

LATE TESTIMONY

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

2017 OFFICERS

PRESIDENT

EVAN FUJIMOTO
GRAHAM BUILDERS, INC.

PRESIDENT-ELECT

DEAN UCHIDA
SSFM INTERNATIONAL, INC.

VICE PRESIDENT

MARSHALL HICKOX
HOMEWORKS CONSTRUCTION, INC.

SECRETARY

DWIGHT MITSUNAGA
DM PACIFIC, INC.

TREASURER

MICHAEL WATANABE
JW, INC.

SPECIAL APPOINTEE-BUILDER

CURT KIRIU
CK INDEPENDENT LIVING BUILDERS

SPECIAL APPOINTEE-BUILDER

MARK KENNEDY
HASEKO CONSTRUCTION MANAGEMENT
GROUP, INC.

SPECIAL APPOINTEE-ASSOCIATE

PETER ELDRIDGE
RAYNOR OVERHEAD DOORS & GATES

IMMEDIATE PAST PRESIDENT

CRAIG WASHOPSKY
SERVCO HOME & APPLIANCE
DISTRIBUTION

CHIEF EXECUTIVE OFFICER

GLADYS MARRONE
BIA-HAWAII

2017 DIRECTORS

KAREN BERRY

TRADE PUBLISHING COMPANY

CHRIS CHEUNG

CC ENGINEERING & CONSTRUCTION, INC.

CLIFTON CRAWFORD

C & J CONTRACTING, INC.

MARK HERTEL

INTER ISLAND SOLAR SUPPLY,
OAHU-MAUI HAWAII KAUAI

BRENTON LIU

DESIGN TRENDS CONSTRUCTION, INC.

SARAH LOVE

BAYS LUNG ROSE & HOLMA

BEAU NOBMAN

HPM BUILDING

GARY OKIMOTO

HONOLULU WOOD TREATING

JACKSON PARKER

D.R. HORTON, SCHULER DIVISION

DOUGLAS PEARSON

CASTLE & COOKE HOMES

PAUL D. SILEN

HAWAIIAN DREDGING
CONSTRUCTION CO. INC.

ALAN TWU

HK CONSTRUCTION CORP.

MAILING:

P.O. BOX 970967
WAIPAHU, HAWAII 96797-0967

PHYSICAL:

94-487 AKOKI STREET
WAIPAHU, HAWAII 96797

Testimony to the Senate Committee on Judiciary & Labor

Thursday, February 9, 2017

9:05 am

Conference Room 016

RE: SB 858 – Relating to Labor

Chair Keith-Agaran, Vice-Chair Rhoads, and members of the committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii offers the following comments on SB 858, Relating to Labor.

This bill 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 (workers' compensation rules).

Instead of an immediate stop-work order issued by the Department, there should be a grace period in which the the company is given to cure the situation after being notified in writing. Otherwise, if a stop-work order is just immediately issued without any notice, it could seriously harm a company, especially if the situation is a simple mistake or involves exigent circumstances.

We appreciate the opportunity to provide comments on SB 858.

LATE TESTIMONY

DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR
LEONARD HOSHIO
DEPUTY DIRECTOR

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 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. 858 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 386, Hawaii Revised Statutes (HRS), by adding four new sections relating to stop-work orders to Part IV and by amending section 386-123, HRS. The bill authorizes the DLIR Director to issue and serve stop-work orders to employers not in compliance with section 386-121, HRS, and establishes penalties, enforcement, and protest procedures.

The Department supports the intent of SB858 to help ensure all employers have the required workers' compensation coverage as mandated by law and offers comments below.

II. CURRENT LAW

Section 386-123, HRS, holds the employer liable for penalties for failure to comply with section 386-121, HRS, and allows the Director to seek an injunction against employers who do not have workers' compensation coverage.

