



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 11, 2020

To: The Honorable Brian T. Taniguchi, Chair,  
The Honorable Les Ihara, Jr., Vice Chair, and  
Members of the Senate Committee on Labor, Culture and the Arts

Date: Tuesday, February 11, 2020

Time: 3:00 P.M.

Place: Conference Room 224, State Capitol

From: Scott T. Murakami, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. NO. 2961 RELATING TO WAGES**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2961 amends the Payment of Wages and Other Compensation Law (Chapter 388, Hawaii Revised Statutes [HRS]) by adding a new section to enforce general contractor liability in the construction industry when a subcontractor's employees are not paid their wages. The measure also authorizes enforcement actions by the Director or a joint labor-management cooperation committee to recover funds for workers.

The DLIR provides comments.

**II. CURRENT LAW**

There is no law that requires the department to enforce private contract rights beyond an employee and employer.

**III. COMMENTS ON THE HOUSE BILL**

DLIR recognizes that this measure is attempting to provide an additional recourse for employees of a subcontractor who did not pay their employees. It is not clear why the protection is only for the construction industry. There are many types of employers that close down, notably in the retail and restaurant industries, leaving unfortunate workers without paychecks and often few or no assets.

This measure segregates the construction industry, reaching into a private contractual relationship, which may already be pursuable in a court of law. The proposal provides that no other party except the Department and a labor management committee may bring an action against a general contractor to enforce the liability established in this section (pg. 4, lines 7-8).

This bill prohibits by omission the claimant from obtaining and enforcing a judgment against the general, which gives no recourse to the claimant to pursue their own wage claim. There appears to be no reason that the clamant should not be allowed to pursue their individual claims against the general contractor.

The DLIR suggests deleting “after trial” (pg. 4, line 11) as this may prohibit the department from filing a judgment lien against a general after an Order of Wage Payment Violation administrative action.

Enactment of this measure would require additional resources to effectively implement.

# ***SAH - Subcontractors Association of Hawaii***

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February 11, 2020

Testimony To: Senate Committee on Labor, Culture and the Arts  
Senator Brian T. Taniguchi, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2961 – RELATING TO WAGES.

Chair Taniguchi and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The Subcontractors Association represents the following nine separate and distinct contracting associations and they are:

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 & AIRCONDITIONING CONTRACTORS' NATIONAL ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

This bill imposes some very heavy responsibilities upon general and subcontractors and ones that we believe are not entirely fair, especially on private work.

Certainly while we subscribe to the theory that the general contractor has to do due diligence on all of his subcontractors, this bill imposes some liabilities on the general contractor that we believe go far beyond reasonableness. For the general contractor to be able to stay on top of the financial condition of 15 or even 19 different subcontractors during the course of the job with perhaps several different jobs going on at once is a very heavy burden. Additionally, under the bill, the general contractor is also responsible for the financial condition of not only his subcontractors but also the subcontractors at any tier, in other words, the subs of subs. In most cases the general contractor doesn't have much of a choice as to who that subcontractor picked as their subcontractors, so they have no direct link to the financial stability or condition of those subcontractors. We would also foresee prolonged payment issues to all subcontractors until the general contractors are sure their liabilities were free and clear. Payment issues between subs and generals are already a huge issue.

At the very least we can foresee general contractors withholding payment to all subcontractors on a job based on the real, perceived or contrived excuse of missing payroll information. While Section (i) (page 6) requires payment in a "timely manner" it does not specify what that is. Timely to a general contractor who is holding someone else's money could be 90 or 120 days. Timely to a subcontractor who needs to pay bills is 30 days.

We would also ask that the Committee pause just a minute and review all the information a sub has to deliver to a general as prescribed by 387-6 HRS (subsection f, page 5). These are:

- (1) The name, address, and occupation of each employee;
- (2) The amount paid each pay period to each employee;
- (3) The hours worked each day and each workweek by each employee;
- (4) The rate or rates of pay of each employee and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages; and more specifically,
- (5) The employee's total hours worked;
- (6) The employee's regular and overtime hours;
- (7) The employee's straight-time compensation;
- (8) The employee's overtime compensation;
- (9) Any other compensation, including allowances, if any, claimed as part of the minimum wage;
- (10) The employee's total gross compensation;
- (11) The amount and purpose of each deduction
- (12) The employee's total net compensation;
- (13) The date of payment;
- (14) The pay period covered; and
- (15) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis, including overtime rate or rates of pay. For employees paid a piece rate, the record shall indicate the applicable piece rate or rates of pay, and the number of pieces completed at each piece rate.

This is for each and every employee of each and every sub and of all subs!

While we can emphasize with the individual employee who might have been left with unpaid wages, we are not sure it is entirely the general contractors fault for those kinds of problems. Bonds and insurance should be able to take care of those kinds of situations without imposing these undue burdens on the contractor.

Based on the above, we think this bill is ill advised.

Thank you.



**TESTIMONY TO THE SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS  
State Capitol, Conference Room 224  
415 South Beretania Street  
3:00 PM**

February 11, 2020

RE: SENATE BILL NO. 2961, RELATED TO WAGES

Chair Tanguchi, Vice Chair Ihara and members of the committee:

My name is Dwight Mitsunaga, 2020 President 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. Our members build the communities we all call home.

