



**Testimony to the Senate Committee on Judiciary and Labor
Thursday, February 9, 2017 at 9:05 A.M.
Conference Room 016, State Capitol**

RE: SENATE BILL 858 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 SB 858, 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 1,400 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.



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

THE SENATE
THE TWENTY-NINTH
LEGISLATURE REGULAR
SESSION OF 2017

COMMITTEE ON JUDICIARY
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

NOTICE OF HEARING
DATE: Tuesday, February 9, 2017
TIME: 9:05 am
PLACE: Conference Room 016

TESTIMONY ON SB 854 and SB 858, RELATING TO LABOR

Aloha 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.

Allied Builders System supports SB 854, Relating to Labor, 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.

We also support SB 858, Relating to Labor, which authorize the Director of Labor and Industrial Relations (Director) or the Director's designee to issue and serve an employer with 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, to ensure the employer has the required workers' compensation coverage.

Failure to stop employers from evading workers' compensation laws and paying appropriate wages only rewards unscrupulous employers over employers who follow the law. Stop-work order provisions in SB 854 and SB 858 will incentivize employers to follow the law and make cheating an unprofitable business model in Hawaii.

For these reasons, we support SB 854 and SB 858. Thank you for allowing us to testify.



TESTIMONY OF
BKA BUILDERS INC.
BRIAN ADACHI

THE SENATE

COMMITTEE ON JUDICIARY AND LABOR

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

NOTICE OF HEARING

DATE: Thursday, February 9, 2017
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TESTIMONY ON SB 854 and SB 858, RELATING TO LABOR

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

My name is Brian Adachi, president of BKA Builders, Inc.; a General Contracting firm on Oahu, Hawaii for the last 26 years.

BKA Builders Inc. supports SB 854, Relating to Labor, 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.

We also support SB 858, Relating to Labor, which authorize the Director of Labor and Industrial Relations (Director) or the Director's designee to issue and serve an employer with 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, to ensure the employer has the required workers' compensation coverage.

Failure to stop employers from evading workers' compensation laws and paying appropriate wages only rewards unscrupulous employers over employers who follow the law. Stop-work order provisions in SB 854 and SB 858 will incentivize employers to follow the law and make cheating an unprofitable business model in Hawaii.

For these reasons, we support SB 854 and SB 858. Thank you for allowing us to testify.

Hawai'i Construction Alliance

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

February 5, 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: Strong Support for SB858, Relating to Labor

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 **strongly support SB858**, 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 request your committee’s favorable action on SB858.

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@hawaiiconstructionalliance.org

SAH - Subcontractors Association of Hawaii

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

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

February 9, 2017

Testimony To: Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair

Presented By: Tim Lyons, President

Subject: S.B. 858 - RELATING TO LABOR.

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

We 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. 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, Government Relations Manager
Pacific Resource Partnership

SENATE COMMITTEE ON JUDICIARY AND LABOR

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

SB 858 – Relating to Labor
Thursday, February 9, 2017
9:05 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, we **strongly support** SB 858 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.

Based on feedback from the Department of Labor and Industrial Relation's (DLIR) and stakeholders regarding the contents of this bill, Pacific Resource Partnership (PRP) recommends a proposed SD1 with the following amendments (see attachment):

- Amend section 386-99, HRS, to require employers to post policy information;
- Amends language requiring the director or director's designee to provide the employer with written notice requiring the employer to provide evidence of having secured any necessary insurance or self-insurance in accordance with chapter 386-121 within five business days. If the employer fails to provide such evidence, then the director or director's designee will issue a stop-work order;
- Amends time frames for the employer to request a hearing before the director to protest a stop-work order within 10 business days, for the director to schedule a hearing within 21 business days from the date of filing a request, and for the director to affirm or dismiss the stop-work order within 7 business days after the hearing.
- Adds language allowing parties to appeal director's decision to uphold a stop work order pursuant to Chapter 386;



(Continued From Page 1)

- Remove the enforcement provision in section one of the measure;
- New sections are removed from Part IV of the statute that is entitled “Security for Compensation; Employment Rights of Injured Employees; Funds,” and are included in Part III, entitled, “Administration.”;
- Adds an effective date of July 1, 2018

It’s in the best interest of the State of Hawaii to stop the work of unscrupulous employers who are in violation of the workers’ compensation law, and who are profiting at the expense of employers and employees. We, therefore, respectfully request your support to pass this measure out of the Senate Committee on Judiciary and Labor with our 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.

