

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.labor.hawaii.gov](http://www.labor.hawaii.gov)  
Phone: (808) 586-8844 / Fax: (808) 586-9099  
Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

March 15, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Karl Rhoads, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 15, 2017  
Time: 9:00 a.m.  
Place: Conference Room 016, 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, HRS, 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, the Department recommends deleting sections 1 and 2 in its entirety.

Furthermore, as default businesses, especially mainland companies have no or limited assets in Hawaii it is difficult to collect penalties once issued. DLIR recommends adding language to the measure to secure a portion of the penalty through a surety bond or letter of credit. DLIR recommends adding language to section 3(b), on page 5, line 6 to by inserting after "circuit court" the following:

after filing a surety bond or letter of credit with  
the Director in the amount equal to 10% of the penalty  
amount ;

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.

Moreover, as a business owner may be associated with multiple companies under a different name or business type, DLIR recommends adding the following language to the measure to prevent a company from knowingly misrepresenting themselves or closes the existing business and reopening the business under another name:

Stop work orders and any penalties imposed shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership or sole proprietorship against which the stop-work order was issued.



**Testimony to the Senate Committee on Judiciary and Labor  
Wednesday, March 15, 2017 at 9:00 A.M.  
Conference Room 016, State Capitol**

**RE: HOUSE BILL 208 HD2 RELATING TO LABOR**

Chair Keith-Agaran, Vice Chair Rhoads, 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.

# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

---

March 13, 2017

The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Karl Rhoads, Vice Chair  
and members  
Senate Committee on Judiciary and Labor  
415 South Beretania Street  
Honolulu, Hawai'i 96813

**RE: Support for HB208 HD2, Relating to Labor and Support for Amendments**

Dear Chair Keith-Agaran, Vice Chair Rhoads, 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 **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 understand that Pacific Resource Partnership is proposing amendments in their testimony which would address some of these concerns. **We support the amendments being proposed by Pacific Resource Partnership.**

We also recognize that your committee heard a similar bill, SB854, which pertained to stop-work orders for employers who do not comply with certain provisions regarding security for payments of compensation to employees. We note that this bill is unlikely to meet internal legislative deadlines on the House side, and **therefore we request that your committee consider incorporating language from SB854 into HB208 to establish penalties for employers who commit wage violations.** We defer to the Department of Labor and Industrial Relations and other industry stakeholders as to specific workable language in regard to penalties for employers who commit wage violations.

In closing, we strongly ask for your committee’s favorable action in **amending and approving HB208 HD2.**

Mahalo,



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



## HAWAII REGIONAL COUNCIL OF CARPENTERS

March 14, 2017

Senate Committee on Judiciary and Labor

Chair Gilbert S.C. Keith-Agaran  
Vice Chair Karl Rhoads

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

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the 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.

We support proposed amendments for a possible SD 1, that takes into account the collaborative effort by the Department of Labor and industry stakeholders to refine the bill to ensure it works as intended.

Thank you for the opportunity to voice our opinion.

#### STATE HEADQUARTERS & BUSINESS OFFICES

**OAHU:** 1311 Houghtailing Street, Honolulu, Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 841-0300

**HILO OFFICE:** 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576

**KONA OFFICE:** 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376

**MAUI OFFICE:** 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961

**KAUAI OFFICE:** Kuhio Medical Ctr. Bldg., 3-3295 Kuhio Hwy., Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 15, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR HONORABLE KARL RHOADS, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **COMMENTS REGARDING H.B. 208, HD2 RELATING TO LABOR.**

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. Establishes penalties, enforcement, and protest procedures related to stop-work orders. (HB208 HD2)

Committee Hearing

DATE: March 15, 2017  
TIME: 9:00 a.m.  
PLACE: Room 016

Dear Chair Keith Agaran, Vice Chair Rhoads and Members of the Committee,

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

**The GCA has comments regarding H.B. 208, HD2, Relating to Labor and will continue to work with proponents of this measure to ensure proper safeguards are put in place to protect all parties involved.** While GCA appreciates the intent of this legislation and the requirement that all employers comply with the law to a safe work environment to protect from a work related injury, GCA requests that employers are afforded due process if accused of such non-compliance and that the law ensures if there is one contractor on the job that is in non-compliance with their workers compensation it does not stop the entire project but only essentially stops the violator from its work.

H.B. 208, HD2, Relating to Labor, proposes to allow the Department of Labor and Industrial Relations (DLIR) to issue and serve on any employer, whether it be in construction or any other industry, an immediate order to stop work due to non-compliance with Section 386-121, compliance with Workers Compensation. The proposal lacks specifics on how DLIR would investigate such non-compliance or what burdens the DLIR may have to prove prior to issuing an order to stop work. This bill also indicates that the failure to observe a stop work order is a misdemeanor punishable by imprisonment not exceeding one year or by a fine not exceeding \$10,000, or both. Furthermore an employee affected shall be paid for time lost not to exceed 10



days, GCA questions whether or not it would depend on who receives the violation, for construction what if the violation is by the subcontractor – in that case is the entire project stopped or only the portion being performed by the subcontractor, does that mean the project can go on with other compliant contractors on the project?

Under current law, the DLIR has the ability to request that the Attorney General petition the Court to enjoin a business from carrying on its business if an employer is in default of their workers compensation for a period of thirty days. See HRS Section 386-123. In addition, the Department of Commerce and Consumer Affairs through its Regulated Industries Complaint Office, known as 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. See Revised Ordinances of Honolulu, Article 7, Section 18-7.5.

GCA respectfully requests the Committee consider safeguards for the protection of all parties involved to ensure any attempt to stop work is given full consideration and is supported by factual information. Such factual information should be as a result of a complete investigation supported by evidence of such an alleged violation. **For these reasons, we respectfully request the Committee consider adding language that clearly articulates the standard the DLIR must satisfy *before* issuance of an order to stop work; provide an employer adequate notice or advance warning of such an allegation *before* an order to stop work is issued; allow an employer the ability to adequately respond and defend against such allegation *before* a stop work order is issued; and most importantly allow the employer to secure the place of employment for all employees and the public at large *before* issuance of a stop work order.**

GCA will continue to work with proponents of this measure to include such safeguards. Thank you for the opportunity to present our views on this matter and for considering our requested language to ensure such enforcement mechanisms include proper safeguards for the employee, employer and the public at large.

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

HB 208, HD2 – Relating to Labor  
Wednesday, March 15, 2017  
9:00 A.M.  
State Capitol – Room 016

Aloha Chair Keith-Agaran, Vice Chair Rhoads, 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, Pacific Resource Partnership (PRP) strongly supports HB 208, HD2 with amendments. The amendments are based on prior testimonies from the Department of Labor and Industrial Relation (DLIR) and various stakeholders (see proposed SD1 attachment):

- Completely remove the posting requirement for Workers' Compensation insurance.
- Amend language to say that after the department has conducted an investigation and has reason to believe that an employer is in violation of Hawaii's workers' compensation law, the director is required to provide the employer with written notice requiring the employer to show their valid Certificate of Liability Insurance issued by the insurance carrier or a Self-insurance Authorization in accordance with the law within 5 business days. Failure to provide these documents within 5 business days shall be prima facie evidence of a violation of the workers' compensation law. This will put the burden of proof on the employer to prove that they are in compliance with the law.
- Remove language that would require an employer to pay employees 10 days of time lost due to the stop-work order.
- Include a timeframe for the administrative hearing process for a stop-work order.
- Amend language so a stop-work order will not be in effect during the pendency of a timely appeal.



**(Continued From Page 1)**

- Amend language to provide the employer with the opportunity to appeal the director's decision to the appellate board; and provides the employer with the opportunity to appeal the appellate board's decision in circuit court.
- Remove criminal penalties for the failure to observe the stop-work order.
- Amend language to authorize the director to apply for an injunction or other relief from the courts, including a fine of \$1,000 per day for non-compliance, against an employer who violates a stop-work order.
- Keep existing language in Section 386-123, Hawaii Revised Statutes, and amend the timeframe for enjoining an employer in violation; similar amendments are also proposed for temporary disability insurance and Prepaid Health Chapters in the HRS.
- Add an upon approval effective date.

PRP also recommends further amendments to HB 208, HD2 that would incorporate DLIR's proposed amendments to SB 854, SD1, which the department submitted in testimony to the Senate Committee on Ways and Means on February 24, 2017 (see attached DLIR's testimony and recommended amendments).

Thank you for this opportunity to testify.

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.*

---

---

## A BILL FOR AN ACT

RELATING TO LABOR.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding four new sections to part III to be appropriately designated and to read as follows:

"§386- Stop-work order. (a) When the department of labor and industrial relations, as a result of investigation by the department, has reason to believe that a violation of section 386-121 has occurred, the director or director's designee shall provide the employer with written notice requiring the employer to show their valid Certificate of Liability Insurance issued by the workers' compensation insurance carrier or a Self-insurance Authorization pursuant to section 386-121(a)(6) within five business days. Failure to provide a valid Certificate of Liability Insurance issued by the workers' compensation insurance carrier or a Self-insurance Authorization pursuant to section 386-121(a)(6) to the department within five business days shall be prima facie evidence of a violation of section

386-121, and the director or the director's designee shall issue and serve the employer a stop-work order that prohibits the use of employee labor by the employer until the employer is in compliance with the provisions of section 386-121. The stop-work order shall become effective immediately upon service.

(b) An employer may protest a stop-work order by making and filing with the director a written request for a hearing within ten business days after service of the stop-work order. The hearing shall be held within twenty-one business days from the date of filing the request. The director shall notify the employer of the time and place of the hearing by mail. The stop-work order shall not be in effect during the pendency of any timely filed appeal. Any stop-work order and monetary penalty in accordance with section 386-123 shall be rescinded if the director or director's designee finds at the hearing that the employer has at all times been in compliance with this chapter. If the director or director's designee finds at the hearing that the employer did or has not provided for all insurance or self-insurance as required under section 386-121, the stop-work order shall be effective immediately at the conclusion of the hearing and shall remain in effect until such time as the employer provides evidence, satisfactory to the director or director's designee, of having secured any necessary insurance or self-insurance and pays penalties as required by

section 386-123, counting the date when the violation occurred as the first day and the date of payment of the penalty in accordance with section 386-123 and of production of evidence of insurance or self-insurance as required under section 386-121 as the final day. The director shall also issue a written decision to all parties by registered or certified mail within seven business days. If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 386; provided that the operation of a stop-work order shall not be stayed on appeal unless specifically ordered by the appellate board or court of competent jurisdiction in accordance with section 91-14(c)."

"§386- **Stop-work order; failure to comply; fines.** The director or the director's designee may apply to the appropriate court for injunctive or any other relief the court deems appropriate, including a fine of not less than \$1,000 per day against an employer for each day that it conducts business operations that are in violation of a stop-work order issued pursuant to this section.

§386- **Stop-work order; withdrawal.** The director has the discretion to withdraw a stop-work order if good cause is shown; provided the employer in default complies with section 386-121.

§386- **Enforcement; recovery of attorneys' fees and costs.** The court may award reasonable attorneys' fees and costs

to the department in an action brought by the department to enforce the provisions of this chapter, including injunctive and other relief to carry out the purposes of sections 386-121 and 386-123."

SECTION 2. Section 386-123, Hawaii Revised Statutes, is amended to read as follows:

**"§386-123 Failure to give security for compensation; penalty; injunction.** In addition to any other remedy available, including a stop-work order, [If] an employer [~~fails~~] failing to comply with section 386-121, [~~the employer~~] shall be liable for a penalty of not less than \$500 or of \$100 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State, and the amount so collected shall be paid into the special compensation fund created by section 386-151. The director may, however, in the director's discretion, for good cause shown, remit all or any part of the penalty in excess of \$500; provided that the employer in default complies with section 386-121. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

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.

SECTION 3. Chapter 392, Hawaii Revised Statutes, is amended to read as follows:

**"§392-47 Failure to give security for payment of benefits; penalty; injunction.** If an employer fails to comply with section 392-41 the employer shall be subject to a penalty of not less than \$500 or of \$100 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought in the discretion of the director and the amount so collected shall be paid into the trust fund for disability benefits created by section 392-61. The director may, however, in the director's discretion, for good cause shown, remit all or any part of the penalty in excess of \$500; provided that the employer in default complies with section 392-41.

Furthermore, if any employer is in default under section 392-41, 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 in the State



or where the violation occurred from carrying on the employer's business any place 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.

SECTION 4. Chapter 393, Hawaii Revised Statutes, is amended to read as follows:

**§393-33 Penalties; injunction.** (a) If an employer fails to comply with section 393-11, 393-12, 393-13, or 393-15 the employer shall pay a penalty of not less than \$25 or of \$1 for each employee for every day during which such failure continues, whichever sum is greater. The penalty shall be assessed under rules and regulations promulgated pursuant to chapter 91 and shall be collected by the director and paid into the trust fund for premium supplementation established by section 393-41. The director may, for good cause shown, remit all or any part of the penalty.

(b) Any employer, employee, or prepaid health care plan contractor who wilfully fails to comply with any other provision of this chapter or any rule or regulation thereunder may be fined not more than \$200 for each such violation.

(c) Any employer who fails to initiate compliance with the coverage requirements of section 393-11 for a period of [~~thirty~~ fourteen] days, may be enjoined by the circuit court of the

circuit in which the employer's principal place of business is located in the State or where the violation occurred from carrying on the employer's business any place 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.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on upon approval.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHINO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.labor.hawaii.gov](http://www.labor.hawaii.gov)  
Phone: (808) 586-8844 / Fax: (808) 586-9099  
Email: [dllr.director@hawaii.gov](mailto:dllr.director@hawaii.gov)

February 24, 2017

To: The Honorable Jill N. Tokuda, Chair,  
The Honorable Donovan M. Dela Cruz, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Friday, February 24, 2017  
Time: 1:35 p.m.  
Place: Conference Room 211, State Capitol

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

**Re: S.B. No. 854 HD1 Relating to Labor**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal adds a provision to the Payment of Wages and Other Compensation Law, chapter 388, Hawaii Revised Statutes (HRS), to allow the Department to impose an administrative stop-work order for violations of the law. Authorizes a \$1,000 penalty for violations of the chapter.

The Department supports the intent of SB854 SD1 and offers amendments for the committee's consideration.

**II. CURRENT LAW**

There is no administrative stop-work order in the law. There is a provision that authorizes the court to issue an injunction against the employer for violations in section 388-9, HRS, and a provision for criminal penalties under section 388-10(b) HRS. However, the evidentiary burden and process to use these two provisions is such that the Department rarely uses them. In addition, often the employer will be out of business or bankrupt before DLIR is able to use these provisions.

There is no penalty imposed for violations of chapter 388 that goes into the general fund.

**III. COMMENTS ON THE SENATE BILL**

The Department supports the intent of SB854 SD1 as a tool to promote compliance with Hawaii's payment of wage laws, but believes a more effective approach would be to provide an administrative process in chapter 388, HRS.

DLIR suggests providing an administrative process with judicial review of the administrative determination and administrative penalties. The Wage Standards Division already has a very similar administrative process for chapter 104, Hawaii's Wages and Hours of Employees on Public Works Law. Draft language for the Committee's consideration is attached.

SECTION 1. Chapter 388, Hawaii Revised Statutes, is amended by adding five new sections to part I to be appropriately designated and to read as follows:

**"§388-A Notification of Wage Payment Violation Order. (a)**

When the department, as a result of the department's own investigation, finds that a violation of this chapter or the administrative rules adopted under this chapter has been committed, the department shall issue a notification of wage payment violation order to the employer involved.

(b) A notification of wage payment violation order shall be final and conclusive unless within twenty days after a copy has been sent to the employer, the employer files a written notice of appeal with the director.

(c) A hearing on the written notice of appeal shall be held pursuant to chapter 91 by a hearings officer appointed by the director.

(d) Hearings shall be held within 60 days of the notice of appeal and a decision shall be rendered by the hearings officer within 60 days after the conclusion of the hearing, stating the findings of fact and conclusions of law.

(e) Any party may obtain judicial review of the decision issued pursuant to section 388-A(d) in the manner provided in chapter 91.

**§388-B Notification of wage payment violation order; penalties.** Where the department finds that a violation of this

chapter or the administrative rules adopted under this chapter has been committed, the department shall assess a penalty, pursuant to section 388-10(a), of not less than \$500 or \$100 for each employee, whichever sum is greater for each violation found.

**§388-C Notification of wage payment violation order; withdrawal; penalties remitted.** In the absence of an appeal and within twenty days after a copy of the notification of wage payment violation order has been sent to the employer the director may withdraw or modify a notification of wage payment violation order or remit all or any part of a penalty assessed if good cause is shown; provided the employer in default complies with this chapter and the administrative rules adopted under this chapter.

**§388-D Enforcement of the notification of wage payment violation order.** The director may file in the circuit court in the circuit in which the employer does business or where the violation occurred, either a certified copy of the notification of wage payment violation order or final decision and the court shall render a judgment in accordance with the notification of wage payment violation order and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard

and determined by the court, except that there shall be no appeal therefrom."

SECTION 2. Section 388-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§388-10 Penalties.** (a) Civil. Any employer who fails to pay wages in accordance with this chapter without equitable justification shall be liable [~~to the employee~~], in addition to the wages legally proven to be due to the employee, for a sum equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due[-] and a penalty of not less than \$500 or \$100 for each employee, whichever sum is greater."



Testimony of  
RAM Corporation dba  
Allied Builders System  
Justin Izumi, Vice President

State of Hawaii  
Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

HB 208, HD2 – Relating to Labor  
Wednesday, March 15, 2017  
9:00 A.M.  
State Capitol – Room 016

Chair Keith-Agaran, Vice Chair Rhoads and members of the Committee:

Founded in 1970, RAM Corporation dba Allied Builders System is a locally owned and operated general contracting firm. Fundamental to our corporate philosophy is a deep-rooted commitment to act responsibly and provide exceptional value in service to our clients, their design teams and industry partners.

We support HB 208, HD2, Relating to Labor. This measure 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. This measure also establishes penalties, enforcement, and protest procedures related to stop-work orders.

Failure to stop employers from paying appropriate wages only rewards unscrupulous employers over employers who follow the law. Stop-work order provisions in HB 208, HD2 will incentivize employers to follow the law and make cheating an unprofitable business model in Hawaii.

For these reasons, we support HB 208, HD2. Thank you for allowing us to testify.