



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII'Ī
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

February 27, 2023

To: The Honorable Kyle T. Yamashita, Chair,
The Honorable Lisa Kitagawa, Vice Chair, and
Members of the House Committee on Finance

Date: Monday, February 27, 2023
Time: 1:30 p.m.
Place: Conference Room 308, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 168 H.D.2 RELATING TO PUBLIC WORKS

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this measure. HB168 HD2 proposes to amend Sections 104-24 and 104-25, Hawaii Revised Statutes (HRS) by imposing progressively increasing penalties on both the person **and** firm upon finding of repeat violations of Hawaii's Wages and Hours of Employees on Public Works Law (Chap. 104). Subsection 104-24(e) defines the term "Person" to include a sole proprietor and the principal responsible managing employee for the project being investigated and holders of the contractor's license as provided under Chapter 444.

II. CURRENT LAW

Sections 104-24(b) and (c), and Section 104-25, HRS, imposes progressively increasing penalties on the person **or** firm upon finding repeat violations of Hawaii's Wages and Hours of Employees on Public Works Law.

III. COMMENTS ON THE HOUSE BILL

This proposal seeks to eliminate the circumvention of the law by entities that transfer key personnel to a separate company and continue business under a new name to avoid the suspension from work provision in Chapter 104.



Hawaii Operating Engineers Industry
Stabilization Fund PAC
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February 27, 2023

House Committee on Finance
Representative Kyle Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair

TESTIMONY IN SUPPORT
House Bill 168, HD2 Relating to Public Works

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

Thank you for the opportunity to submit testimony on behalf of the Hawaii Operating Engineers Industry Stabilization Fund Political Action Committee (HOEISF PAC). The HOEISF PAC is a non-profit labor management organization whose core mission is to represent the interests of the Operating Engineers Local Union No. 3 and Hawaii's leading contractors and ensure that the industry is thriving and sustainable for the future.

We are writing in **support of HB168, HD2** which imposes penalties, including suspension, on the person and the firm upon a finding of violation of state law governing wages and hours of employees on public works projects.

As you know, Hawaii is a national leader in prevailing wage laws. However, there are still occurrences where contractors do not pay workers their fair and entitled wage on public works projects. In those instances, a "three strike" policy is in statute to allow the contractor the opportunity to correct this practice, but if a contractor receives a third strike, they are suspended from being able to bid on public works projects for three years.

While the law has generally served its purpose as a deterrent, there have been recent examples of companies receiving a third strike and then moving their key personnel into a new company in order to continue bidding on public works projects. This undermines the important purpose of the "three strike" policy.

What HB168 HD2 seeks to do is end this practice by ensuring that the violation is attached to both the firm and the person. The bill also clearly defines "person", so the appropriate individual(s) are held responsible and there are not unintended consequences of attaching violations to people who are connected to the firm but not responsible for the specific violation.

Thank you for the opportunity to provide our testimony in support and we strongly urge you to pass this measure.



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February 27, 2023

TO: HONORABLE KYLE T. YAMASHITA, CHAIR, HONORABLE LISA KITAGAWA, VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **COMMENTS ON H.B. 168 HD2, RELATING TO PUBLIC WORKS.**
Imposes penalties, including suspension, on the person and the firm upon a finding of violations of state law governing wages and hours of employees on public works projects.

HEARING

DATE: Monday, February 27, 2023
TIME: 1:30 p.m.
PLACE: Capitol Room 308

Dear Chair Yamashita, Vice Chair Kitagawa and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA provides comments on H.B. 168 HD2, which imposes penalties, including suspension, on the person and the firm upon a finding of violations of state law governing wages and hours of employees on public works projects.

This measure attempts to close the loophole of preventing members of a firm that is suspended from bidding on public works projects from opening a new firm and immediately bidding again. GCA believes the measure as introduced, which included the subordinate RME's would have closed that loophole. However, the HD2 version of this measure just opens another loophole. There is nothing that would prevent a subordinate RME of a suspended firm from opening a new firm. Because of this, we believe that this measure attempts to close one loophole by opening another. The current measure will not truly address the problem.

GCA is also concerned with the unintended consequences of this bill. First, an individual may be a principal RME for more than one contracting entity. This measure could indirectly impose a penalty on another contracting entity who was not involved with the project.

QUALITY PEOPLE. QUALITY PROJECTS



Randy Perreira, President

HAWAII STATE AFL-CIO
Hawaii's Labor Unions

888 Mililani Street Suite 501, Honolulu, Hawaii 96813

The Thirty-Second Legislature, State of Hawai'i
Hawai'i State House of Representatives
Committee on Finance

Testimony by
Hawai'i State AFL-CIO
February 27, 2023

H.B. 168 H.D. 2 – RELATING TO PUBLIC
WORKS

The Hawai'i State AFL-CIO is a state federation of 74 affiliate local unions and councils with over 68,000 members across both public and private sectors. We appreciate the opportunity to testify in **strong support** of H.B. 168 H.D. 2.

Holding both persons and firms accountable for violations of Chapter 104, Hawaii Revised Statutes, is important to avoid repeat offenses by bad actors who persistently violate Chapter 104 through new legal entities. This measure effectively puts unscrupulous persons and firms on notice that repeat offenders will lose the privilege of working on public works projects.

When enacted this will also protect workers from having to recover unpaid wages.

We appreciate your consideration of our testimony in **strong support** of H.B. 168 H.D. 2.

Respectfully,

For Randy Perreira
President

RP/dd