



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

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January 28, 2011

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor & Public Employment

Date: Friday, January 28, 2011  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Interim Director  
Department of Labor and Industrial Relations

**Re: H.B. No. 166 Relating to the Hawaii Occupational Safety and Health Law**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 166 proposes to increase the penalties for violations of the Hawaii Occupational Safety and Health Law by an unspecified amount. The department supports this measure.

**II. CURRENT LAW**

The current law imposes maximum penalties of up to \$7,000 per item for most violations of the Hawaii Occupational Safety and Health Law. Willful violations carry penalties of up to \$70,000 with a minimum of \$5,000 per item violated. Violations of §396-8(e), the discrimination or "whistleblower" law, has a maximum civil penalty of not more than \$1,000 for each violation. Providing advance notice of an upcoming inspection also warrants penalties of not more than \$1,000, but may also include imprisonment for not more than six months.

The current penalties were increased in 1992, more than 18 years ago, under a Congressional mandate following a chicken processing plant fire which resulted in the death of 25 women, when they were trapped in the burning building because the employer locked all fire exits. At that time, the maximum penalty was \$1,000.

### III. HOUSE BILL 166

The department supports this measure for the following reasons:

1. Congressional and state legislative intent is for penalties to be sufficient as deterrence to employers who choose to disregard their obligations to provide a safe and healthful workplace in accordance with the Hawaii Occupational Safety and Health Law. The penalties have not increased in over 18 years.
2. While OSHA and the Hawaii Occupational Safety and Health Division (HIOSH) have adopted various directives to separate out those employers who want to comply but perhaps do not have the resources from those who repeatedly choose to disregard safety and health and who consider accidents to be the cost of doing business, these tools must still be used within the confines of the statutory limits. Although, they can be effective, these modifications to the penalty calculation are often ineffective when dealing with employers new to the state, such as out-of-state contractors, who have not built up an inspection history with our program.

The department agrees that actions contributing to a worker fatality should warrant penalties greater than a few hundred dollars. The penalty for harassing wild horses and burros is \$10,000. A human life is certainly worth more than that, and penalties to deter those who allow unsafe conditions or acts to continue should be high enough to be a true deterrence. However, although we support the increase to the maximum penalty after 18 years of no increase, we urge caution in not setting the maximum penalties too high.

The overwhelming majority of employers in this state really values their workers and wants to do what is right. But they may not have the resources – either the know-how, or the money during these trying economic times. The mission of the Hawaii Occupational Safety and Health Division is to prevent workplace accidents through a mix of incentives and disincentives. Strict enforcement without offering assistance to employers, especially small employers who do not have the resources to readily come into compliance, is counterproductive to voluntary compliance and accident prevention. We need to achieve a balance of compliance assistance and enforcement for Hawaii's employers.

We are working to rebuild our program to be able to provide that balance of carrot and stick. With the legislature's help and the input and partnerships we are building with all of our stakeholders, we should be able to once again offer meaningful assistance and effective deterrence to help our workers and their families build a better Hawaii.

Therefore we support this measure, with a recommendation for a modest increase at this time.



# ROOFING CONTRACTORS ASSOCIATION OF HAWAII

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January 28, 2011

Testimony To: House Committee on Labor & Public Employment  
Representative Karl Rhoads, Chair

Presented By: Tim Lyons, CAE  
Executive Director

Subject: H.B. 166 – RELATING TO THE HAWAII OCCUPATIONAL SAFETY AND HEALTH  
LAW

Chair Rhoads and Members of the Committee:

I am Tim Lyons, Executive Director of the Roofing Contractors Association of Hawaii and we oppose this bill. We oppose this bill because of the one-sided system that exists under the safety laws.

By this, what we mean is that the only citations that can be applied are to employers. It doesn't matter if the employer has provided the employee with training, provided them with safety equipment or has given them an ultimatum to use it. If there is a violation, it is the employer that is fined. To HIOSH's credit, there are ways for an employer to mitigate these violations if they can show an affirmative defense however, the fact remains that any employer who is fined \$7000.00 or \$70,000.00 has a difficult time recouping that amount of money. Can you imagine if you had a traffic citation for \$7000.00?

As proposed, we also find in this bill that the penalty for failing to post notification of the HIOSH law, which currently has a \$7000.00 penalty, could also rise. It would seem to us that \$7000.00 for failure to put up a poster is extremely excessive and any increase in that would fall in the same category.

We are not here to say that employers should violate safety laws and in fact, our Association routinely puts on safety seminars for its members and their employees. We are also very supportive of the safety standards and agree that enforcement is something that cannot be put on the side. An employer that follows safety law regulations has a significant higher cost of operation than one who does not. We do not want to make that differential any worse. It is typical that a lot of safety violations are not followed by companies who have a difficult time of affording the safety measures and to increase the penalties is only to frustrate the situation.

Lastly, we are not aware of any study which shows penalties higher than \$7000/\$70,000 serve as an incentive to comply.

Based on the above we are not in support of this bill.

Thank you.

LATE

Testimony in Support of  
HB 166  
RELATING TO THE HAWAII OCCUPATIONAL SAFETY AND HEALTH LAW

By  
Al Lardizabal, Director of Government Relations  
Hawaii Laborers' Union

Friday, January 28, 2011  
Room 309, 9:00 a.m.  
State Capitol

To the  
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Representative Karl Rhoads Chair; Representative Kyle T. Yamashita, Vice Chair and  
Members of the Committee:

On behalf of Mr. Peter Ganaban, Business Manager, the officers and members of the  
Hawaii Laborers' Union, we support the increase of fines under HRS 396-10. We defer to  
the Department of Labor and Industrial Relations for the specific amounts of each fine.

However, we encourage the Committee to specifically address the category of serious  
and high gravity violations by the employer where fatalities occur. If the deceased worker  
has a family with children below the age of 21, they should be provided with immediate  
financial maintenance at the death of their father/husband/head of the household such that  
the normal living expenses are covered .i.e. rent or mortgage, food, transportation,  
utilities, school, clothing, child care, medical and prescription drugs, etc. until such time  
as the family receives appropriate insurance proceeds. This is to prevent any further  
severe hardship on the family while the deceased workers' estate is being settled.

Thank you for the opportunity to submit this testimony.