



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

February 21, 2023

To: The Honorable Jarrett Keohokalole, Chair,
The Honorable Carol Fukunaga, Vice Chair, and
Members of the Committee on Commerce and Consumer Protection

Date: Tuesday, February 21, 2023
Time: 10:00 a.m.
Place: Conference Room 229, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. 415 S.D.1 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this proposal and suggests an amendment. SB415 SD1 proposes to amend the Payment of Wages and Other Compensation Law, Chapter 388, Hawaii Revised Statutes (HRS), by adding a new section to make a general contractor, entering into or under a private construction contract, liable for any unpaid wages and interest owed by a subcontractor, at any tier, to the subcontractor's employees for work performed under the contract. The measure also authorizes enforcement actions by the Director or a joint labor-management cooperation committee to recover unpaid wages for the subcontractor's employees.

II. CURRENT LAW

Chapter 388, HRS, requires private employers to pay their employees all wages due at least twice a month and within seven days after the end of each pay period except under certain exceptions. DLIR enforces laws for employees of all private employers in the State. The law does not require an employer to pay for any unpaid wages from another employer.

III. COMMENTS ON THE SENATE BILL

This proposal seeks to hold a general contractor liable for any unpaid wages and interest that a subcontractor at any tier owes to its employees for work performed under a private construction contract.

DLIR suggests inserting in the definition of “employer” in **§388-1 Definitions**, that the general contractor, for purposes of wages owed to a subcontractor’s employees, shall be deemed the employer for enforcement.



February 21, 2023

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To: Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

From: Malcolm Barcarse, Jr. ABC Hawaii Board Legislative Committee Chair

Associated Builders and Contractors Hawaii Chapter Testimony in **OPPOSITION** to SB
415 SD1

Chair Keohokalole, Vice Chair Fukunaga and members of the Committee:

Thank you for the opportunity to testify, my name is Malcolm Barcarse, Jr. I am the Chair of the Legislative Committee of Associated Builders and Contractors, Hawaii Chapter which represents over 150 member companies in the Construction Industry in Hawaii. We also have a State Approved Trade Apprenticeship Program in the trades of Carpentry, Electrical, Painting, Plumbing and Roofing. Our national organization has over 21,000 members across 69 chapters.

We stand in opposition to this bill for two reasons. First for public projects these provisions and this type of liability already exists under Chapter 104 and this bill would create a conflict with Chapter 104. Chapter 104 requires subcontractors to submit certified payroll to the State through their general contractors. Violations for noncompliance can extend to GC on the project through the existing law so because of that this bill is not necessary for public projects. On private projects, this bill would put construction in a different category than all other industries. In no other industry does Chapter 388 extend liability to a general contractor for the wages of their subs. We feel that it is unfair to subject the construction industry to increased paperwork, compliance and liability under Chapter 388 as opposed to every single industry in the economy. Protections for these violations are covered in Chapter 388 and federal law so we encourage the State to focus on enforcing the laws that are already on the books.

For the reasons stated above we ask that this bill be HELD. Thank you for the opportunity to testify.



February 21, 2023

TO: HONORABLE JARRETT KEOHOKALOE, CHAIR, HONORABLE CAROL FUKUNAGA, VICE CHAIR, COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **COMMENTS ON S.B. 415 SD1, RELATING TO WAGES.** 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.

HEARING

DATE: Tuesday, February 21, 2023
TIME: 10:00 a.m.
PLACE: Capitol Room 229

Dear Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA provides comments on S.B. 415 SD1, which 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.

GCA is currently working with the stakeholders to find an equitable solution. We believe that this draft reflects compromise language between the GCA and some of its labor counterparts.

Thank you for the opportunity to provide comments on this measure.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 21, 2023

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair

Presented By: Tim Lyons, President

Subject: S.B. 415, S.D. 1 – RELATING TO WAGES.

Chair Keohokalole 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:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

HAWAII FLOORING ASSOCIATION

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL & AIRCONDITIONING CONTRACTORS' NATIONAL ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

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 must do his 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 of 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.

TO: Members of the Committee on Commerce and Consumer Protection

FROM: Natalie Iwasa
808-395-3233

HEARING: 10 a.m. Tuesday, February 21, 2023

SUBJECT: SB 415, SD1, General Contractors Liable for Subcontractor's Unpaid Wages -
OPPOSED

Aloha Chair Keohokalole and Committee Members,

Thank you for allowing the opportunity to provide testimony on SB 415, SD1, which would make the general contractor liable for a subcontractor's unpaid wages for certain projects.

These types of policy changes don't happen in a vacuum. It seems to me that if you make the general liable for a subcontractor's unpaid wages, that general will attempt to make itself whole by charging more for the contract. The result will be increased contract prices on these jobs.

It is simply wrong to hold a general liable for a sub's unpaid bills.

Please vote "no" on SB415, SD1.

LATE

SB-415-SD-1

Submitted on: 2/20/2023 10:18:20 PM

Testimony for CPN on 2/21/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Nathaniel Kinney	Testifying for Hawaii Regional Council of Carpenters	Support	Written Testimony Only

Comments:

The Hawaii Regional Council of Carpenters (HRCC) strongly supports SB 415 SD1, which would make general contractors entering into or under contracts in Hawaii for work on building 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.

HRCC has identified numerous projects where unscrupulous employers 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 federal and state agencies, however the general contractor involved in the scheme received no penalties related to the payroll fraud happening on 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 contractors, to report and pay lower taxes, and avoid the liability for unpaid wages. Had the case not been caught by federal and state agencies, he could have repeated the scheme elsewhere in the state without any consequences, to the detriment of the local construction community.

SB415 SD1 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 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.

Mahalo.

