
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 wage, benefit,
16 fringe benefit, or contribution claims that result from or is
17 caused by retainage by the general contractor.



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) pursuant to chapter 387,
13 chapter 388, or a civil action against a general
14 contractor. The general contractor's liability shall
15 be limited to unpaid wages, including any interest
16 owed; or

17 (2) A joint labor-management cooperation committee
18 established pursuant to 29 United States Code, section
19 175a, the federal Labor Management Cooperation Act of
20 1978, may bring an action in any court of competent
21 jurisdiction against a general contractor or



1 subcontractor at any tier for unpaid wages owed to a
2 claimant by the general contractor or subcontractor
3 for the performance of private work not subject to
4 chapter 104, including unpaid wages owed by the
5 general contractor, pursuant to subsection (a). The
6 court shall award a prevailing plaintiff in such an
7 action reasonable attorney's fees and costs, including
8 expert witness fees. As a condition precedent to any
9 such action against a general contractor to enforce
10 the liability established by subsection (a), the
11 committee shall provide written notice to the general
12 contractor and subcontractor who employed the
13 claimant, within ninety days from the date on which
14 the person did or performed the last labor for which
15 claim is made, but not later than forty-five days
16 after the date of completion as defined in section
17 507-43, stating with substantial accuracy the amount
18 claimed and the name of the party for whom the labor
19 was done or performed. The written notice shall be
20 served by registered or certified mailing of the
21 notice to the general contractor and subcontractor at



1 any place the general contractor or subcontractor
2 maintains an office or conducts their business, or in
3 any manner authorized by law to serve such notice.

4 The written notice shall not limit the liability of
5 the general contractor or preclude subsequent
6 amendments of an action to encompass additional
7 claimants employed by the subcontractor.

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

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

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

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

19 (f) Upon request by a general contractor to a
20 subcontractor, the subcontractor and any lower tier
21 subcontractors under contract with the subcontractor shall



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

19 (g) For purposes of this section:

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



1 "Retainage" means a percentage of what a general contractor
2 withholds from payment to a subcontractor until construction of
3 the project has been satisfactorily completed in all aspects
4 according to contract.

5 "Subcontractor" means a contractor who does not have a
6 direct contractual relationship with an owner. The term
7 includes a contractor who has a contractual relationship with a
8 general contractor or with another subcontractor.

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

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



1 (j) The provisions of this section are severable. If any
2 provision of this section or its application is held invalid,
3 that invalidity shall not affect other provisions or
4 applications that can be given effect without the invalid
5 provision or application."

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

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on March 15, 2094.



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. (SB1082 HD1)

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