



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

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April 1, 2015

To: The Honorable Jill N. Tokuda, Chair
The Honorable Ronald D. Kouchi, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: April 2, 2015
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

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

Re: H.B. No. 391 HD1 SD1, Relating to Wages and Hours on Public Works

I. OVERVIEW OF PROPOSED LEGISLATION

Amends the Hawaii prevailing wage law to allow for payment of overtime on public works projects to exceed time and half. Authorizes overtime rates in prevailing collective bargaining agreements to apply to the wage rate schedule in order to provide a level playing field.

The Department supports the proposal and notes it will entail some fiscal impact, but defers to the contracting agencies on the specifics.

II. CURRENT LAW

The current overtime provision for public works is one and one-half the basic hourly rate plus the cost to the employer for fringe benefits under the Wages and Hours of Employees on Public Works, chapter 104, Hawaii Revised Statutes (HRS), which follows the calculation of overtime law for the rest of the Hawaii workforce in the Wage and Hour Law, chapter 387, HRS, and the federal Fair Labor Standards Act (FLSA).

III. COMMENTS ON THE HOUSE BILL

Wages and Hours of Employees on Public Works Law requires the Director of

Labor and Industrial Relations to issue wage rate schedules twice a year, which list the prevailing wages in each category of worker classifications on a public construction project. The prevailing wage is based on the most often occurring rate in a particular classification of construction workers as stated in section 104-2(b), HRS. In addition, the law requires payment of overtime at one and one-half of the prevailing wage on State holidays, Saturdays, Sundays and in excess of eight hours on any other day.

The Department understands that this measure was intended to give flexibility to the payment of overtime, to allow payment at a higher ratio than time and a half. Additional language added to section 104-2(c), HRS, will have the effect of requiring merit based contractors and those contractors with a collective bargaining agreement to pay their employees at more than the time and a half for all hours worked over 8 in a day, weekends and State holidays, if stated in the prevailing agreement of the specific prevailing laborer or mechanic classification.

This measure, if enacted, will level the playing field and require the non-union contractors to pay the same higher rates for overtime as union contractors currently do for public works projects. The unionized contractor is already paying a premium for overtime that is more than the current statutory one and one-half times the prevailing rate.

Hawai'i Construction Alliance

P.O. Box 179441
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March 31, 2015

The Honorable Jill N. Tokuda, Chair
The Honorable Ronald D. Kouchi, Vice Chair
and members
Senate Committee on Ways and Means
Hawai'i State Legislature
Honolulu, Hawai'i 96813

Dear Chair Tokuda, Vice Chair Kouchi, and members:

The Hawai'i Construction Alliance **strongly supports HB391 HD1 SD1**, relating to wages and hours on public works.

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.

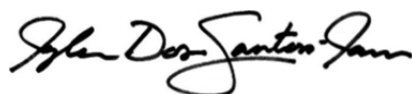
HB391 provides that, for government public works construction contracts greater than \$2,000, the overtime compensation be not less than 1½ times the laborers or mechanics basic hourly rate of pay plus fringe benefits. The bill further provides that if the department of labor and industrial relations determines that a prevailing wage is defined by a collective bargaining agreement, the overtime compensation shall be at the rates set by the applicable collective bargaining agreement. Finally, the bill specifies that the overtime rate and any premium rate be those rates specified in an applicable collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement.

We appreciate and agree with the supportive comments provided by the Department of Labor and Industrial Relations in previous hearings, particularly the department's belief that "this measure, if enacted, will level the playing field."

To elaborate further, the bill would have the practical effect of setting a floor for overtime pay for wages at "time-and-a-half," and would provide the Department of Labor and Industrial Relations with the flexibility to recognize the correct prevailing wages for various classifications and trades, especially for Sundays and holidays. This is particularly important for those of our members whose collective bargaining agreements specify that their Sunday and public holiday rates are greater than "time-and-a-half," to ensure that they receive their properly negotiated wages when working on public works projects.

Therefore, we request your committee's **favorable consideration on HB391 HD1 SD1**, relating to wages and hours on public works.

