

February 27, 2015

Page 1



**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: dliir.director@hawaii.gov

February 27, 2015

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

Date: February 27, 2015
Time: 3:00 p.m.
Place: Conference Room 325, State Capitol

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

Re: H.B. No. 952, H.D. 1 Relating to Wages and Hours on Public Works Law

I. OVERVIEW OF PROPOSED LEGISLATION

HB952 HD1 amends the Hawaii prevailing wage law to allow the Department of Labor and Industrial Relations (DLIR) to limit investigations under the Wages and Hours of Employees on Public Works Law, chapter 104, Hawaii Revised Statutes (HRS), to accept complaints filed within one year from the date wages were due and provide confidentiality to complainants. Effective July 1, 2015.

The Department strongly supports this Administration proposal.

II. CURRENT LAW

The current period for investigations is within three years from the date of filing a complaint with the DLIR. There is no statutory requirement to maintain confidentiality of the identity of a person filing a complaint.

III. COMMENTS ON THE HOUSE BILL

This proposal conforms the time limitation period for the filing of prevailing wage complaints with those complaints filed under chapter 388, HRS, Payment of Wages and Other Compensation Law. Under current practice, prevailing wage complaints

filed with the DLIR generally require a review of up to three years of payroll records. In addition to the fading memories of witnesses, the current three-year review period extends the time needed to investigate the time and payment records.

Extending confidentiality to the complainant from disclosure encourages the timely reporting of alleged prevailing wage violations by lessening concerns regarding employer retribution. The confidentiality will assist the DLIR in conducting a full investigation that can be supported in the instance of appeal.

The DLIR notes that the Wage Standards Division (WSD) is one of the general funded programs that has not obtained any restoration in capacity since the 2009 Reduction-in-Force (RIF). Twice since the RIF (HB2766, 2012 and SB3039, 2014) the Legislature has deliberated on creating a public works special fund in recognition of the reduced capacity of the department to conduct timely chapter 104 investigations. Both measures perished in conference committee.

This measure, if enacted, will facilitate and make investigations easier because payroll and other records requiring review, including availability of witnesses, will cover a much shorter period of time (up to one year instead of three).



A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

735 Bishop Street, Suite 412 * Honolulu, Hawaii 96813
(808) 524-2249 - FAX (808) 524-6893

KIKA G. BUKOSKI
Executive Director

February 25, 2015

EXECUTIVE BOARD

REGINALD CASTANARES
President
Plumbers & Fitters Local 675

DAMIEN T.K. KIM
Vice President
International Brotherhood of
Electrical Workers Local 1186

MARC YAMANE
Secretary Treasurer
Elevator Constructors Local 126

RYDEN VALMOJA
Sergeant At Arms
District Council 50
Painters & Allied Trades Local 1791
Carpet, Linoleum, & Soft Tile
Local 1926
Drywall, Tapers & Finishers
Local 1944
Glaziers, Architectural Metal &
Glassworkers Local 1889

DOUGLAS FULP
Trustee
International Assoc. of Heat & Frost
Insulators & Allied Workers Local 132

JOSEPH O'DONNELL
Trustee
Iron Workers
Local 625

GARY AYCOCK
Boilermakers, Ironship Builders
Local 627

PETER IRIARTE
Operative Masons & Plasterers
Local 630

RONAN KOZUMA
Hawaii Teamsters & Allied
Workers Local 996

VAUGHN CHONG
Roofers, Waterproofers & Allied
Workers United Union of Roofer
Local 221

Honorable Representative Karl Rhoads, Chair
Honorable Representative Joy San Buenaventura, Vice Chair
Members of the Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **IN OPPOSITION** TO HB952, HD1 RELATING TO WAGE AND HOUR ON PUBLIC WORKS LAW Hearing: Friday, February 27, 2015, 3:00 p.m. Conference Room 325

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO (HBCTC) is a chartered member of the Building and Construction Trades Department, AFL-CIO which was first organized in 1908 and is comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 15,000 members locally. Our primary mission being to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council respectfully OPPOSES HB952, HD1 which requires laborers and mechanics working on public works to file complaints within one year of the date the payment was due and ensure confidentiality of the complainant or witness.

The Department of Labor and Industrial Relations in recent testimony on a similar measure (SB1121; dated February 10, 2015) states that, "this proposal conforms the time limitation period for the filing of prevailing wage complaints with those complaints filed under chapter 388, HRS".

Provisions found in chapter(s) 387 and 388, HRS intended to protect employees rights as they relate to wage and hour differ from those found in chapter 104, HRS as they relate specifically to employees on public works projects and the process by which violations are identified, investigated and adjudicated.

A recent article (Honolulu Star Advertiser, Tuesday, February 10, 2015) reported that a Honolulu-based contractor was found in violation of wage and hour laws and ordered to pay \$305,000 in back wages and damages.

Reducing the time allowed to file a claim in the face of such a backlog and lack of timely enforcement, further encourages contractors who knowingly violate the law by misclassifying workers on public works projects in an attempt to increase profit margins at the expense of public safety and public taxpayer dollars.

Also please note, in recent testimony provided by the Department of Labor and Industrial Relations on HB713, HD1 Relating to Contractors as heard on February 11, 2015, the Department voluntarily admits to a significant backlog in complaints related to prevailing wage law (chapter 104, HRS), and that quote..., "the AVERAGE" age of the pending 187 complaints is 688 days old."

Knowing such information, it does not appear logical or fair to support a reduction in the time allowed for victims of wage and hour violations to seek damages and/or back wages they may rightfully be owed from contractors.

HBCTC strongly supports language that serves to protect the identities of those victims who report contractors that violate the law. Such protections will not only prevent retaliation which is very difficult to prevent and/or prove, but will also serve to discourage such illegal and unethical practices from re-occurring.

We respectfully request that you HOLD HB952, HD1 in its current form. Mahalo.

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.

Uploaded via Capitol Website

LATE

February 27, 2015

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

SUBJECT: **COMMENTS REGARDING TO H.B. 952, H.D. 1, RELATING TO WAGE AND HOURS ON PUBLIC WORKS LAW.** Requires laborers and mechanics working on public works to file administrative complaints within one year of the date that unpaid wages or overtime were due. Ensures confidentiality of a complainant. (HB952 HD1)

Hearing

DATE: Friday, February 27, 2015
TIME: 3:00 p.m.
PLACE: Conference Room 325

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

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

Thank you for the opportunity to comment on H.B. 952, H.D. 1, Relating to Wages and Hours on Public Works Law which proposes to place a limit the time period in which a claimant can initiate a case for unpaid wages or overtime compensation to one year after the date of wages or overtime were due and payable. This measure limits to investigation period to one year preceding the filing of the written request. This measure would also prohibit the employer from knowing who the complainants are unless prior permission is provided by the complainant or witness, which is similar to language in governing Hawaii Industrial and Occupational Safety and Health.

While GCA appreciates that the Department of Labor and Industrial Relations ("Department") may be attempting to limit the investigation period in an effort to narrow the scope of the potential violations in question, is it fair to withhold information from the employer as to who the investigation may involve? Given that the employer must cooperate with any investigation, isn't it necessary for the employer to provide the proper files and information to the Department in order to assist in the investigation? Therefore, GCA finds that the proposed subsection (c) which would withhold who the complainants are -- may not be proper.

Thank you for this opportunity to present our views on this matter.