BIA Hawaii is opposed to S.B. 2961 which proposes to make general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

As many of our members are small general contractors, the proposed bill would place a substantial financial and oversight burden on our members to ensure the solvency of not only their director sub-contractors, but any sub-contractor used by their sub-contractor.

The bill would create more risks and uncertainty for our members in a market that already challenged with regulatory burdens, and increasing costs for labor and materials.

We believe the proposed bill would create significant challenges to our small contractor members. We are opposed to S.B. 2961 and appreciate the opportunity to express our views on this matter.

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## HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Labor, Culture and the Arts  
The Honorable Brian T. Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
Tuesday, February 11, 2020  
3:00 PM, State Capitol Room 224

### Statement of the Hawaii Regional Council of Carpenters Support for SB 2961, Relating to Wages and Proposed Amendment

Aloha Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The Hawaii Regional Council of Carpenters **strongly supports SB 2961**, which would make general contractors entering into or under contracts in Hawaii for work on buildings or structures liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

We are grateful for the legislature's recent efforts to increase accountability for employers both inside and outside of the construction industry to ensure that Hawaii workers are fairly protected. Such efforts included raising fines for employers in the construction industry who do not pay proper prevailing wages (SB 2723 2016), increasing penalties for employers in all industries who fail to provide TDI and Workers' Compensation coverage to their employees (HB 2363 2016), and allowing the Attorney General to obtain an injunction against a business in default of workers' compensation and allowed DLIR to issue an "order of wage payment violation" against employers who deny pay to their workers (HB 208 2017).

While these efforts have certainly increased protections for Hawaii workers, they have also left open other avenues for unscrupulous employers to engage in payroll and tax fraud by hiring shady subcontractors.

One such scheme was revealed at the Maile Sky Court construction site in Waikiki. In this case, the general contractor working on the site utilized subcontractors who were underpaying employee wages and not providing necessary benefits and safety standards. The subcontractor received a number of fines from state and federal agencies, however, the general contractor involved in the scheme received no penalties related to the payroll fraud happening on the site.

As a result, the general contractor accrued all of the financial benefits of the fraudulent scheme without repercussion: his use of a shady subcontractor allowed him to underbid legitimate local contractors, to report and pay lower taxes, and avoid liability for the unpaid wages. Had the arrangement involved not been caught by state or federal agencies, he could have repeated the

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scheme elsewhere in the state without any consequences, to the detriment of the local construction community.

SB 2961 provides a needed remedy to ensure that general contractors don't turn a blind eye to the shady activities of their subcontractors. The bill seeks to make general contractors liable for unpaid wages of their subcontractors, and provides a tool to general contractors to be able to require their subcontractors to furnish payroll records and other relevant documents upon request, so that a general contractor can ensure all subcontractors' workers are being paid properly in compliance with the law.

Over the course of the hearings for SB 1082, which was last session's bill which dealt with this same issue, we and other industry stakeholders agreed on further amendments, which we would like to propose to your committee for consideration, specifically:

*Removing the phrase "The general contractor's liability shall be limited to unpaid wages, including any interest owed" from Page 2, Lines 13-15.*

We and our other industry stakeholders have agreed that this phrase is redundant, as a general contractor's liability is already limited to unpaid wages on Page 2, Line 9.

Thank you for the opportunity to voice our opinion on this important matter.

Testimony of  
Pacific Resource Partnership

Senate Committee on Labor, Culture and the Arts  
The Honorable Brian T. Taniguchi, Chair  
The Honorable Les Ihara, Vice Chair

SB 2961 Relating to Wages

Tuesday, February 11, 2020  
3:00 P.M.  
Conference Room 224

Aloha Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

Pacific Resource Partnership (PRP) writes in strong support of SB 2961, which would hold unscrupulous general contractors accountable for supporting or ignoring the unfair labor practices of their subcontractors who fail to pay wages owed to their employees.

SB 2961 will modernize the law to address new and complicated marketplace abuses that are occurring in the construction industry. Under current law, general contractors are not held accountable for the unfair labor practices of their subcontractors, which includes the nonpayment of wages. For instance, at the Maile Sky Court construction site in Waikiki, the general contractor working on the site utilized subcontractors who were underpaying employee wages. The subcontractor received a number of fines from state and federal agencies, however, the general contractor involved in the scheme received no penalties related to payroll fraud that occurred at the construction site.

SB 2961 provides adequate protections to law abiding and vigilant contractors. The general contractor is the single entity that has the most knowledge of every aspect of the project. If the general contractor uses safeguards built within the bill protecting general contractors, they will ensure that unscrupulous subcontractors are not on the job and avoid liability. For instance, SB 2961 provides general contractors with the power to demand a subcontractor's employee payroll records and project award information to ensure that their subcontractors are in compliance with the law. General contractors may withhold any of all future payments to the subcontractor unless the requested information is submitted promptly. Moreover, this reporting requirement will not overly burden the subcontractor since the existing law already requires subcontractors to keep accurate time and payroll records for each employee for six years.

If general contractors are held liable for their subcontractors that violate the law, they will take extra precautions to make sure they hire responsible subcontractors. This will benefit honest contractors, workers and their families, taxpayers and the general public as a whole. Therefore, PRP respectfully requests your committee's favorable action on SB 2961. We are aware that the Hawaii Regional Council of Carpenters will be proposing an amendment to SB 2961, which PRP also supports. Thank you for this opportunity to testify.

