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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."

# Hawai'i Construction Alliance

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February 22, 2017

The Honorable Jill N. Tokuda, Chair  
The Honorable Donovan M. Dela Cruz, Vice Chair  
and members  
Senate Committee on Ways and Means  
415 South Beretania Street  
Honolulu, Hawai'i 96813

**RE: Strong Support for SB854 SD1, Relating to Labor**

Dear Chair Tokuda, Vice Chair Dela Cruz, 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 SB854 SD1**, which would authorize the Director of the Department of Labor and Industrial Relations ("DLIR") or the Director's designee to issue a stop-work order to an employer until the employer complies with Chapter 388, Hawai'i Revised Statutes, relating to the payment of wages and other compensation.

The Hawai'i Construction Alliance has been extremely concerned by the increasing problem of unscrupulous employers intentionally disregarding laws designed to protect Hawai'i workers. Unfortunately, it is far too common for employers in Hawai'i to devise schemes to enrich themselves by defrauding their workers.

Last summer, the U.S. Department of Labor ("USDOL") Wage and Hour Division found that a contractor renovating the Maile Sky Court hotel in Waikiki was misclassifying its workers as independent contractors, rather than employees. USDOL reported that the contractor "paid its workers fixed rates per day, without regard to how many hours they worked, and they worked more than 40 hours in a week. Workers on the project typically worked 10-hour days, 6 or 7 days per week." Over the course of the renovation project, the contractor defrauded at least \$185,688 in overtime alone from 95 workers, which included carpenters, laborers, painters, plumbers, and other tradespeople.

DLIR found numerous other violations by the same contractor, including failure to provide Prepaid Health Care, Temporary Disability Insurance, and Workers' Compensation coverage.

Although DLIR acted swiftly in thoroughly investigating this case, they lacked the ability to immediately stop work on the project for nonpayment or improper payment of wages. As a result, the contractor was able to continue working while the investigation went on – and was able to continue benefitting from their fraudulent scheme. This is a particularly acute problem in the construction industry, where projects sometimes take only a few months, while investigations into unlawful activity can stretch on much longer.

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 unscrupulous employers and to ensure that all workers are paid a proper, dignified wage for their labor.

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 taken advantage of.

We note that several other jurisdictions have the ability to issue stop-work orders to employers who do not pay proper wages. Examples of successful stop-work order powers include California (Cal. Labor Code §238.1) and Connecticut (Conn. Gen. Stat §31-76a).

By virtue of these jurisdictions’ abilities to issue stop-work orders for nonpayment or improper payment of wages, their workers enjoy more protections and greater dignity on the job site. We believe Hawai‘i workers deserve the same.

Therefore, we strongly request your committee’s **favorable action on SB854 SD1**.

Mahalo,

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

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

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

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

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

February 24, 2017

Testimony To: Senate Committee on Ways and Means  
Senator Jill N. Tokuda, Chair

Presented By: Tim Lyons, President

Subject: S.B. 854, SD 1 - RELATING TO LABOR.

Chair Tokuda and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we do not support this bill as written. 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

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



We do however, support the intent of the bill and recognize that there are situations that a stop work order might in fact be needed. We are concerned however with the lack of any criteria or any procedure that would occur prior to the issuance of a stop work order. In other words, after a violation, are there any steps that DLIR must take prior to the issuance of a stop work order or can they immediately go forward to the stop work order?

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

Based on the above we cannot support this bill as it is written although we do believe that it may have some merit if it can be modified.

Thank you.

Testimony of  
Christopher Delaunay  
Pacific Resource Partnership

SENATE COMMITTEE ON WAYS AND MEANS  
Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair

Friday, February 24, 2017  
1:35 P.M.  
State Capitol – Room 211

Aloha Chair Tokuda, Vice Chair Dela Cruz and members of the Committee:

In an effort to ensure that employers pay all wages due to the employer's employees in accordance with Chapter 388, Hawaii Revised Statutes, we **strongly support** the Department of Labor and Industrial Relations' (DLIR) recommended amendments to SB 854, SD1.

Currently, there are no administrative fines for an employer who fails to pay wages in accordance with Chapter 388, Hawaii Revised Statutes. We believe that administrative fines will incentivize employers to pay wages due to the employer's employee in a timely manner.

As such, we respectfully request that the Committee on Ways and Means adopt DLIR's proposed amendments.

#### About PRP

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





# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Ways and Means  
Friday, February 24, 2017 at 1:35 P.M.  
Conference Room 211, State Capitol**

**LATE**

**RE: SENATE BILL 854 SD1 RELATING TO LABOR**

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to provide **comments** regarding SB 854 SD1, which authorizes the Director of Labor and Industrial Relations or the Director's designee to issue a stop-work order to an employer, until the employer complies with Chapter 388, Hawaii Revised Statutes, relating to the payment of wages and other compensation.

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.