

HB 377

RELATING TO WORKERS' COMPENSATION.

LAB, FIN

HB377



Submit Testimony

Measure Title: RELATING TO WORKERS' COMPENSATION.

Report Title: County Building Permits; Workers' Compensation Coverage

Description: 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 the Department of Labor and Industrial Relations to ensure compliance.

Companion: [sb1131](#)

Package: None

Current Referral: LAB, FIN

Introducer(s): HOLT, JOHANSON, Gates, Quinlan

Sort by Date		Status Text
1/20/2017	H	Pending introduction.
1/23/2017	H	Pass First Reading
1/23/2017	H	Referred to LAB, FIN, referral sheet 2
2/6/2017	H	Bill scheduled to be heard by LAB on Thursday, 02-09-17 10:00AM in House conference room 309.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

4 "§386- Building permits; workers' compensation
5 coverage. (a) Each county that requires the issuance of a
6 permit as a condition precedent to the construction, alteration,
7 improvement, demolition, or repair of any building or structure
8 shall also require that each applicant for such a permit, as a
9 condition to the issuance of the permit:

10 (1) Provide to the county a signed declaration under
11 penalty of perjury that the applicant, including the
12 applicant's subcontractors, if any, have secured
13 workers' compensation coverage or State-approved self-
14 insurance in accordance with this chapter. The
15 declaration shall also provide the name and workers'
16 compensation policy of the applicant and the
17 applicant's subcontractors, and the applicant and the



1 applicant's subcontractors' federal or state employer
2 identification numbers; or

3 (2) If the applicant or the applicant's subcontractors are
4 exempt from this chapter, provide to the county a
5 signed declaration, under penalty of perjury, that
6 includes the exempt party's federal or state employer
7 identification number and the basis for the claimed
8 exemption.

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

13 (c) Upon receiving the signed declaration from the county
14 building permitting agency, the director shall verify that the
15 applicant and the applicant's subcontractors have secured
16 workers' compensation coverage, State-approved self-insurance,
17 or an exemption from this chapter, and the director shall notify
18 the county building permitting agency of the director's findings
19 in a timely manner.

20 (d) A permittee shall file a signed declaration, in the
21 same manner as required in subsection (a), that verifies



H.B. NO. 377

1 worker's compensation coverage, State-approved self-insurance,
 2 or an exemption from coverage under this chapter for any
 3 subcontractor hired after the issuance of the building permit.

4 (e) The county building permitting agency shall suspend a
 5 building permit, upon receiving notice from the director that
 6 the workers' compensation insurance, State-approved self-insured
 7 status, or exemption from this chapter, of the permittee or any
 8 subcontractor of the permittee has been cancelled or has
 9 expired. The building permit shall be suspended until coverage
 10 is obtained for all work performed pursuant to the building
 11 permit."

12 SECTION 2. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

14

INTRODUCED BY: Dal Hlt

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JAN 20 2017



H.B. NO. 377

Report Title:

County Building Permits; Workers' Compensation Coverage

Description:

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 the Department of Labor and Industrial Relations to ensure compliance.

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



Hawai'i Construction Alliance

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

February 7, 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 HB377, Relating to Workers' Compensation

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 HB377**, 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**.

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

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

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

February 9, 2017

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

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

Chair Johanson 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 contractor to provide subcontractors workers' compensations 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.

holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 5:27 PM
To: LABtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB377 on Feb 9, 2017 10:00AM*

HB377

Submitted on: 2/6/2017

Testimony for LAB on Feb 9, 2017 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

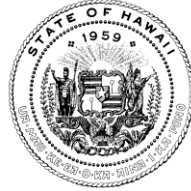
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HB 377

Late testimony

LATE



LATE

LATE

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 9, 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: Thursday, February 9, 2017
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal adds a new section to the workers' compensation statute which 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 proposal provides the 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 Department supports the intent of HB377 to help ensure all employers have the required workers' compensation coverage as mandated by law.

I. CURRENT LAW

Chapter 386, 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, almost

everyone hired to work is covered by the workers' compensation law. 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. DLIR notes that this measure will impact the department's limited staffing and resources. However, DLIR appreciates another mechanism to verify statutory compliance and therefore is willing to work with the parties should the measure continue through the legislative process.

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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 377 – Relating to Workers’ Compensation
Thursday, February 9, 2017
10:00 A.M.
State Capitol – Room 309

Aloha Chair Johanson, Vice Chair Holt 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 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 building permit applicant 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 on HB 377.

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.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org

LATE



GCA of
GENERAL CONTRACTORS

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February 9, 2017

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

SUBJECT: **COMMENTS REGARDING TO H.B. 377, 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 the Department of Labor and Industrial Relations to
ensure compliance.

HEARING

DATE: February 9, 2017
TIME: 10:00 a.m.
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt 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, Relating to Workers Compensation, which would **require that each of the four counties require that** an applicant for a permit provide 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 are pulling permits are in compliance with their workers compensation, GCA does not believe this is the proper way to go about doing such.

In September 2015 the Hawaii Business Magazine ran an article entitled "*Broken: Stuck in Permit Purgatory*"¹ and the second line to the article sums it up "it took me six months just to get my building permit for this place." This measure would not only add more time and delay to the issuance of a permit, but could also put a huge burden on the applicant for the permit, who in some cases could be the government for public works projects. H.B. 377 proposes to require that the applicant sign an affidavit that would include names of the contractor and its subcontractors

¹ Hawaii Business Magazine, September 2015, Broken: Stuck in Permit Purgatory, accessed on February 9, 2017 at <http://www.hawaiibusiness.com/broken-stuck-in-permit-purgatory/>

(who he or she may not have even secured) and their federal or state Employee Identification numbers. Further it requires the county to submit such information to the Department of Labor.

What is unknown is how the County would be able to enforce such, whether the County and the State Department of Labor 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 post information including one's workers compensation status online and such is updated regularly. Why couldn't the county rely on such information before issuance of a permit?

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

LATE**LATE****LATE****TESTIMONY for Measure: HB 377**

Committee	LAB
Committee Referrals	LAB
Date of Hearing	02-09-17
Organization	Hawaii Government Employees Association
Name of Testifier	Michelle Kurihara-Klein
Job Title of Testifier	Legislative Officer
Position – Circle One	Support / Oppose / Comments
Category – Circle One	Fed Govt. / State Govt. / County Govt. / Industry / Private
Notes:	Present.