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March 1, 2017

To: The Honorable Sylvia Luke, Chair,
The Honorable Ty J.K. Cullen, Vice Chair, and
Members of the House Committee on Finance

Date: Wednesday, March 1, 2017
Time: 2:30 p.m.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 208 HD2 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 386, Hawaii Revised Statutes (HRS), by adding three new sections relating to stop-work orders to Part IV and by amending sections 386-99 and 386-123, HRS. The bill authorizes the DLIR Director to issue and serve stop-work orders to employers not in compliance with section 386-121, HRS, and establishes penalties, enforcement, and protest procedures. The measure also requires employers subject to section 386-121, HRS, to post the name of the insurer and identity of the self-insured employer's claim adjustor.

The Department supports the intent of HB208 HD2 to help ensure all employers have the required workers' compensation coverage as mandated by law and offers comments below.

II. CURRENT LAW

Section 386-99, HRS, requires the employer to post and maintain in places readily accessible to employees, information on benefit rights and claims for benefits. Section 386-123, HRS, holds the employer liable for penalties for failure to comply with section 386-121, HRS, which requires employers to secure workers' compensation coverage. Section 386-121 also allows the Director to seek an injunction against employers who do not have workers' compensation coverage.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of HB208 HD2 to help ensure all employers have the required coverage as mandated by law. However, as drafted, the proposal has some problematic aspects relating to current statute as well as operations. The Department is concerned with the unintended legal consequences of this measure, including due process, improper issuance of stop work orders, and liquidated damages. Therefore, DLIR recommends deleting sections 1 and 2 in its entirety and parts of section 3 (up until page 5, line 20).

To meet the intent of the measure, the Department recommends keeping the language struck out in the proposal beginning on page 5, line 20 through page 6, line 13. This existing statutory language allows the Director to enjoin the employer from carrying on business in the State. DLIR recommends reducing the existing statutory timeline of 30 days of non-compliance to 14 days in order to expedite compliance. Additionally, we would recommend clarifying where a lawsuit is filed, especially relating to out-of-state employers. DLIR offers the following amendment to the second paragraph of §386-123:

In addition, if any employer is in default under section 386-121 for a period of [~~thirty~~] fourteen days, the employer may be enjoined, by the circuit court of the circuit in which the employer's principal place of business is located[~~7~~] in the State or where the violation occurred, from carrying on the employer's business anywhere in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 1, 2017

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

Subject: H.B. 208, HD 2 - RELATING TO LABOR.

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we support the intent of the bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

This bill has come a long way to establish criteria and a procedure that would occur prior to the issuance of a stop work order. Providing notice with a time limit helps.

We are still concerned with Section 386-123 (a) regarding the payment of time lost and we are not quite sure how that would be calculated or substantiated.. The work order becomes effective immediately upon service and then the employer has to pay for any time lost not to exceed ten (10) days however, what if work schedules for the following week have not yet been made up? How then does anybody know what the time lost will be?

We also favor the protest procedure and urge a short time frame.

We recognize that the stop work order could be an effective tool in curbing non-compliance with the workers compensation statute however, we also are fearful that a stop work order that was erroneously issued needs to have a cure process that can happen as quickly as it was issued. Therefore, some type of notification to the employer would seem to need to occur.

Based on the above, we can support this bill though we believe that it still needs some fine tuning.

Thank you.



HAWAII REGIONAL COUNCIL OF CARPENTERS

February 26th 2017

House Finance Committee
Representative Sylvia Luke, Chair
Representative Ty Cullen, Vice Chair

Statement of the Hawaii Regional Council of Carpenters – Support for HB 208 H.D. 2

Aloha Chair Luke and members of the House Finance Committee:

The Hawaii Regional Council of Carpenters strongly supports HB 208 H.D. 2, which would authorize the Department of Labor and Industrial Relations Director or the Director's designee to issue a stop-work order prohibiting the continued use of employee labor until the employer complies with the law.

Stop-work orders would be a “last-resort” option for DLIR, but we believe that this type of tool will be effective in preventing workers from being made to work without proper coverage. We note that several other states can issue stop-work orders to employers who do not have proper workers' compensation coverage, including:

- California (Cal. Labor Code §3710);
- Connecticut (Conn. Gen. Stat §31-76a);
- Florida (Fla. Stat. §440.107);
- Massachusetts (Mass. Gen. Laws. Ch. 152, §25C);
- New Jersey (N.J. Rev. Stat. §34:20-1);
- New York (N.Y. Work Comp Law §141-A); and
- Washington State (Wash. Rev. Code §51.48.022).

By these states' abilities to issue stop-work orders, their workers enjoy more protections and, by extension, safer job sites. We believe our local workers deserve the same.

Thank you for the opportunity to voice our opinion.

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Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
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February 27, 2017

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and members
House Committee on Finance
Hawai'i State Legislature
Honolulu, Hawai'i 96813

RE: Strong Support for HB208 HD2, Relating to Labor

Dear Chair Luke, Vice Chair Cullen, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; 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.

We **strongly support HB208 HD2**, which would authorize the Director of Labor and Industrial Relations or the Director's designee to issue and serve on an employer a stop-work order prohibiting the use of employee labor by the employer until the employer complies with certain provisions regarding security for payments of compensation to employees and would establish penalties, enforcement, and protest procedures related to stop-work orders.

The Hawai'i Construction Alliance has been extremely concerned by the increasing problem of unscrupulous employers not following laws designed to protect the health and safety of Hawai'i workers, in particular, Section 386, the Workers' Compensation chapter.