STATE OF HAWAII

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 IV]~~ part III to be appropriately designated and to read as follows:

~~["§386- Enforcement. The director shall enforce the provisions of this chapter. The director may employ investigators, clerks, interpreters, and other employees as necessary and may assign any employee of the department to assist in the enforcement of this chapter.]~~

§386- Stop-work order; failure to observe; penalties. An employer or employer representative who ~~[fails to observe a stop-work order issued and served upon the employer pursuant to]~~ directs employees to work in violation of the stop-work order issued and served upon the employer pursuant to section 386-123 shall be guilty of a misdemeanor punishable by imprisonment not exceeding sixty days or by a fine not exceeding \$10,000, or both. Both the employer and employer representative

who directed employees to work in violation of the stop-work order shall be held in violation of this section. The director may obtain injunctive and other relief from the circuit court to enforce the provisions of this chapter.

§386- Stop-work order; withdrawal; penalties

remitted. The director has the discretion to withdraw a stop-work order or remit all or any part of the penalty in excess of \$500 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]~~, 386-99, Hawaii Revised Statutes, is amended to read as follows:

"§386-99 Posting of information. (a) Each employer shall post and maintain in places readily accessible to individuals in the employer's employ printed statements concerning benefit rights, claims for benefits, and such other matters relating to the administration of this chapter as the department of labor and industrial relations may by ~~[regulation]~~ rule prescribe. Each employer shall supply to such individuals copies of such

printed statements or other materials related to claims for benefits when and as the department may by regulation prescribe.

~~[Such printed statements and other materials shall be supplied by the department to each employer without cost to the employer.]~~ (b) Every employer subject to section 386-121(a) (1), shall post a notice in a conspicuous place accessible to employees, where the notice may be easily read during the hours of the workday. Such notice shall include the name of the insurer securing compensation pursuant to section 386-121(a) (1). Every employer who receives a self-insurance authorization pursuant to section 386-121, shall post a valid notice identifying the claims adjuster for claims made pursuant to this chapter. Failure to keep the notice required by this section conspicuously posted in a place accessible to employee shall be prima facie evidence of a violation of section 386-121.

"§386-123 Failure to give security for compensation; penalty; injunction[-]; stop-work order; fines. (a) If an employer fails to comply with section 386-121 or fails to comply with section 386-99(b), the director or director's designee shall provide the employer with written notice requiring the employer to provide evidence, satisfactory to the director or director's designee, of having secured any necessary insurance or self-insurance in accordance with section 386-121 within five business days. If an employer fails to provide such evidence of

having secured insurance or self-insurance within five business days, the director or the director's designee shall issue and serve the employer a stop-work order prohibiting 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. Any employee so affected by the work stoppage shall be paid by the employer for the time lost, not to exceed ten days, pending compliance by the employer.

(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. At the conclusion of the hearing, the stop-work order shall be affirmed or dismissed, and within seven business days after the hearing, the director shall issue a written decision to all parties by registered or certified mail. If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 386.

(c) At the time the stop-work order is issued and served pursuant to this section, the director or the director's designee shall also issue and serve a penalty requiring the

uninsured employer [~~shall be liable for~~] to pay a penalty of not less than \$500 or of \$100 for each employee for every day [~~during which such failure continues,~~] the employer fails to comply with the provisions of section 386-121, whichever sum is greater, to be recovered in an action brought by the director or the director's designee 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 days, the employer may be enjoined, by the circuit court of the circuit in which the employer's principal place of business is located, 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect [~~upon its~~
~~approval~~] on July 1, 2018.

DRAFT

Report Title:

Stop-Work Orders; Establishment; Enforcement; Penalties

Description:

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. (HB208 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

DRAFT



Alan Shintani Inc.

GENERAL CONTRACTOR BC 13068
Testimony of

ALAN SHINTANI, INC.

Alan Shintani, Owner

THE SENATE
THE TWENTY-NINTH
LEGISLATURE REGULAR
SESSION OF 2017

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

NOTICE OF HEARING

DATE: Thursday, February 9, 2017

TIME: 9:05 a.m.

PLACE: Conference Room 016

TESTIMONY ON SB 854 and SB 858, RELATING TO LABOR

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

Alan Shintani, Inc. supports SB 854, Relating to Labor, 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.

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Failure to stop employers from evading workers' compensation laws and paying appropriate wages only rewards unscrupulous employers over employers who follow the law. Stop-work order provisions in SB 854 and SB 858 will incentivize employers to follow the law and make cheating an unprofitable business model in Hawaii.

For these reasons, we support SB 854 and SB 858. Thank you for allowing us to testify.

Sincerely,

Alan Shintani
President