

**ASSOCIATED STUDENTS OF THE UNIVERSITY OF HAWAI'I AT MĀNOA**  
**2465 Campus Road, Campus Center 211A**  
**Honolulu HI 96822**

**In the Senate**  
**February, 06, 2019**

**Senate Resolution 10-19**  
**For First Reading**

**A RESOLUTION**

**DIVESTMENT FROM SUB-MINIMUM WAGE PRACTICES**

BE IT ENACTED BY THE UNDERGRADUATE SENATE:

*WHEREAS,* the Associated Students of the University of Hawai'i at Mānoa Senate is the elected body representing approximately 11,000 full-time classified undergraduate students; and,

*WHEREAS,* Section 14(c) of the federal Fair Labor Standards Act of 1938 ("FLSA") permits the U.S. Secretary of Labor to grant special wage certificates to entities that provide employment to workers with disabilities<sup>1</sup>, allowing those employers to pay disabled workers wages that are lower than the federal minimum wage, and effectively, Hawaii's minimum wage; and,

*WHEREAS,* through current federal laws, such as the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the U.S. Congress has recognized the civil rights of individuals with disabilities and prohibited discrimination on the basis of a disability in all areas of public life, and found that a person's disability is a natural part of the human experience and should not diminish a person's rights<sup>2</sup>; and,

*WHEREAS,* since the passage of disability laws currently in effect, the U.S. Congress has found that increased employment of individuals with disabilities can be achieved through the implementation of statewide workforce development systems that provide meaningful opportunities for employment in integrated work settings for the individuals through the provision of reasonable accommodations; and,

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<sup>1</sup> <https://www.dol.gov/whd/specialemloyment/index.htm>

<sup>2</sup> <https://www.ada.gov/cguide.htm#anchor65610>

*WHEREAS,* at the time of the enactment of the FLSA in 1938, the U.S. Congress did not have a great deal of empirical information about people with disabilities and included section 14(c) in the original text of the FLSA under a misconception that a person’s disability affected their ability to participate in society, which misconception continues to undermine the effectiveness of current disability laws; and,

*WHEREAS,* with the passage of the Americans with Disabilities Act and its amendments, the U.S. Congress declared that a physical or mental disability in no way diminishes a person’s right to fully participate in all aspects of society, including in matters of employment, which contradicts prior misconceptions held about people with disabilities dating from the FLSA era; and,

*WHEREAS,* some employers with special wage certificates misclassify the work performed by employees with disabilities as rehabilitative services intended to prepare people with disabilities for competitive integrated employment, which allows them to exploit a vulnerable labor force rather than provide substantive training that would lead to jobs in the mainstream economy; and,

*WHEREAS,* some employers with special wage certificates misclassify the work performed by people with disabilities as rehabilitative services in order to avoid paying the proper federal employment taxes; and,

*WHEREAS,* employers holding special wage certificates are allowed to benefit from reduced labor costs in comparison to employers who pay full wages to their workers, thus resulting in an ability to underbid other employers who do not take advantage of this predatory wage practice; and,

*WHEREAS,* employers with special wage certificates that exploit workers with disabilities may currently contract with, lease facilities from, or receive Grant-in-Aid funds from the University of Hawai‘i and its various Departments, the State of Hawaii, and the City and County of Honolulu; and,

*WHEREAS,* the “Transitioning to Integrated and Meaningful Employment Act of 2017,” HR. 1377, which would repeal the use of federal special wage certificates for employers of workers with disabilities, was introduced into the U.S. House of Representatives in March of 2017,

and has been co-sponsored by both Hawaii members of the U.S. House of Representatives<sup>3</sup>; and,

*WHEREAS,*

differing versions of House Bill 1627 (2018) were passed by both chambers of the Hawaii State Legislature in 2018, which attempted to discontinue the practice of paying employees with disabilities subminimum wages at the State level<sup>4</sup>, but competing House and Senate versions could not be reconciled, and ultimately, the measure could not be passed; and,

