

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 8:28 PM
To: JUDtestimony
Cc: Abensley80@yahoo.com
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Adam Bensley	Individual	Support	No

Comments: Please pass this bill

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**HB 37
RELATING TO NOISE**

**SEAN O'KEEFE
DIRECTOR – ENVIRONMENTAL AFFAIRS
ALEXANDER & BALDWIN, INC.**

JANUARY 29, 2013

Chair Rhoads and Members of the House Committee on Judiciary:

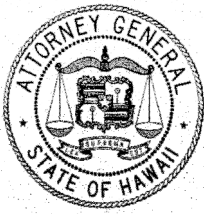
I am Sean O'Keefe, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 37, A BILL FOR AN ACT RELATING TO NOISE. We respectfully oppose this bill, which would allow a person who alleges the existence of a nuisance due to excessive noise to bring a civil action for injunctive relief, as well as for damages caused by noise or vibration.

Excessive noise sources are presently regulated by the Department of Health under Chapter 342F, HRS and rules adopted pursuant to §342F-31. Construction projects unavoidably produce noise at levels requiring a permit under Chapter 342F. These permits typically contain restrictions on hours of operation and other requirements for noise abatement. Failure to comply with permit requirements can result in enforcement action (including assessment of penalties), termination of the permit, and/or civil action for injunctive or other relief initiated by the Director of Health. A&B, along with its contractors, wishes to be a good neighbor and strives to minimize noise impacts on the surrounding community from its development projects through strict adherence to its Community Noise Permits.

As defined in HRS §342F-1, "Excessive noise means the presence of sound as measured by standard testing devices as established by the noise rules adopted by the department of a volume or in quantities and for durations which endangers human health, welfare or safety, animal life, or property or which unreasonably interferes with the comfortable enjoyment of life and property in the State or in such areas of the State as are affected thereby." Under §342F-30, no person may engage in activity which produces excessive noise without first securing approval in writing from the director. Hawaii Administrative Rules Chapter 11-43, Community Noise Control, establishes a permit program whereby the Department of Health may provide approval to operate excessive noise sources, with appropriate restrictions, if it determines, considering environmental impacts and other factors, that such approval is in the public interest.

Any "excessive noise", as defined and regulated under Chapter 342F, would be automatically classified as a nuisance under the proposed bill and would therefore be subject to the proposed private civil action and injunctive relief provisions. We understand that the proposed bill would thereby allow any person to obtain an order to stop any excessive noise source for which a valid permit has been obtained, even when the operator of the source is complying with all requirements of the permit, HAR Chapter 11-43, and Chapter 342F. By contrast, the Director of Health may obtain injunctive relief only when an activity is in violation of Chapter 342F, HAR Chapter 11-43, or a permit or variance issues pursuant thereto. We believe that this bill would have the effect of nullifying the noise permit program under Chapter 342F by allowing any person to halt a project for which a permit has been obtained and is being complied with.

Based on the foregoing, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:
H.B. NO. 37, RELATING TO NOISE.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, January 29, 2013 **TIME:** 2:00 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill but has concerns that the bill is vague and overly broad. Because some of the terms are not clearly defined, it may result in unintended consequences.

The bill seeks to create a new civil cause of action to allow for injunctive relief and monetary damages for private nuisance due to excessive noise.

Subsection (a) of the new section being added to chapter 663, Hawaii Revised Statutes, provides that:

A person who alleges the existence of a private nuisance due to excessive noise may bring a civil action for appropriate injunctive relief, or actual damages, or both within two years after the occurrence of the alleged violation of this part.

“Excessive noise” is defined as “the presence of sound of a volume or in quantities and for durations that unreasonably interferes with the comfortable enjoyment of life and property.”

“Nuisance” is defined as “any interference with reasonable use and enjoyment of property and includes all claims that meet the requirements of this definition regardless of whether a complaint designates the claims as brought in nuisance, negligence, trespass, or any other claim under law or equity.”

Chapter 342F, Hawaii Revised Statutes, entitled Noise Pollution, expressly defines the term “excessive noise” and provides the development of objective standards with respect to decibel, duration, and quantities of noise. Because the definition of “excessive noise” in this bill

does not define what is excessive, the Department is concerned that the inconsistency between this bill and chapter 342F will result in unintended consequences.

For example, because this bill does not include any exceptions as to time, duration, or volume, this bill could, for example, create a private cause of action for someone who lives near a roadway where the State or counties are working on a long-term roadway construction project if the person subjectively believes that the construction noise is too loud or noisome.

