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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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January 31, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, January 31, 2017
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 386, Hawaii Revised Statutes (HRS), by adding four new sections relating to stop-work orders to Part IV and by amending section 386-123, HRS. The bill authorizes the Director of Labor & Industrial Relations 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 Department supports the intent of HB208 to help ensure all employers have the required workers' compensation coverage as mandated by law and offers comments below.

II. CURRENT LAW

Section 386-123, HRS, holds the employer liable for penalties for failure to comply with section 386-121, HRS, and 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 to help ensure all employers have the required workers' compensation coverage as mandated by law. However, as drafted, the proposal contains some problematic aspects relating to the current statute as well as operations. DLIR is willing to work with the parties should the measure continue through the legislative process. This measure was largely

drafted using the California law and DLIR notes that it is aware that at least five other states besides California have similar laws (attached). Making the measure compatible with Hawaii's existing law would require amendments to other sections in chapter 386.

DLIR would like further information on California's implementation and whether California's implementation of stop-work orders is dependent on other programs and provisions in California's labor code.

Other considerations include:

- A stop-work order issued to an employer without a hearing will raise due process concerns on the part of the employer. Most, if not all, due process concerns could be addressed by amending section 386-99, HRS, to require employers to be responsible for posting policy information. In addition, the department could develop procedures and administrative rules to further address due process considerations.

The California law holds employers in strict liability on both coverage and posting policy information and in this manner avoids due process issues. California's law has operated for seventeen (17) years without a single challenge to stop-work orders DLIR learned in discussions with California staff responsible for administering the stop-work provisions.

- The proposal, as drafted, gives the department only five days to schedule a hearing, notify the parties, and hold the hearing, which is unrealistic and affords no one adequate time to prepare for the hearing. Requiring the Director to orally announce a decision at the end of the hearing then issue a written decision within 24 hours may be an onerous burden. Other concerns include that there is no mention of appeal rights and whether chapter 91 applies to these procedures.
- The enforcement provision in section one of the measure is unnecessary as the Director already, "... shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter," pursuant to section 386-73.5, HRS.
- The new sections should not be included in Part IV of the statute that is entitled "Security for Compensation; Employment Rights of Injured Employees; Funds." DLIR recommends that the new sections should be included in Part III, entitled, "Administration."
- DLIR notes that if it is required to administer these provisions, as drafted, it would likely need additional staffing and resources
- Misdemeanor offenses are usually punishable up to one year, not sixty days.

LATE

Stop Work Orders in Selected States

State	Reasons for issuing stop work order against an employer	When does the stop work order take effect? How is service accomplished?	Penalties for violating the stop work order	Scope of stop work order	Other information
California ¹	Failure to pay workers' compensation for employees.	Immediately upon service.	An employer or employee who fails to observe a stop order is subject to a misdemeanor punishable by up to 60 days in jail or a fine of up to \$10,000 or both	The order prohibits the use of employee labor by the employer until he or she comes into compliance	Employees who are affected by the work stoppage must be paid by the employer for up to ten days of time lost.
Connecticut ²	Misrepresenting his or her employees as independent contractors or providing false information regarding the amount of employees to obtain a lower premium rate	Immediately upon service. Service can be accomplished by posting a copy of the stop work order in a conspicuous location at the place of business or employment.	A person who violates a stop work order is subject to a penalty of \$1,000 for each day of the violation.	All business operations of the employer must cease. The order applies only against the employer found to be in violation and only to the specific place of business or employment for which the violation exists. It remains in effect until the employer comes into compliance	Stop work orders issued against a business are effective against any successor entity that has one or more of the same principals or officers as the business and are engaged in the same or equivalent trade or activity.
Florida ³	Failure to secure workers' compensation by understating payroll, misstating employee duties to avoid proper classification for premium calculations, or materially concealing information relating to the computation and application of an experience rating modification factor.	Immediately upon service. Service can be accomplished by posting a copy of the stop work order in a conspicuous location at the worksite, and it must be made on the employer	Employers who violate the stop work order are subject to a \$1,000 penalty for each day not in compliance	After service is made on the employer, the order is effective upon all employer worksites in the state for which the employer is not in compliance. The order remains in effect until the employer comes into compliance.	The employer may receive an order of conditional release from the stop work order if he or she has complied with the coverage requirements and agreed to pay penalties through a payment schedule. If the terms of the schedule are not met, the stop work order will be reinstated and the unpaid balance of the penalty will become due

¹ California Labor Code, Section 3710

² Connecticut Public Act No. 07-89

³ Florida Statutes Title XXXI, 440.107

Stop Work Orders in Selected States

State	Reasons for issuing stop work order against an employer	When does the stop work order take effect? How is service accomplished?	Penalties for violating the stop work order	Scope of stop work order	Other information
					<p>The employer may be required to file reports demonstrating compliance during a two year probationary period.</p> <p>Stop work orders issued against a business are effective against any successor entity that has one or more of the same principals or officers as the business and are engaged in the same or equivalent trade or activity.</p>
Massachusetts ⁴	Failure to provide workers' compensation payments to his or her employees.	Immediately upon service on the employer unless the employer provides evidence of securing insurance and pays a civil penalty of \$100 a day for each day of noncompliance.	None specified.	All business operations at the place of employment or job site must cease.	<p>The stop work order is not in effect during an appeal and will be rescinded if the employer is found to be in compliance. If the employer is not found to be in compliance, the stop work order is reinstated until he or she proves compliance and pays a penalty of \$250 a day for each day of noncompliance</p> <p>An employee affected by the stop work order must be paid for the first ten days lost due to the order.</p>
New Jersey ⁵	A second or subsequent violation of failing to properly classify an employee	Immediately upon service on the employer or worksite.	An employer who violates the stop work order is subject to a penalty of up to \$5,000 a day for each day of the violation.	The first stop work order (second violation) requires the cessation of all business operations at every site at which the violation occurred	<p>The employer may be required to file reports demonstrating compliance during a two year probationary period.</p> <p>Stop work orders issued against a business are effective against any</p>

⁴ Massachusetts General Laws c. 152, §25C

⁵ New Jersey Statutes c.34:20

Prepared for: Joint Legislative Task Force of the Underground Economy in the Construction Industry

Prepared by: Kathleen Buchli, Counsel, Senate Labor, Commerce, Research and Development Committee

Date: October 1, 2008

Stop Work Orders in Selected States

State	Reasons for issuing stop work order against an employer	When does the stop work order take effect? How is service accomplished?	Penalties for violating the stop work order	Scope of stop work order	Other information
				<p>The second and subsequent stop work orders (third or subsequent violations) require the cessation of all business operations of the employer.</p> <p>The order remains in effect until the employer properly classifies his or her employees and pays any penalties.</p>	<p>successor entity that has one or more of the same principals or officers as the business and are engaged in the same or equivalent trade or activity</p>
New York ⁶	<p>Failure to secure workers' compensation for his or her employees.</p>	<p>Immediately upon service.</p> <p>Service can be made at a worksite or to the employer. Service at the worksite is accomplished by posting the order in a conspicuous location at the worksite.</p>	<p>None specified.</p>	<p>When served on a worksite, the order is effective to that worksite. When served on the employer, the order is effective to all employer worksites for which the employer is not in compliance. The order remains in effect until the employer comes into compliance and pays any penalties.</p>	<p>The employer may receive an order of conditional release from the stop work order if he or she has complied with the coverage requirements and agreed to pay penalties through a payment schedule. If the terms of the schedule are not met, the stop work order will be reinstated and the unpaid balance of the penalty will become due.</p> <p>The employer may be required to file reports demonstrating compliance during a two year probationary period.</p> <p>A stop work order is in effect against any noncompliant substantially-owned affiliated entity.</p>

⁶ New York Assembly Bill Text A06163

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Hawai'i Construction Alliance

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

January 29, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and members
House Committee on Labor & Public Employment
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Strong Support for HB208, Relating to Labor

Dear Chair Johanson, Vice Chair Holt, 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, 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 the provisions of Section 386-121, Hawaii Revised Statutes. The bill also establishes penalty, 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 386-121, 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);
- 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.

Therefore, we strongly ask for your committee’s favorable action on HB208.

Mahalo,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

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

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

HB 208 – Relating to Labor
Tuesday, January 31, 2017
9:00 A.M.
State Capitol – Room 309

Aloha Chair Johanson, Vice Chair Holt 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 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.
- **A stop-work order will not unduly penalize employers who make a good faith effort to pay their workers' compensation insurance in accordance with the law.** There is no excuse for failing to pay workers' compensation insurance on time. Insured employers receive advanced notice prior to the expiration of their workers' compensation insurance. For instance, workers' compensation



(Continued From Page 1)

renewal notices are usually sent out to employers at least 30 days in advance from the insurer. In addition, statutory law requires that the insurer mail or deliver to the employer not less than 10 days advanced written notice stating when the insurance cancellation is to take effect (HRS §386-127). Therefore, employers are notified at least twice by insurers prior to the expiration of their workers' compensation insurance. Moreover, insurers are usually willing to work with employers if they make a good faith effort to comply with insurance payments. There may be times when an employer fails to pay their workers' compensation insurance on time due to a family emergency. Insurers are usually willing to work with these employers to ensure that there is no break in coverage, which means they will not be impacted by a stop-work order.

- **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.
- **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.

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.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

**TESTIMONY OF HAWAII LECET
CLYDE T. HAYASHI - DIRECTOR**

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Daniel Holt, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, January 31, 2017
TIME: 9 AM
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

TESTIMONY ON HOUSE BILL NO. 208, RELATING TO LABOR.

ALOHA COMMITTEE CHAIR AARON JOHANSON, COMMITTEE VICE CHAIR DANIEL HOLT, AND MEMBERS OF THE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

My name is Clyde T. Hayashi and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify on House Bill No. 208. This bill proposes to authorize the Director of Labor and Industrial Relations or the Director's designee, to issue and serve an employer a stop-work order prohibiting the use of employee labor by the employer until the employer complies with the provisions of section 386-121, Hawaii Revised Statutes. It also establishes penalties, enforcement, and protest procedure related to stop-work orders.

We believe every employer has a legal responsibility to their employees to ensure their workplace is safe. A workers' compensation policy compensates employees injured on the job for any medical care, rehabilitation and/or lost wages due to their injury. Additionally, workers' compensation protects a business from lawsuits stemming from workplace accidents.

Unfortunately in the construction industry, there are some contractors (with employees) that classify their workers as 1099 independent subcontractors or pay them in cash only. This is done to dodge paying for workers' compensation, Federal or State withholdings and unemployment tax, which also results in a clear bidding advantage over law-abiding contractors.

For these reasons, we support the intent of House Bill No. 208.

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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

January 31, 2017

TO: HONORABLE AARON JOHANSON, CHAIR HONORABLE DANIEL HOLT,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR
AND EMPLOYMENT

SUBJECT: **COMMENTS AND SUGGESTED AMENDMENTS TO H.B. 208,
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 the provisions of section 386-121, Hawaii Revised
Statutes. Establishes penalties, enforcement, and protest procedure related to stop-
work orders.

House Labor and Employment Committee Hearing

DATE: Tuesday, January 31, 2017
TIME: 9:00 a.m.
PLACE: Room 309

Dear Chair Johanson, Vice Chair Holt 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 appreciates the opportunity to share our comments regarding H.B. 208, Relating to Labor. While GCA appreciates the intent of this legislation and the requirement that all employers comply with the law to ensure that all employees are afforded a safe work environment to protect from a work related injury, GCA has some comments for your consideration to ensure employers are afforded due process if accused of such non-compliance.

H.B. 208, 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 60 days in jail or a fine not exceeding \$10,000, or both. Furthermore, among other things, the Stop Work Order would be immediate upon service and an employee affected shall be paid for time lost not to exceed 10 days.

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. Furthermore, 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 including procedural due process 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. Whether such investigation is for non-compliance with workers compensation, temporary disability insurance or non-payment of wages. In construction an order to stop work is an extreme mechanism that should not be taken lightly, given that a construction project's immediate stoppage may put employees and the general public at risk.

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.

We respectfully request these provisions be added to the measure before moving forward. 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.



HAWAII REGIONAL COUNCIL OF CARPENTERS

January 30, 2017

House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

LATE

Tuesday, January 31, 2017
9:00 A.M., State Capitol – Room 309

Statement of the Hawaii Regional Council of Carpenters – Support for HB 208

Aloha Chair Johanson, Vice Chair Holt and members of the Committee:

The Hawaii Regional Council of Carpenters strongly supports HB 208 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.

STATE HEADQUARTERS & BUSINESS OFFICES

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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

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Testimony to the House Committee on Labor
Tuesday, January 31, 2017
9:00 a.m.
Conference Room 309

LATE

RE: HB 208 – Relating to Labor

Chair Johanson, Vice-Chair Holt, and members of the committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii offers the following comments on HB 208, Relating to Labor.

This bill 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 the provisions of section 386-121 (workers' compensation rules).

Instead of an immediate stop-work order issued by the Department, there should be a grace period in which the the company is given to cure the situation after being notified in writing. Otherwise, if a stop-work order is just immediately issued without any notice, it could seriously harm a company, especially if the situation is a simple mistake or involves exigent circumstances.

We appreciate the opportunity to provide comments on HB 208.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Tuesday, January 31, 2017 at 9:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 208 RELATING TO LABOR

LATE

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to provide **comments** regarding HB 208, 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 the provisions of section 386-121, Hawaii Revised Statutes; establishes penalties, enforcement, and protest procedure 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.



LATE

Testimony to the House Labor & Public Employment Committee
January 31, 2017 at 9:00 a.m.
State Capitol - Conference Room 309

RE: HB 208, Relating to Labor

Aloha Chair Johanson, Vice Chair Holt and members of the committee:

We are John Knorek and Cara Heilmann, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents nearly 800 human resource professionals in the State of Hawaii.

We are writing to respectfully oppose HB 208, relating to labor. This bill 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 the provisions of section 386-121, Hawaii Revised Statutes. It establishes penalties, enforcement, and protest procedure related to stop-work orders. We believe that this measure is unnecessary in light of existing employer penalties and would also tend to negatively affect consumers in the event of a shut down.

Human resource professionals are attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses’ most valuable asset: human capital. We truly have our employers’ and employees’ interests at heart. We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it.

Thank you for the opportunity to testify.