Mahalo,



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

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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 2, 2015

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE RON KOUCHI, VICE CHAIR, AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **OPPOSITION TO H.B. 391, HD1, SD1, RELATING TO WAGES AND HOURS ON PUBLIC WORKS.** Allows overtime compensation on public works projects to exceed time and one-half and specifies that if the Department of Labor and Industrial Relations determines that a prevailing wage is defined by collective bargaining, overtime will be at rates set by the applicable collective bargaining agreement. Specifies that overtime compensation and other premium pay rates are those rates specified in an applicable collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement. Effective date 07/01/2030. (SD1)

Decision Making

DATE: Thursday, April 2, 2015
TIME: 9:00 a.m.
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Kouchi and Members,

The General Contractors Association of Hawaii (GCA) **opposes** H.B. 391, HD1, SD1 because (1) the bill's financial impact will increase costs on public works construction and (2) the bill is unnecessary as agencies will pay overtime at a rate exceeding the statutory one and half times rate if it is required under any private collective bargaining agreement. Furthermore, GCA believes that statutes governing public works construction should not force the terms of a privately negotiated collective bargaining agreements on parties that had no input in its terms and conditions. The procurement of public works should promote economy, efficiency and impartiality in an open, fair and transparent process, this measure lacks such qualities.

The GCA is an organization comprised of over approximately 580 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.

This measure will have a significant impact on the cost of public works construction, especially because many of the transportation related projects require overtime hours because they take place on weekends and holidays to accommodate Hawaii's residents.

The GCA has no objection in requiring payment of overtime compensation that exceeds the current statutory rate of one and half times, **if** such a rate has been negotiated as a part of a collective bargaining agreement. **However, this measure would require those that have not agreed with a collective bargaining agreement be subject to its terms regarding overtime payment.** We have been informed by applicable government agencies that if a collective bargaining agreement recognizes a higher rate than the statutory one and half times rate, it will honor it. The imposition of additional benefits for overtime should not be required for all overtime merely because it is a part of the collective bargained compensation package that determined the prevailing wage rate for that class of workers. If any trade union has negotiated a higher overtime rate it should only apply to companies that were a party to the agreement. A collective bargaining agreement (CBA) contains many benefits and off sets that are not available to the non-union company. Therefore, requiring all contractors to pay for the overtime rate that it had no part in negotiating is unfair to any party that is not a signatory of the collective bargaining agreement.

The Department of Labor and Industrial Relations (DLIR) recognizes that this bill will have a fiscal impact, which will result in higher costs to taxpayers. The bill's applicability is mainly to address costs work performed in excess of 8 hours in one day, on makeup work days, holidays and weekends. Below are some examples of the wage rate differential between reflecting regular pay rates versus the statutory requirements of one and one-half time rate versus a double time rate for a particular trade.

Examples from DLIR Prevailing Wage Rate Schedule, February 16, 2015

<u>Classification Example</u>	<u>Prevailing Wage Hourly Rate</u>	<u>1 ½ Overtime Hourly Rate</u>	<u>Double Time Hourly Rate</u>	<u>Regular Rate @ 8 Hours</u>	<u>1 ½ Rate @ 8 Hours</u>	<u>Double Rate @ 8 Hours</u>
Example A	\$65.85	\$98.78	\$131.70	\$526.80	\$790.24	\$1,053.60
Example B	\$67.91	\$101.87	\$135.82	\$543.28	\$814.96	\$1,086.56

This bill, as written, proposes to force the non-signatory contractor to pay wages that it had no input in negotiating in, nor agreed to. Furthermore, this bill would require contractors, DLIR, and all agencies to enforce the overtime wages and certified payrolls at different rates, with different rules, and different timing for each that qualifies. Each CBA may also have different definitions of "shift" for overtime pay calculations that overlaps or contradicts current HRS 104 statutes.

For these reasons, GCA is concerned with the current version of the bill and its potential impact on taxpayers and requests that the bill be amended as previously requested or held.



**Testimony to the Senate Committee on Ways and Means
Thursday, April 2, 2015 at 9:00 A.M.
Conference Room 211, State Capitol**

RE: HOUSE BILL 391 HD1 SD1 RELATING TO WAGES AND HOURS ON PUBLIC WORKS

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 391 HD1 SD1, which allows overtime compensation on public works projects to exceed time and one-half and specifies that if the Department of Labor and Industrial Relations determines that a prevailing wage is defined by collective bargaining, overtime will be at rates set by the applicable collective bargaining agreement. Also specifies that overtime compensation and other premium pay rates are those rates specified in an applicable collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement.