We request that this bill be held.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 8:00 AM
To: JUDtestimony
Cc: bill@puna.us
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Smith	Individual	Support	No

Comments: I support HB37 and urge you to report it favorably. Medical science literature has begun to acknowledge what many people have felt -- that is, some continual loud noises can be more than just annoying, they can be damaging to health. Please lookup vibrioacoustic disease for further information. Mahalo.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 7:44 AM
To: JUDtestimony
Cc: cpgroup@aloha.net
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl corbiell	Individual	Support	No

Comments: The highest danger is noise that you can not hear - subsonic. However, it is still waves of sound and it affects people's health. So this regulation should cover both audible and non audible noise. So if this regulation would cover commercial wind turbines that definitely have noise whenever the wind blows, then I support this bill.

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Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

January 29, 2013

TO: HONORABLE KARL RHOADS, CHAIR; HONORABLE SHARON HAR,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON
JUDICIARY

SUBJECT: **OPPOSITION TO H.B. 37, RELATING TO NOISE.** Authorizes injunctive
relief and damages for private nuisance due to excessive noise.

HEARING

DATE: Tuesday, January 29, 2013
TIME: 2:00 p.m.
PLACE: Capitol Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) 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.

House Bill No. 37, proposes to provide a cause of action to permit private citizens the right to sue for damages and injunctive relief for excessive noise within two years of the occurrence.

The GCA is **strongly opposed** to passage of H.B. 37. This bill could potentially result in tying up construction projects and result in additional unanticipated costs to state and county governments, as well as contractors. Construction activities such as road maintenance and utility repairs require a delicate balance between preventing traffic congestion (often by working at night) and minimizing the impacts of excessive noise on nearby residents and businesses. Private suits by aggrieved citizens who could allege excessive noise along major streets under repair could bring emergency work to a halt. Further, this bill could prevent night work on major thoroughfares due to alleged excessive noise and thereby result in major traffic tie-ups during the day because no work can be performed during the night.

The bill's definition of "excessive noise" is vague with no objective standard to measure what is excessive. "Comfortable enjoyment of life" is too subjective a standard, making it impossible to determine if the noise is excessive. Is the same noise level at night excessive, but not during the day? How long must the noise continue to be excessive?

The bill as proposed raises a large number of issues and problems and should not be considered as a viable solution to prevent excessive noise. Noise regulations, particularly sounds that are work related, are regulated under both state and federal laws. The State of Hawaii Department of

Health currently regulates excessive noise under Chapter 342F, Hawaii Revised Statutes. Under federal law, guidelines for occupational noise exposure were established by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health in 1970. Enforcement under both federal and state laws provides an objective, quantifiable means of regulating excessive and work related noises that may jeopardize public health and safety. Pursuant to Section 342F-10 “any person who commits a violation of noise control rules . . . may be issued a summons or citation for such violation . . .” A violation of such rules results in fines and even a person’s arrest.

This bill is unnecessary because an administrative process is already in place. This bill would have a negative effect, not only on the construction industry, but on society as a whole, and would promote more litigious actions by private citizens.

Accordingly, GCA respectfully requests that this measure be held. Thank you for the opportunity to express our views on this bill.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Complete Construction Services Corp.

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Mark Kennedy

HASEKO Construction Kamakana, LLC

Marshall Hickox

Homeworks Construction, Inc.

Michael Watanabe

JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Scotty Anderson

Pacific Rim Partners

W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Judiciary Tuesday, January 29, 2013 2:00 p.m. State Capitol - Conference Room 325

RE: H.B. 37, RELATING TO NOISE

Dear Chair Rhoads, Vice-Chair Har, and members of the committee:

My name is Gladys Marrone, Director of Government Relations for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. BIA-Hawaii promotes its members through advocacy and education, and provides community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization, chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is **opposed** to H.B. 37, Relating to Noise. The bill proposes to amend Chapter 663, HRS, and authorize injunctive relief and damages for private nuisance due to excessive noise.

Excessive noise sources, however, are presently regulated by the Department of Health under Chapter 342F, HRS. Noise generated from construction projects requires a permit under Chapter 342F. The permit sets time restrictions, other requirements for noise abatement, and consequences imposed by the Director of Health due to lack of compliance. Our developers and contractors strive to minimize noise impacts on the surrounding neighbors and community by strictly adhering to these noise permits.

H.B. 37 also allows any person to obtain an order to stop any excessive noise source for which a valid permit has been obtained, even when the operator of the source is complying with all requirements of the permit obtained under Chapter 342F.

Based on the above reasons, BIA-Hawaii is **opposed** to H.B. 37 and respectfully requests that this measure be held.

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

TESTIMONY OF MICHAEL TANOUE

HOUSE COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair

Tuesday, January 29, 2013
2:00 p.m.

HB 37

Chair Rhoads, Vice Chair Har, and members of the Committee, my name is Michael Tanoue, counsel for the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** HB 37.