III. COMMENTS ON THE SENATE BILL

The Department supports the intent of SB858 to ensure all employers have the

required workers' compensation coverage as mandated by law. However, as drafted, the proposal contains some problematic aspects relating to current statute as well as operations. DLIR is willing to work with the parties should the measure continue through the legislative process. This measure was largely drafted using the California law and DLIR notes that it is aware that at least five other states besides California have similar laws (attached). Making the measure compatible with Hawaii's existing law would require amendments to other sections in chapter 386.

DLIR would like further information on California's implementation and whether California's implementation of stop-work orders is dependent on other programs and provisions in California's labor code.

Other considerations include:

- A stop-work order issued to an employer without a hearing will raise due process concerns on the part of the employer. Most, if not all, due process concerns could be addressed by amending section 386-99, HRS, to require employers to be responsible for posting policy information. In addition, the department could develop procedure and administrative rules to further address due process considerations as well as appeal rights.

The California law 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 orally announce a decision at the end of the hearing then issue a written decision within 24 hours may be an onerous burden.
- The enforcement provision in section one of the measure is unnecessary as the Director already, "...shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter," pursuant to section 386-73.5, HRS.
- The new sections should not be included in Part IV of the statute that is entitled "Security for Compensation; Employment Rights of Injured Employees; Funds." DLIR recommends that the new sections should be included in Part III, entitled "Administration."
- DLIR notes that if it is required to administer these provisions, as drafted, it would likely need additional staffing and resources.

Stop Work Orders in Selected States

State	Reasons for issuing stop work order against an employer	When does the stop work order take effect? How is service accomplished?	Penalties for violating the stop work order	Scope of stop work order	Other information
California ¹	Failure to pay workers' compensation for employees.	Immediately upon service.	An employer or employee who fails to observe a stop order is subject to a misdemeanor punishable by up to 60 days in jail or a fine of up to \$10,000 or both.	The order prohibits the use of employee labor by the employer until he or she comes into compliance.	Employees who are affected by the work stoppage must be paid by the employer for up to ten days of time lost.
Connecticut ²	Misrepresenting his or her employees as independent contractors or providing false information regarding the amount of employees to obtain a lower premium rate.	Immediately upon service. Service can be accomplished by posting a copy of the stop work order in a conspicuous location at the place of business or employment.	A person who violates a stop work order is subject to a penalty of \$1,000 for each day of the violation.	All business operations of the employer must cease. The order applies only against the employer found to be in violation and only to the specific place of business or employment for which the violation exists. It remains in effect until the employer comes into compliance.	Stop work orders issued against a business are effective against any successor entity that has one or more of the same principals or officers as the business and are engaged in the same or equivalent trade or activity.
Florida ³	Failure to secure workers' compensation by understating payroll, misstating employee duties to avoid proper classification for premium calculations, or materially concealing information relating to the computation and application of an experience rating modification factor.	Immediately upon service. Service can be accomplished by posting a copy of the stop work order in a conspicuous location at the worksite, and it must be made on the employer.	Employers who violate the stop work order are subject to a \$1,000 penalty for each day not in compliance.	After service is made on the employer, the order is effective upon all employer worksites in the state for which the employer is not in compliance. The order remains in effect until the employer comes into compliance.	The employer may receive an order of conditional release from the stop work order if he or she has complied with the coverage requirements and agreed to pay penalties through a payment schedule. If the terms of the schedule are not met, the stop work order will be reinstated and the unpaid balance of the penalty will become due.