It is far too common for employers in Hawai'i — particularly in the construction industry — to not provide their employees with temporary disability insurance and workers' compensation coverage. Often, this is due to employers fraudulently misclassifying workers as "independent contractors" or willfully neglecting to provide such coverage in an attempt to cut costs and retain profits. This sort of behavior is unacceptable and actively harms Hawai'i workers and families.

Last year, the legislature passed HB2363, which was signed into law as Act 187. This bill, among other things, increased fines for employers who did not have Workers' Compensation coverage. At the time, we believed that increasing fines would serve as a sufficient deterrent to cause unscrupulous contractors to think twice before flouting the law.

Unfortunately, unscrupulous contractors continue to operate – as was discovered at the recent raids at the Maile Sky Court and Polynesian Plaza construction projects in Waikīkī. Thus, we strongly believe that the Department of Labor and Industrial Relations ought to be given another enforcement tool – the issuance of stop-work orders – to further deter bad actors and to prevent workers who aren't provided coverage from being placed into unsafe situations.

Stop-work orders would be a “last-resort” option for DLIR, but we believe that this type of tool will be effective in preventing workers from being made to work without proper coverage. We note that several other states have the ability to issue stop-work orders to employers who do not have proper workers’ compensation coverage, including:

- California (Cal. Labor Code §3710);
- Connecticut (Conn. Gen. Stat §31-76a and §31-288(g));
- Florida (Fla. Stat. §440.107);
- Massachusetts (Mass. Gen. Laws. Ch. 152, §25C);
- New Jersey (N.J. Rev. Stat. §34:20-1);
- New York (N.Y. Work Comp Law §141-A); and
- Washington State (Wash. Rev. Code §51.48.022).

By virtue of these states’ abilities to issue stop-work orders, their workers enjoy more protections and, by extension, safer job sites. We believe Hawai‘i workers deserve the same.

We note that various industry stakeholders have been working together among themselves and with DLIR to develop amendments to address concerns which have been raised. We support these efforts and hope that all concerns will be adequately addressed through the legislative process.

In closing, we strongly ask for your committee’s favorable action on HB208 HD2.

Mahalo,



Tyler Dos Santos-Tam
Executive Director
Hawai‘i Construction Alliance
execdir@hawaiiconstructionalliance.org

Testimony of
Pacific Resource Partnership

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

HB 208, HD2 – Relating to Labor
Wednesday, March 1, 2017
2:30 P.M.
State Capitol – Room 308

Aloha Chair Luke, Vice Chair Cullen and members of the Committee:

In an effort to ensure a level playing field for employers who do follow the workers' compensation law in the State of Hawaii, we **strongly support** HB 208, HD2 and its efforts to authorize the Department of Labor and Industrial Relations Director or the Director's designee to issue a stop-work order prohibiting the continued use of employee labor until the employer complies with the law.

Under existing law, an employer failing to comply with workers' compensation laws in the State of Hawaii is liable for a penalty of not less than \$500 or of \$100 for each employee for every day the employer fails to comply with the law. Harsher penalties are needed in order to deter large, medium, and small employers from ignoring Hawaii's workers' compensation laws. Unscrupulous employers will continue to work unlawfully, even when fines are issued, because, currently, the benefits of cheating outweigh the risk. A stop-work order is the best remedy for this problem for the following reasons:

- **Failure to stop employers from ignoring workers' compensation laws will only reward unscrupulous employers.** Employers who don't abide by Hawaii's workers' compensation laws have an unfair advantage over those employers that follow the law. Their services and products will be cheaper than the employer who adheres to the law. As such, a stop-work order will incentivize employers to pay their workers' compensation insurance and make cheating an unprofitable business model in the State of Hawaii.
- **Employers should not be required to pay higher premiums because delinquent employers are not following the law.** Large numbers of employers not paying their fair share of workers' compensation exposes the special compensation fund to greater risks of having to pay workers' compensation to employees who are not covered by their delinquent employers. Inadequate funding in the special compensation fund could drive up the costs of workers' compensation for Hawaii employers.



(Continued From Page 1)

- **Stop-work orders protect the employer and employee.** A stop-work order can stop work before an uninsured employee is injured on the job. This could protect the employer from additional liabilities and protect the employee from uninsured injuries.

It's in the best interest of the State of Hawaii to stop the work of unscrupulous employers who are in violation of Hawaii's workers' compensation laws, and who are profiting at the expense of employers and employees who follow the law. We, therefore, respectfully request your support on HB 208, HD2.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Wednesday, March 1, 2017 at 2:30 P.M.
Conference Room 308, State Capitol**

RE: HOUSE BILL 208 HD2 RELATING TO LABOR

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to provide **comments** regarding HB 208 HD2, which authorizes the Director of Labor and Industrial Relations or the Director's designee to issue and serve on an employer a stop-work order prohibiting the use of employee labor by the employer until the employer complies with certain provisions regarding security for payments of compensation to employees; also establishes penalties, enforcement, and protest procedures related to stop-work orders.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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 appreciate the intent of the bill to ensure that all companies are on the same playing field in abiding by the laws and rules of the state. At the same time, we have some concerns on the lack of specificity on how investigations would take place, and what is the burden of proof on the department on issuing the stop-work order. A clear due process structure needs to be clarified as the penalties are both monetary and imprisonment. We also would ask that the Director or their designee be given latitude to issue a stop-work order rather than the law mandating them to do so.

Please keep in mind that the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaint Office (RICO) has the ability to cite for unlicensed activity, including non-compliance with workers compensation insurance and order a project to cease and desist. The City and County of Honolulu also has a similar ordinance which allows them to order a project to be stopped if it is based on public health and safety.

Lastly, we have concerns while this bill has genesis in the construction industry; it applies to all business and could adversely affect many other companies and industries.

Thank you for the opportunity to testify.