Even without HB 37, a person alleging the existence of a private nuisance due to excessive noise may file a petition for injunction, a civil complaint for damages, or both. Because that right already exists, HB 37 is unnecessary.

The establishment of a two-year statute of limitations in subsection (a) of HB 37 is inconsistent with the remedy of an injunction in the context of excessive noise. If the noise is so excessive, a two-year period by which to seek an injunction diminishes the seriousness of the claimed nuisance.

The definitions of the key terms “excessive noise” and “nuisance” in HB 37 are unclear and subjective, which would lead to more costly and protracted court proceedings. The definition of the term “damages” mentions “vibrations,” a term nowhere else discussed or even mentioned in HB 37.

The term “damages” also includes “reasonable attorney fees.” Such “reasonable attorney fees” would be recoverable only by the plaintiff, i.e., the person who alleges the existence of a private nuisance, in the event the plaintiff prevails. HB 37 does not provide the defendant with the same right to seek recovery of “reasonable attorney fees” in the event the defendant prevails. This omission could encourage harassing lawsuits by one neighbor against the other, with no consequence to the plaintiff. Leaving the defendant with no reciprocal right to seek “reasonable attorney fees” if the defendant prevails against a baseless claim is inequitable and could incentivize plaintiffs to pursue frivolous claims

Based on the foregoing, Hawaii Insurers Council respectfully requests that HB 37 be held. Thank you for the opportunity to testify.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 10:15 PM
To: JUDtestimony
Cc: jtt.hew@gmail.com
Subject: *Submitted testimony for HB37 on Jan 29, 2013 14:00PM*

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Janeel Hew	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 9:31 AM
To: JUDtestimony
Cc: mcpherson.kimo@gmail.com
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kimo McPherson	Individual	Support	No

Comments: HB37 noise from turbines is unhealthy for all forms of life.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 8:34 AM
To: JUDtestimony
Cc: bigislandpaul@gmail.com
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Kuykendall	Individual	Support	No

Comments: I support HB 37 and request that you report it favorably. Continual loud noise interferes with people's health and happiness and interferes with the ability to enjoy the Aina. Vibrioacoustic disease, caused by low frequency noise, has been documented to damage the health of people exposed to it. Please support this bill and protect the people of Hawaii. Mahalo

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 12:13 PM
To: JUDtestimony
Cc: nimo1767@gmail.com
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Petricci	Puna Pono Alliance	Support	No

Comments: Aloha My name is Robert Petricci, I am testifying for Puna Pono Alliance in support of HB37. We support HB37 and urge you to pass the bill. Medical experts are finding that some types of long term loud noises can be more than just annoying, they can have negative impacts on health. There are different types of noise, including low-frequency noise that may have a detrimental effect on the health and lifestyle of people who are forced to endure it. Stress, loss of sleep, annoyance and discomfort are real problems. Noise in the environment can interfere with children's ability to learn and people's job performance. The evidence on low-frequency noise is sufficiently strong to warrant immediate concern. There is mounting evidence that health effects due to low frequency noise may be more severe than noises in general. Current noise monitoring generally does not measuring low frequency noise.

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Sent: Tuesday, January 29, 2013 8:55 AM
To: JUDtestimony
Cc: molokaimama@hotmail.com
Subject: *Submitted testimony for HB37 on Jan 29, 2013 14:00PM*

HB37

Submitted on: 1/29/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Shirlee Newman	Individual	Support	No

Comments:

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Sent: Tuesday, January 29, 2013 8:55 AM
To: JUDtestimony
Cc: suzannewakelin@yahoo.com
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Wakelin	Individual	Support	No

Comments: Please vote YES on HB37. Noise, including low-frequency noise can have a detrimental effect on and interfere with the comfort of people who are subjected to it. Stress, loss of sleep, annoyance and discomfort are real problems. In addition, there is increasing evidence that exposure to noise has detrimental health effects, known as Vibroacoustic disease. From the World Health Organization (WHO) Guidelines for Community Noise (p68) • “The evidence on low-frequency noise is sufficiently strong to warrant immediate concern” • “Health effects due to low frequency components in noise are estimated to be more severe than for community noises in general” • “A” weighting underestimates the sound pressure level of low frequency components”

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har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 9:06 AM
To: JUDtestimony
Cc: ttravis12@mac.com
Subject: Submitted testimony for HB37 on Jan 29, 2013 14:00PM

HB37

Submitted on: 1/29/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Travis	Individual	Support	No

Comments: Medical science literature has begun to acknowledge what many people have felt -- that is, some continual loud noises can be more than just annoying, they can be damaging to health. Please lookup vibrioacoustic disease for further information. Mahalo.

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