

JAN 20 2023

A BILL FOR AN ACT

RELATING TO WAGES.

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

1 SECTION 1. Chapter 388, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:
4 "§388- Contractor liability; unpaid wages. (a) A
5 general contractor entering into or under a contract in the
6 State for the erection, construction, alteration, or repair of a
7 building, structure, or other private work not subject to
8 chapter 104 shall assume and is liable for any debt owed to a
9 claimant for wages incurred by a subcontractor at any tier
10 acting under, by, or for the general contractor, for the
11 claimant's performance of labor included in the contract between
12 the general contractor and the owner. The general contractor's
13 liability under this section shall extend only to unpaid wages
14 to the claimant, including any interest owed, but shall not
15 extend to penalties, liquidated damages, or any benefit, fringe
16 benefit, or contribution claims.



1 A general contractor shall not evade or commit any act that
2 negates the requirements of this section; provided that this
3 section does not prohibit a general contractor or subcontractor
4 from contracting with or enforcing any lawful remedies against a
5 subcontractor for the liability created by the nonpayment of
6 wages by the subcontractor or by a subcontractor at any tier
7 working under another subcontractor.

8 (b) Notwithstanding any law to the contrary, actions to
9 enforce a general contractor's liability for unpaid wages may
10 include the following:

11 (1) The director may enforce liability for unpaid wages
12 established by subsection (a) against a general
13 contractor. The general contractor's liability shall
14 be limited to unpaid wages, including any interest
15 owed; or

16 (2) A joint labor-management cooperation committee
17 established pursuant to section 175a of the federal
18 Labor Management Cooperation Act of 1978 (29 U.S.C.
19 175a) may bring an action in any court of competent
20 jurisdiction against a general contractor or
21 subcontractor at any tier for unpaid wages owed to a



1 claimant by the general contractor or subcontractor
2 for the performance of private work not subject to
3 chapter 104, including unpaid wages owed by the
4 general contractor, pursuant to subsection (a). The
5 court shall award a prevailing party in such an action
6 reasonable attorney's fees and costs, including expert
7 witness fees. As a condition precedent to any such
8 action against a general contractor to enforce the
9 liability established by subsection (a), the committee
10 shall provide written notice to the general contractor
11 and subcontractor who employed the claimant, within
12 ninety days from the date on which the person did or
13 performed the last labor for which claim is made, but
14 no later than forty-five days after the date of
15 completion as defined in section 507-43, stating with
16 substantial accuracy the amount claimed and the name
17 of the party for whom the labor was done or performed.
18 The written notice shall be served by registered or
19 certified mailing of the notice to the general
20 contractor and subcontractor at any place the general
21 contractor or subcontractor maintains an office or



1 conducts their business, or in any manner authorized
2 by law to serve such notice. The written notice shall
3 not limit the liability of the general contractor or
4 preclude subsequent amendments of an action to
5 encompass additional claimants employed by the
6 subcontractor.

7 No other party may bring an action against a general contractor
8 to enforce the liability established in this section.

9 (c) Unless otherwise provided by law, property of the
10 general contractor may be attached for the payment of any
11 judgment received after trial and pursuant to this section.

12 (d) An action brought pursuant to this section shall be
13 filed within one year after actual completion of the work
14 covered by the direct contract between the owner and general
15 contractor.

16 (e) This section does not apply to work performed by an
17 employee of the State or any political subdivision of the State.

18 (f) Upon request by a general contractor to a
19 subcontractor, the subcontractor and any lower tier
20 subcontractors under contract with the subcontractor shall
21 provide payroll records, which, at a minimum, shall contain the



1 information set forth in section 387-6 of its employees who are
2 providing labor on a private work. The payroll records shall be
3 marked or obliterated only to prevent disclosure of an
4 employee's full social security number, except that the last
5 four digits of the employee's social security number shall be
6 provided. Upon request of a general contractor to a
7 subcontractor, the subcontractor and any lower tier
8 subcontractors under contract with the subcontractor shall
9 provide the general contractor with award information that
10 includes the project name, name and address of the
11 subcontractor, lower-tier subcontractor with whom the
12 subcontractor is under contract, anticipated start date,
13 duration, estimated journeyperson and apprentice hours, and
14 contact information for the subcontractors on the project. A
15 subcontractor's failure to comply with this subsection shall not
16 relieve a general contractor from any of the obligations
17 contained in this section.

18 (g) For purposes of this section:

19 "General contractor" means a contractor who has a direct
20 contractual relationship with an owner.



1 "Subcontractor" means a contractor who does not have a
2 direct contractual relationship with an owner. The term
3 includes a contractor who has a contractual relationship with a
4 general contractor or with another subcontractor.

5 (h) The obligations and remedies in this section shall be
6 in addition to any obligations and remedies otherwise provided
7 by law, except that nothing in this section shall be construed
8 to impose liability on a general contractor for anything other
9 than unpaid wages, including any interest owed.

10 (i) Nothing in this section shall alter an owner's
11 obligation to pay a general contractor, or the general
12 contractor's obligation to pay a subcontractor, in a timely
13 manner; provided that a general contractor may withhold all sums
14 owed to a subcontractor if the subcontractor does not provide
15 the information requested under subsection (f) in a timely
16 manner and until such time that the information is provided.

17 (j) The provisions of this section are severable. If any
18 provision of this section or its application is held invalid,
19 that invalidity shall not affect other provisions or
20 applications that can be given effect without the invalid
21 provision or application."



S.B. NO. 415

1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2023.

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INTRODUCED BY: *Karl Rhoads*



S.B. NO. 415

Report Title:

Wages; Timely Payment; General Contractors; Subcontractors;
Liability

Description:

Makes 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.

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