*WHEREAS,*

the National Federation of the Blind of Hawaii adopted Resolution 2016-04<sup>5</sup>, Regarding Support for the Transitioning to Integrated and Meaningful Employment Act, the Democratic Party of Hawaii adopted Resolution GOV:2018-04, Urging the End of Public Partnerships with Employers Exploiting Workers with Disabilities, and Resolution GOV:2018-05, Urging the End of the Payment of Subminimum Wages to Workers with Disabilities<sup>6</sup>, and the City Council of the City and County of Honolulu adopted Resolution 18-224, Relating to an Equal Minimum Wage for Workers with Disabilities<sup>7</sup>; now therefore

*BE IT RESOLVED,*

that the Associated Students of the University of Hawai'i at Mānoa condemns and deplores all employers who use Section 14(c) of the Fair Labor Standards Act to exploit workers with disabilities by paying them less than the federal minimum wage; and,

*BE IT FURTHER RESOLVED,*

that the Associated Students of the University urges the United States Congress to repeal the provisions of the Fair Labor Standards Act that permit employers to pay workers with disabilities less than the federal minimum wage; and,

*BE IT FURTHER RESOLVED,*

that the Associated Students of the University urges the Hawaii State Legislature to enact legislation permanently discontinuing the issuance of special wage certificates from the State Department of Labor and Industrial Relations that allow employers to pay

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<sup>3</sup> <https://www.congress.gov/bill/115th-congress/house-bill/1377/text>

<sup>4</sup>

[https://www.capitol.hawaii.gov/Archives/measure\\_indiv\\_Archives.aspx?billtype=HB&billnumber=1627&year=2018](https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=1627&year=2018)

<sup>5</sup>

<sup>6</sup> <https://www.oahudemocrats.org/convention18/2018OCDresolutions-adopted.pdf>

<sup>7</sup> [https://honolulu.granicus.com/Viewer.php?view\\_id=3&clip\\_id=873&meta\\_id=71068](https://honolulu.granicus.com/Viewer.php?view_id=3&clip_id=873&meta_id=71068)

subminimum wages to workers with disabilities, in accordance with Section 14(c) of the Fair Labor Standards Act and Section 387-9, Hawaii Revised Statutes; and,

*BE IT FURTHER RESOLVED,*

that the Associated Students of the University urges the Hawaii State Legislature to enact legislation prohibiting public entities (the State, the City and County, and their respective agencies and instrumentalities) from contracting with, leasing land or facilities, or giving Grant-in-Aid funds, to persons or entities holding special wage certificates from the U.S. Department of Labor that allow them to pay workers with disabilities subminimum wages under Section 14(c) of the federal Fair Labor Standards Act; and,

*BE IT FURTHER RESOLVED,*

that the Associated Students of the University urges the University of Hawaii System to establish a permanent divestment away from all entities holding special wage certificates that permit the payment of subminimum wages to workers with disabilities issued by either the United States Department of Labor or the Hawaii Department of Labor and Industrial Relations; and,

*NOW, THEREFORE, BE IT FINALLY RESOLVED,* that copies of this resolution shall be sent to:

the Hawai'i State Legislature, Hawai'i State Senate Committee on Labor, Culture and the Arts, Hawai'i State Senate Committee on Ways and Means, Hawai'i State House Committee on Labor and Public Employment, Hawai'i State House Committee on Finance, Governor David Ige, Lieutenant Governor of the State of Hawaii Josh Green, the President of the Hawaii State Senate Ronald D. Kouchi, the Speaker of the Hawaii State House of Representatives Scott K. Saiki, Mayor of Honolulu Kirk Caldwell, City Council Chair of Honolulu Ernest Martin, the University of Hawai'i Board of Regents Chair Lee Putnam and Members, President and UHM Interim Chancellor David Lassner, Interim Vice Chancellor for Academic Affairs and Chancellor for Research Michael Bruno, Interim Vice Chancellor for Students Lori Ideta, Interim Dean of Students and Student Housing Services Director, the Graduate Student Organization, and Ka Leo O Hawai'i.

INTRODUCED BY



**THIS DOCUMENT HAS NOT YET BEEN ADOPTED BY THE SENATE**

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Landon Li  
Introducing Member  
Senator-At-Large



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Joshua Jungha Kim  
Introducing Member  
Senator-At-Large



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Starshine Chun  
Introducing Member  
Senator-At-Large