¹ California Labor Code, Section 3710

² Connecticut Public Act No. 07-89

³ Florida Statutes Title XXXI, 440.107

Prepared for: Joint Legislative Task Force of the Underground Economy in the Construction Industry

Prepared by: Kathleen Buchli, Counsel, Senate Labor, Commerce, Research and Development Committee

Date: October 1, 2008

Stop Work Orders in Selected States

State	Reasons for issuing stop work order against an employer	When does the stop work order take effect? How is service accomplished?	Penalties for violating the stop work order	Scope of stop work order	Other information
					<p>The employer may be required to file reports demonstrating compliance during a two year probationary period.</p> <p>Stop work orders issued against a business are effective against any successor entity that has one or more of the same principals or officers as the business and are engaged in the same or equivalent trade or activity.</p>
Massachusetts ⁴	Failure to provide workers' compensation payments to his or her employees.	Immediately upon service on the employer unless the employer provides evidence of securing insurance and pays a civil penalty of \$100 a day for each day of noncompliance.	None specified.	All business operations at the place of employment or job site must cease.	<p>The stop work order is not in effect during an appeal and will be rescinded if the employer is found to be in compliance. If the employer is not found to be in compliance, the stop work order is reinstated until he or she proves compliance and pays a penalty of \$250 a day for each day of noncompliance.</p> <p>An employee affected by the stop work order must be paid for the first ten days lost due to the order.</p>
New Jersey ⁵	A second or subsequent violation of failing to properly classify an employee.	Immediately upon service on the employer or worksite.	An employer who violates the stop work order is subject to a penalty of up to \$5,000 a day for each day of the violation.	The first stop work order (second violation) requires the cessation of all business operations at every site at which the violation occurred.	<p>The employer may be required to file reports demonstrating compliance during a two year probationary period.</p> <p>Stop work orders issued against a business are effective against any</p>

⁴ Massachusetts General Laws c. 152, §25C

⁵ New Jersey Statutes c.34:20

Stop Work Orders in Selected States

State	Reasons for issuing stop work order against an employer	When does the stop work order take effect? How is service accomplished?	Penalties for violating the stop work order	Scope of stop work order	Other information
				<p>The second and subsequent stop work orders (third or subsequent violations) require the cessation of all business operations of the employer.</p> <p>The order remains in effect until the employer properly classifies his or her employees and pays any penalties.</p>	<p>successor entity that has one or more of the same principals or officers as the business and are engaged in the same or equivalent trade or activity.</p>
New York ⁶	<p>Failure to secure workers' compensation for his or her employees.</p>	<p>Immediately upon service.</p> <p>Service can be made at a worksite or to the employer. Service at the worksite is accomplished by posting the order in a conspicuous location at the worksite.</p>	<p>None specified.</p>	<p>When served on a worksite, the order is effective to that worksite. When served on the employer, the order is effective to all employer worksites for which the employer is not in compliance. The order remains in effect until the employer comes into compliance and pays any penalties.</p>	<p>The employer may receive an order of conditional release from the stop work order if he or she has complied with the coverage requirements and agreed to pay penalties through a payment schedule. If the terms of the schedule are not met, the stop work order will be reinstated and the unpaid balance of the penalty will become due.</p> <p>The employer may be required to file reports demonstrating compliance during a two year probationary period.</p> <p>A stop work order is in effect against any noncompliant substantially-owned affiliated entity.</p>

⁶ New York Assembly Bill Text A06163

Prepared for: Joint Legislative Task Force of the Underground Economy in the Construction Industry

Prepared by: Kathleen Buchli, Counsel, Senate Labor, Commerce, Research and Development Committee

Date: October 1, 2008

LATE TESTIMONY

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 9, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **COMMENTS AND SUGGESTED AMENDMENTS TO S.B 858, RELATING TO LABOR.** 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.

Committee Hearing

DATE: February 9, 2017
TIME: 9:05 a.m.
PLACE: Room 016

Dear Chair Keith Agaran, Vice Chair Rhoads 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.

The GCA has comments regarding S.B. 858, Relating to Labor regarding ensuring due process procedures are in place and will continue to work with proponents of this measure to ensure such safeguards are in place to protect all parties involved. While GCA appreciates the intent of this legislation and the requirement that all employers comply with the law to provide proper coverage in the event of a work-related injury, GCA requests that employers are afforded due process if accused of such non-compliance.

