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February 22, 2017

To: The Honorable Sylvia Luke, Chair,
The Honorable Ty J.K. Cullen, Vice Chair, and
Members of the House Committee on Finance

Date: Wednesday, February 22, 2017
Time: 3:00 p.m.
Place: Conference Room 308, State Capitol

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

Re: H.B. No. 377 H.D. 1 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 H.D. 1 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.

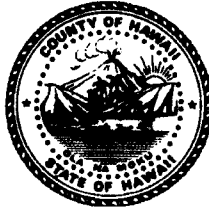
III. COMMENTS ON THE HOUSE BILL

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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February 21, 2017

Representative Sylvia Luke
Finance Committee
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Luke and members:

RE: HB 377

Thank you for this opportunity to testify against HB 377.

HB 377 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 seems to recognize that it must be the State that makes the determination whether

Sylvia Luke
Finance Committee
February 21, 2017

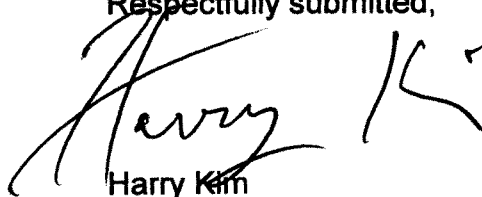
proper insurance is in place, but at some point will the State require the counties to become experts in workers' comp insurance?

Although HB 377 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 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, appearing to read "Harry Kim", written in a cursive style.

Harry Kim
Mayor

Hawai'i Construction Alliance

P.O. Box 179441
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(808) 348-8885

February 18, 2017

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
and members
House Committee on Finance
Hawai'i State Legislature
Honolulu, Hawai'i 96813

RE: Strong Support for HB377 HD1, Relating to Workers' Compensation

Dear Chair Luke, Vice Chair Cullen, 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 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.

This 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."

Therefore, we strongly request your committee's **favorable action on HB377 HD1.**

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

SAH - Subcontractors Association of Hawaii

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February 22, 2017

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons, President

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

Chair Luke 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

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 law 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.

Lastly, 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.

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.

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Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 22, 2017

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY CULLEN, VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **COMMENTS REGARDING 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)

HEARING

DATE: February 22, 2017
TIME: 3:00 p.m.
PLACE: Capitol Room 309

Dear Chair Luke, Vice Chair Cullen 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.

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.

Testimony of
Christopher Delaunay
Pacific Resource Partnership

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

HB 377, HD1 – Relating to Workers' Compensation
Wednesday, February 22, 2017
3:00 P.M.
State Capitol – Room 308

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

In an effort to ensure that contractors/subcontractors are in compliance with Hawaii's workers' compensation laws, we **strongly support** HB 377, HD1 and its efforts to require the building permit applicant and their subcontractors to have and verify workers' compensation coverage or an exemption from coverage.

Under existing law, there is no requirement for a permit applicant applying for a building permit to verify workers' compensation coverage or an exemption from coverage. Pacific Resource Partnership (PRP) supports this requirement for the following reasons:

- **Applicants who don't abide by Hawaii's workers' compensation laws have an unfair advantage over those applicants who follow the law.** Contractors/subcontractors not abiding by Hawaii's workers' compensation laws can provide services cheaper than the applicant who adheres to the law. As such, requiring the building permit applicant and their subcontractors to have and verify workers' compensation coverage or an exemption from coverage will incentivize applicants to pay their workers' compensation insurance and ensure that their subcontractors are also covered.
- **Incentivizing applicants to abide by Hawaii's workers' compensation laws will protect the special compensation fund.** Large numbers of employers, including contractors/subcontractors, 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.



(Continued From Page 1)

- **Ensuring that all applicants are abiding by Hawaii’s workers’ compensation laws will protect both the applicant/subcontractor and their employees from uninsured injuries.** Construction work is one of the most dangerous jobs. As such, it is good policy to ensure that all workers on the construction site are insured prior to starting a project.

It’s in the best interest of the State of Hawaii to prevent unscrupulous contractors/subcontractors 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.

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.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 1:15 PM
To: FINTestimony
Cc: bwilson@hrcc-hawaii.com
Subject: *Submitted testimony for HB377 on Feb 22, 2017 15:00PM*

Categories: New Testimony

HB377

Submitted on: 2/21/2017

Testimony for FIN on Feb 22, 2017 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Brooke Wilson	Hawaii Regional Council of Carpenters	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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