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.

We believe that the procurement of public works should be an open, fair and transparent process. However, HB 391 HD1 SD1 forces parties to honor the terms of a collective bargaining agreement (CBA) even though they had no input into the determination of the CBA's terms and conditions. We have concerns with requiring contractors to pay for the overtime rate that it had no part in negotiating, and it is not in line with normal overtime compensation practices.

Additionally, this measure creates an administrative burden by requiring contractors, the Department of Labor and Industrial Relations, and other agencies to manage differing overtime wages and certified payrolls with different sets of rules and timing.

Lastly, as we support rail and other major public projects, we have serious concerns on how this will impact the cost of projects like rail, and whether it will further exacerbate the cost overruns of rail and create a longer extension time of the GE tax increase surcharge for rail.

Thank you for the opportunity to testify.



HAWAII ISLAND CONTRACTORS' ASSOCIATION

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April 2, 2015

TO: HONORABLE JILL TOKUDA, CHAIR, HONORABLE RON KOUCHI, VICE CHAIR, AND MEMBERS OF THE SENATE COMMITTEE ON WAYS AND MEANS

SUBJECT: **OPPOSITION TO H.B. 391, HD1, SD1, RELATING TO WAGES AND HOURS ON PUBLIC WORKS.** Allows overtime compensation on public works projects to exceed time and one-half and specifies that if the Department of Labor and Industrial Relations determines that a prevailing wage is defined by collective bargaining, overtime will be at rates set by the applicable collective bargaining agreement. Specifies that overtime compensation and other premium pay rates are those rates specified in an applicable collective bargaining agreement when the basic hourly rate is established by a collective bargaining agreement. Effective date 07/01/2030. (SD1)

Decision Making

DATE: Thursday, April 2, 2015
TIME: 9:00 a.m.
PLACE: Conference Room 211

Dear Chair Tokuda and Vice Chair Kouchi and Members,

The Hawaii Island Contractors Association was established in 1961, and is comprised of over 150 licensed contractors, subcontractors and construction related firms. Our association's core purposes include protecting and preserving the contracting industry, maintaining its professional standards, promoting fair and cooperative relationships, preserving competition between those engaged in the contracting industry and seeking correction of any unfair or discriminatory business methods and practices.

The Hawaii Island Contractors Association opposes H.B. 391, HD1, SD1 because it will unnecessarily increase cost of public works and would also unfairly force non-signatory contractors to comply with the overtime terms of a privately negotiated collective bargaining agreement (CBA).

Statutes governing public works construction should not force the terms of a privately negotiated CBA on parties that had no input in the determination of its terms and conditions. The procurement of public works should promote economy, efficiency and impartiality in an open, fair and transparent process, this measure lacks fairness and equity.

This bill proposes to force non-signatory contractors to pay wages that it had no input in negotiating in, nor agreed to. Furthermore, this bill would require contractors, DLIR, and all

agencies to enforce the overtime wages and certified payrolls at different rates, with different rules, and different timing for each that qualifies. Each CBA may also have different definitions of "shift" for overtime pay calculations that overlaps or contradicts current HRS 104 statutes. The effective date of this measure is also of concern because contracts that are currently open and have considered a certain pay overtime rate upon bidding would be forced to increase the overall cost of the project if overtime hours are required.

The Hawaii Island Contractors Association opposes this measure and we request the bill be held.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Leslie Isemoto". The signature is fluid and cursive, with the first name being more prominent.

Leslie Isemoto, Legislative Committee Co-Chair

wam3 - Nicolas

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 01, 2015 8:45 AM
To: WAM Testimony
Cc: cloeffler@interpac.net
Subject: Submitted testimony for HB391 on Apr 2, 2015 09:00AM

HB391

Submitted on: 4/1/2015

Testimony for WAM on Apr 2, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Loeffler	Loeffler Construction, Inc.	Oppose	No

Comments: discriminates against those without input.

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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