

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 9, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Karl Rhoads, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Thursday, February 9, 2017
Time: 9:05 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 854 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.

The Department supports the intent of SB854 as tool to promote compliance with Hawaii's payment of wage laws and offers comments.

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 and a provision for criminal penalties under section 388-10(b). Often the employer will be out of business or bankrupt before these provisions can be used.

III. COMMENTS ON THE SENATE BILL

The Department supports the intent of SB854 as tool to promote compliance with Hawaii's payment of wage laws and offers the following comments:

- A stop-work order issued to an employer without a hearing will raise due

process concerns on the part of the employer. Many due process concerns could be addressed by holding employers strictly liable for providing policy information under section 388-7, HRS. In addition, the department could develop procedures and administrative rules to further address due process considerations and appeal rights. The Department has drafted preliminary language to address some of these issues (attached).

- A similar California law under workers' compensation holds employers in strict liability on both coverage and posting policy information and in this manner avoids due process issues. California's law has operated for seventeen (17) years without a single challenge to stop-work orders DLIR learned in discussions with California staff responsible for administering the stop-work provisions.
- The proposal, as drafted, gives the Department only five days to schedule a hearing, notify the parties, and hold the hearing, which is unrealistic and affords no one adequate time to prepare for the hearing. Requiring the Director to issue a written decision within 24 hours may be unduly burdensome.
- New section 388-A is redundant, as chapter 388 already has an enforcement provision at 388-9, HRS.

§388-A Notification of stop work 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 stop-work order to the employer involved.

(b) A notification of stop-work 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 by a hearings officer appointed by the director pursuant to chapter 91.

Hearings on appeal shall be held within XX days of the notice of appeal and a decision shall be rendered by the hearings officer within YY days after the conclusion of the hearing, stating the findings of fact and conclusions of law.

§388-B Stop work order violation; penalties. Where the department finds that a violation of this chapter or the administrative rules promulgated under this chapter has been committed, the department shall assess a penalty of \$1,000 for each violation found.

§388-C Stop-work order; withdrawal; penalties remitted. In the absence of an appeal and within twenty days after a copy of the notification of stop-work order has been sent to the employer the director may withdraw or modify a notification of stop-work 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 Judicial review. (a) Any party to an appeal under this chapter may obtain judicial review of the decision on the appeal in the manner provided in chapter 91.

§388-E Enforcement of the notification of stop work order. The director may file in the circuit court in the jurisdiction in which the employer does business, a certified copy of the notification of stop-work order from which no appeal has been

taken within the time allowed and the court shall render a judgment in accordance with the notification of stop-work 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.



**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 854 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 854, 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.



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
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,

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.



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.

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 SB854, 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 SB854**, 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**.

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@hawaiiiconstructionalliance.org

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 854 – 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 that employers pay all wages due to the employer's employees in accordance with Chapter 388, Hawaii Revised Statutes, we strongly support SB 854 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.

Under existing law, an employer who fails to pay wages in accordance with Chapter 388, Hawaii Revised Statutes, without equitable justification is liable for monetary penalties. However, monetary penalties alone do not always stop employers from continuing to work illegally. A stop-work order will incentivize employers to pay all wages due to the employer's employee and penalties owed to the department in a timely manner.

It's in the best interest of the State of Hawaii to stop the work of unscrupulous employers who are not paying wages due to their employees. We, therefore, respectfully request your support on SB 854.

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.



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. 854 - 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 388-10 (c) regarding the payment of time lost and the fact that 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. 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.



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.

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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.

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