submitted testimony for SB2724 on Mar 18, 2016 10:00AM

**SB2724**

Submitted on: 3/17/2016

Testimony for LAB on Mar 18, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Masatsugu	Hawaii Tapers Market Recovery Trust Fund	Support	Yes

Comments: Chair Nakashima and Members of the Committee: The Hawaii Tapers Market Recovery Trust Fund strongly supports the intent of this bill. Clarifying that Hawaii Revised Statutes, Chapter 104 applies to construction projects on state and county owned lands that are leased but privately developed will help level the playing field for our signatory contractors and ensure that construction workers are paid area-standard wages and benefits. We believe this bill can and should be strengthened by amending the proposed new subsection (a)(3) to limit the exemption in that subsection to single family homes only. Thank you for this opportunity to testify.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**SB2724**

Submitted on: 3/17/2016

Testimony for LAB on Mar 18, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Masatsugu	Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund	Support	Yes

Comments: Chair Nakashima and Members of the Committee: The Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund strongly supports the intent of this bill. Clarifying that Hawaii Revised Statutes, Chapter 104 applies to construction projects on state and county owned lands that are leased but privately developed will help level the playing field for our signatory contractors and ensure that construction workers are paid area-standard wages and benefits. We believe this bill can and should be strengthened by amending the proposed new subsection (a)(3) to limit the exemption in that subsection to single family homes only. Thank you for this opportunity to testify.

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**SB2724**

Submitted on: 3/17/2016

Testimony for LAB on Mar 18, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Masatsugu	Painters Labor Management Cooperation Trust Fund	Support	Yes

Comments: Chair Nakashima and Committee Members: The Painting Industry of Hawaii Labor Management Cooperation Trust Fund strongly supports the intent of this bill. Clarifying that Hawaii Revised Statutes, Chapter 104 applies to construction projects on state and county owned lands that are leased but privately developed will help level the playing field for our signatory contractors and ensure that construction workers are paid area-standard wages and benefits. We believe this bill can and should be strengthened by amending the proposed new subsection (a)(3) to limit the exemption in that subsection to single family homes only. Thank you for this opportunity to testify.

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**SB2724**

Submitted on: 3/17/2016

Testimony for LAB on Mar 18, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Masatsugu	Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund	Support	Yes

Comments: Chair Nakashima and Members of the Committee: The Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund strongly supports the intent of this bill. Clarifying that Hawaii Revised Statutes, Chapter 104 applies to construction projects on state and county owned lands that are leased but privately developed will help level the playing field for our signatory contractors and ensure that construction workers are paid area-standard wages and benefits. We believe this bill can and should be strengthened by amending the proposed new subsection (a)(3) to limit the exemption in that subsection to single family homes only. Thank you for this opportunity to testify.

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**LATE**

From: mailinglist@capitol.hawaii.gov  
Sent: Thursday, March 17, 2016 8:29 PM  
To: LABtestimony  
Cc: lornaw31@yahoo.com  
Subject: Submitted testimony for SB2724 on Mar 18, 2016 10:00AM

**SB2724**

Submitted on: 3/17/2016

Testimony for LAB on Mar 18, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Lorna Woo	IUPAT, District Council 50	Support	No

Comments: Testimony Language for SB2724, S.D. 2 Dear Chair Nakashima and members of the House Labor Committee: The International Union of Painters and Allied Trades, District Council 50, strongly supports the intent of this bill which will clarify that prevailing wages must be paid on construction projects on leased state and county lands. While we support an exemption for work on single family homes on leased state land, we would like to ensure that this exemption is expressly limited to single family homes only, and we request that the bill be amended to reflect this. Doing so will strengthen the bill and help the working men and women in Hawaii's construction industry. Thank you for this opportunity to testify.

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