S.B. 858, Relating to Labor, proposes to allow the Department of Labor and Industrial Relations (DLIR) to issue and serve on any employer, whether it be in construction or any other industry, an immediate order to stop work due to non-compliance with Section 386-121, compliance with Workers Compensation. The proposal lacks specifics on how DLIR would investigate such non-compliance or what burdens the DLIR may have to prove prior to issuing an order to stop work. This bill also indicates that the failure to observe a stop work order is a misdemeanor punishable by sixty days in jail in jail or a fine not exceeding \$10,000, or both. Furthermore, among other things, the Stop Work Order would be immediate upon service and an employee affected shall be paid for time lost not to exceed 10 days.

Under current law, the DLIR has the ability to request that the Attorney General petition the Court to enjoin a business from carrying on its business if an employer is in default of their workers compensation for a period of thirty days. See HRS Section 386-123. In addition, the Department of Commerce and Consumer Affairs through its Regulated Industries Complaint Office, known as 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. See Revised Ordinances of Honolulu, Article 7, Section 18-7.5.

GCA respectfully requests the Committee consider including procedural due process safeguards for the protection of all parties involved to ensure any attempt to stop work is given full consideration and is supported by factual information. Such factual information should be as a result of a complete investigation supported by evidence of such an alleged violation. Whether such investigation is for non-compliance with workers compensation, temporary disability insurance or non-payment of wages. In construction an order to stop work is an extreme mechanism that should not be taken lightly, given that a construction project's immediate stoppage may put employees and the general public at risk.

For these reasons, we respectfully request the Committee consider adding language that clearly articulates the standard the DLIR must satisfy *before* issuance of an order to stop work; provide an employer adequate notice or advance warning of such an allegation *before* an order to stop work is issued; allow an employer the ability to adequately respond and defend against such allegation *before* a stop work order is issued; and most importantly allow the employer to secure the place of employment for all employees and the public at large *before* issuance of a stop work order.

GCA will continue to work with proponents of this measure to include such safeguards. Thank you for the opportunity to present our views on this matter and for considering our requested language to ensure such enforcement mechanisms include proper safeguards for the employee, employer and the public at large.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: *Submitted testimony for SB858 on Feb 9, 2017 09:05AM*
Date: Thursday, February 9, 2017 2:56:52 PM

SB858

Submitted on: 2/9/2017

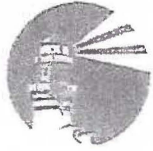
Testimony for JDL on Feb 9, 2017 09:05AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Strahn	Maui Dive Shop	Oppose	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



Ocean Tourism Coalition

LATE TESTIMONY

The Voice for Hawaii's Ocean Tourism Industry
1188 Bishop St., Ste. 1003
Honolulu, HI 96813-3304
(808) 537-4308 Phone (808) 533-2739 Fax
timlyons@hawaiiantel.net

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

THE OCEAN TOURISM COALITION SPEAKING IN STRONG OPPOSITION SB858

Aloha Chair Senator Keith-Agaran, Vice Chair Rhoads:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC) Hawaii's State-wide organization. We represent the 300 Small Commercial Passenger Vessels operating out of State Harbor facilities. We speak in **Strong Opposition of SB 858:**

There are already significant penalties in current statute to deal with this issue. It is not reasonable to shut down an enterprise over a labor dispute which can be resolved by other means. This has the potential to either force a business to agree to an unfair settlement in order to keep the doors open or actually put them out of business completely. We could support additional fines for noncompliance but not a business shut down.

This is an overreach by DOL in our opinion and should not happen. Please do not pass SB 858.

Sincerely,

James E. Coon, President, OTC

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: *Submitted testimony for SB858 on Feb 9, 2017 09:05AM*
Date: Thursday, February 9, 2017 8:46:27 AM

SB858

Submitted on: 2/9/2017

Testimony for JDL on Feb 9, 2017 09:05AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Kersten	Sea Paradise Scuba Inc.	Oppose	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov