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March 14, 2017

To: The Honorable Clarence K. Nishihara, Chair,  
The Honorable Glenn Wakai, Vice Chair, and  
Members of the Senate Committee on Public Safety, Intergovernmental,  
and Military Affairs

Date: Tuesday, March 14, 2017  
Time: 1:15 p.m.  
Place: Conference Room 229, State Capitol

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

**Re: H.B. No. 377 HD1 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal adds a new section to the workers' compensation statute that requires applicants for each county's building permits and the applicant's subcontractors to secure workers' compensation coverage, State-approved self-insurance, or an exemption from the workers' compensation statute.

This measure provides a process for submitting a signed declaration to the county to prove that the applicant has workers' compensation coverage or is exempt from coverage and; in turn, the county shall submit the signed declaration to the Department (DLIR) within three business days of receipt to verify coverage or exemption. If the applicant or any of its subcontractors do not have the required coverage or exemption, the building permit shall be suspended until coverage is obtained for all work performed pursuant to the building permit. The bill shall take effect on July 1, 2050.

DLIR supports the intent of HB377 HD1 to help ensure all employers have the required workers' compensation coverage as mandated by law and defers to the Counties on the operational and other impacts to them.

**I. CURRENT LAW**

Chapter 386, Hawaii Revised Statutes (HRS), requires employers to purchase workers' compensation insurance coverage from a Hawaii-licensed insurance carrier or adopt an approved self-insured plan. Except for those specifically excluded from coverage, the workers' compensation law covers almost everyone hired to work. Employers who fail to provide the required coverage may be penalized not less than \$500 or \$100 for each worker for every day during which such failure to obtain coverage continues, whichever sum is greater.

The Department currently verifies workers' compensation coverage or exemption from coverage for contractors working on jobs for the State of Hawaii or the Counties.

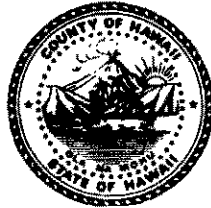
**III. COMMENTS ON THE HOUSE BILL**

The Department recognizes the proposal as another tool to help ensure compliance with chapter 386, HRS. However, DLIR notes that this measure will impact the Department's limited staffing and resources and further prolong the permitting process.

To accomplish the same end result, DLIR recommends that the applicant provide the County with a Certificate of Liability Insurance issued by the workers' compensation insurance carrier or a Self-insurance Authorization pursuant to section 386-121(a)(6) at time of building permit submittal.

Provided the above recommendation is incorporated into the measure, subsections (b) and (c) would not be necessary and DLIR recommends deleting them.

Harry Kim  
Mayor



Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

County of Hawai'i  
Office of the Mayor

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March 13, 2017

Senator Clarence Nishihara  
Public Safety, Intergovernmental and  
Military Affairs  
Hawai'i State Capitol  
Honolulu, HI 96813

Dear Chair Nishihara and members:

RE: **HB 377, HD 1**  
**Relating to Worker's Compensation**

Thank you for this opportunity to testify against HB 377, HD1.

HB 377, HD1 would require, as a condition for the issuance of a building permit, that the County receive a signed declaration under penalty of perjury that the building permit applicants and their subcontractors have workers' compensation coverage/insurance, or an exemption from coverage. The legislation would also require coordinated communication between county permitting agencies and the Director of Labor and Industrial Relations, to ensure compliance.

"Communication" means a county would submit the signed declarations to the State within three business days of their receipt. Then, if notified by the State that a permit applicant's insurance has been canceled or suspended, the County would have to suspend the building permit until the applicant obtains insurance coverage.

This legislation would be a unilateral imposition on the counties to assume what clearly is a state function/responsibility. The legislation adds accounting, reporting, and compliance requirements without any monetary compensation to the counties for the increased workload. The legislation would add cost and time delays to an already burdensome building permitting process, at a time when the Governor and the county mayors are trying to create more affordable housing construction opportunities.

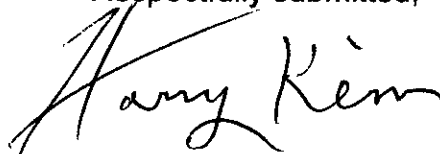
Workers' comp insurance is a complex issue based on the nature of the work being performed and risk/danger posed to the worker. The counties do not have the expertise to determine if the applicants' insurance coverage/signed declaration is appropriate for the various types of work being performed under the building permit. HB 377, HD1 seems to recognize that it must be the State that makes the determination whether proper insurance is in place, but at some point will the State require the counties to become experts in workers' comp insurance?

Although HB 377, HD1 would seem to impose only a minor burden on the counties, we are concerned about the timeliness of the verification process by the DLIR that could have a significant effect on a county's building permit process. It could result in a suspension of a building permit once work has commenced, and could be cause for much aggravation and confusion that the county will ultimately have to deal with. This could include a stoppage of work that leaves site conditions in an unsafe manner, or improvements that will be damaged as a result of exposure to the elements. Who will be liable should public/worker safety be compromised, or damaged personal property occur because a stop-work order is issued as a result of lack of proper insurance coverage?

At a minimum, HB 377, HD1 should be amended to provide explicitly that the counties will not be liable for injury or damages resulting from suspending a permit based on DLIR's directive.

Thank you for considering our testimony and the concerns that we have expressed.

Respectfully submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive style with a large, sweeping initial "H".

Harry Kim  
Mayor

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 14, 2017

TO: HONORABLE CLARENCE NISHIHARA, CHAIR HONORABLE GLENN WAKAI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

SUBJECT: **COMMENTS REGARDING TO H.B. 377, HD1, RELATING TO WORKERS COMPENSATION.** Requires building permit applicant and their subcontractors to have and verify workers' compensation coverage or an exemption from coverage. Requires coordinated communication between county building permitting agencies and the Director of Labor and Industrial Relations to ensure compliance. (HB377 HD1)

**LATE**

HEARING

DATE: March 14, 2017  
TIME: 1:15 p.m.  
PLACE: Conference Room 229

Dear Chair Nishihara, Vice Chair Wakai and Committee Members,

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.

GCA has comments regarding H.B. 377, HD1, Relating to Workers Compensation, which would **require that each of the four counties request of an applicant for a building permit an affidavit reflecting proof of workers compensation insurance for all contractors that may be working on the project, including general contractors and subcontractors.** While we understand the intent behind this measure which is to ensure that those who are applying for a building permit are in compliance with their workers compensation coverage, GCA does not believe this measure will further the goal of protecting the worker. The law already requires that a licensed contractor possess and retain workers compensation insurance; and thus enforcement of this requirement should be the avenue to ensure compliance.

This measure would not only add more time and delay to the issuance of a permit, but could also place an additional burden on the applicant for the permit, who in some cases could be the government for a public works projects. H.B. 377, HD1 proposes to require that the applicant sign an affidavit that would include names of the contractor and its subcontractors, many of whom the permit applicant may not know or have hired when the permit application is submitted. Furthermore, it would require that the applicant also include their federal or state employee identification numbers, which places an additional burden on the applicant to seek this information prior to applying for a permit. For permits covering construction that span over more

than a year, when will the DLIR check each permit and will the DLIR have sufficient staff to check each permit application?

What is unknown is how the County would be able to enforce such, whether the County and the State Department of Labor (DLIR) have the resources to collect such data and whether or not they would be able to use such information to enforce the law. Currently the Department of Commerce and Consumer Affairs through its Professional and Vocational Licensing Division and the Contractors Licensing Board posts information regarding contractor's workers compensation status online, which is updated regularly. The GCA believes that the proposed bill could create additional unnecessary work for the applicant of the building permit and will not reduce the incidents of licensed contractors working without the required workers compensation insurance covering his workers?

Thank you for the opportunity to present our views on this matter.

# Hawai'i Construction Alliance

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

March 13, 2017

The Honorable Clarence K. Nishihara, Chair  
The Honorable Glenn Wakai, Vice Chair  
and members  
Senate Committee on Public Safety,  
Intergovernmental, and Military Affairs  
415 South Beretania Street  
Honolulu, Hawai'i 96813



**RE: Support for HB377 HD1, Relating to Workers' Compensation  
and Support for Suggested Amendments**

Dear Chair Nishihara, Vice Chair Wakai, 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 HB377 HD1**, which would require building permit applicant and their subcontractors to have and verify workers' compensation coverage or an exemption from coverage, and also require coordinated communication between county building permitting agencies and the Director of the Department of Labor and Industrial Relations to ensure compliance.

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, employers in the construction industry will claim that they either did not know the requirements or will claim that their employees are "independent contractors" and don't require coverage from the employer.

Currently, the bill would establish a requirement for employers to self-certify that they have workers' compensation coverage or an exemption, eliminating employers' dubious claims that they didn't know the law. The possibility of their building permit being suspended for violations will cause contractors and the developers who hire them to think twice before proceeding with a project wherein workers are misclassified as "independent contractors."

We recognize, however, that other industry and government stakeholders have raised concerns about how the bill would be implemented and whether certain provisions would be effective in preventing unscrupulous contractors from acting outside of the law. Therefore, **we support the amendments recommended by the Pacific Resource Partnership** in their testimony, which specifically would:

- Remove requirements in sections (a)(1) and (2) that would require the permit applicant to attest and verify that subcontractors have secured workers' compensation, state-approved self-insurance, or an exemption from insurance;
- Remove language in sections (a)(1) and (2) requiring applicant to provide specific information related to workers' compensation in the declaration, including the name of workers' compensation policies and federal and state employer identification numbers;
- Completely remove sections (b), (c), (d), and (e); and
- Add language to include a new section (b) that would require contractors 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), or the county building permitting agency may verify workers' compensation coverage by electronic means.

In closing, we humbly request that your committee **amend and approve HB377 HD1**.

Mahalo,



Tyler Dos Santos-Tam  
Executive Director  
Hawai'i Construction Alliance  
[execdir@hawaiiconstructionalliance.org](mailto:execdir@hawaiiconstructionalliance.org)



# ***SAH - Subcontractors Association of Hawaii***

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

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

March 14, 2017

**LATE**

Testimony To: Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence Nishihara, Chair

Presented By: Tim Lyons, President

Subject: H.B. 377, HD 1 - RELATING TO WORKERS' COMPENSATION

Chair Nishihara and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we generally like the intent of this bill but we have concerns that it will work. 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

It is our impression that the intent of the bill is to be sure that contractors have their workers' compensation insurance. That insurance is in arrangement between the contractor and the insurer with an insurance agent in between. In order to maintain their license under Chapter 444, they must maintain their workers' compensation insurance and in situations where they don't there is an automatic suspension of contractor's license provision which can mature into a license forfeiture provision if the insurance suspension is not resolved.

We think it would be very unworkable for the prime contractor to provide subcontractor workers' compensation coverages along with their federal and state employer identification numbers inasmuch as that could be a changing situation. Workers' compensation policies are issued on a daily basis and typically are good for a one (1) year period. In other words, expiration dates could happen every day of the year.

The bill also talks about exemptions however we are not aware of any exemptions except for a contractor who is not an employer, in other words one who does not have any employees. This is also another loophole in the proposal because a contractor could have no employees on Monday but have employees on Tuesday and no one would be aware of that except for the employer; certainly not the County or the State until some date after the fact. The other exemption, which is not really an exemption is if the contractor is self-insured. This is very rare in the subcontracting community based on the dollar volumes that are generally required.

Another reason we don't believe this will be effective is because it only applies to issuances of building permits and there are a large variety of construction projects particularly, in the residential sector, for which building permits are not required, like most re-roofing, flooring, tile, glass

replacement, painting, drywall repair and more. Lastly, we are concerned that an entire project will be stopped based on the non-compliance of one illegal subcontractor.

Based on the above, while we support the intent of this bill we don't think it is workable and therefore cannot recommend it.

Thank you.

**LATE**

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

HB 377, HD1 – Relating to Workers' Compensation  
Tuesday, March 14, 2017  
1:15 P.M.  
State Capitol – Room 229

Aloha Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

In an effort to ensure that contractors are in compliance with Hawaii's workers' compensation laws, the Pacific Resource Partnership supports HB 377, HD1 and recommends the following amendments (see attached):

- Remove requirements in sections (a)(1) and (2) that would require the permit applicant to attest and verify that subcontractors have secured workers' compensation, state-approved self-insurance, or an exemption from insurance;
- Remove language in sections (a)(1) and (2) requiring applicant to provide specific information related to workers' compensation in the declaration, including the name of workers' compensation policies and federal and state employer identification numbers;
- Completely remove sections (b), (c), (d), and (e);
- Add language to include a new section (b) that would require contractors 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), or the county building permitting agency may verify workers' compensation coverage by electronic means.



**(Continued From Page 1)**

It's in the best interest of the State of Hawaii to prevent unscrupulous contractors who are in violation of Hawaii's workers' compensation laws from working on construction jobs due to health/safety reasons, and, because they have an unfair advantage over contractors/subcontractors who follow the law. We, therefore, respectfully request your support in moving HB 377, HD1 forward with our proposed amendments.

Thank you for the 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.*

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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

**"§386- Building permits; workers' compensation coverage.** (a) Each county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit, as a condition to the issuance of the permit:

- (1) Provide to the county a signed declaration under penalty of perjury that the applicant~~[, including the applicant's subcontractors, if any, have]~~ has secured workers' compensation coverage or state-approved self-insurance in accordance with this chapter. [The declaration shall also provide the name and workers' compensation policy of the applicant and the

~~applicant's subcontractors, and the applicant and the applicant's subcontractors' federal or state employer identification numbers,] or~~

- (2) ~~If the applicant [or the applicant's subcontractors are] is exempt from this chapter, provide to the county a signed declaration, under penalty of perjury, that includes [the exempt party's federal or state employer identification number and] the basis for the claimed exemption.~~

~~[(b) The county building permitting agency shall submit a copy of the signed declaration required by this section to the director within three business days after receiving it from the applicant.]~~

~~[(c) Upon receiving the signed declaration from the county building permitting agency, the director shall verify that the applicant and the applicant's subcontractors have secured workers' compensation coverage, state-approved self-insurance, or an exemption from this chapter, and the director shall notify the county building permitting agency of the director's findings in a timely manner.]~~

~~[(d) A permittee shall file a signed declaration, in the same manner as required in subsection (a), that verifies workers' compensation coverage, state-approved self-insurance,~~

~~or an exemption from coverage under this chapter for any subcontractor hired after the issuance of the building permit.]~~

~~[(c) The county building permitting agency shall suspend a building permit, upon receiving notice from the director that the workers' compensation insurance, state-approved self-insured status, or exemption from this chapter, of the permittee or any subcontractor of the permittee has been cancelled or has expired. The building permit shall be suspended until coverage is obtained for all work performed pursuant to the building permit."]~~

(b) At the time of permit issuance, contractors shall 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), or the county building permitting agency may verify the workers' compensation coverage by electronic means.

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2050.