

JAN 24 2019

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# 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 shall assume and is  
8 liable for any debt owed to a claimant for wages incurred by a  
9 subcontractor at any tier acting under, by, or for the general  
10 contractor, for the claimant's performance of labor included in  
11 the contract between the general contractor and the owner. The  
12 general contractor's liability under this section shall extend  
13 only to unpaid wages to the claimant, including any interest  
14 owed, but shall not extend to penalties, liquidated damages, or  
15 any wage, benefit, or contribution claims that result from or is  
16 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.

17        (2) A joint labor-management cooperation committee  
18 established pursuant to 29 United States Code, section  
19 175a of the federal Labor Management Cooperation Act  
20 of 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, including unpaid  
4           wages owed by the general contractor, pursuant to  
5           subsection (a). The court shall award a prevailing  
6           plaintiff in such an action reasonable attorney's fees  
7           and costs, including expert witness fees. Prior to  
8           commencement of an action against a general contractor  
9           to enforce the liability established by subsection  
10          (a), the committee shall provide the general  
11          contractor or subcontractor who employed the claimant,  
12          with at least a thirty-day notice by first class mail.  
13          The notice need only describe the general nature of  
14          the claim and shall not limit the liability of the  
15          general contractor or preclude subsequent amendments  
16          of an action to encompass additional claimants  
17          employed by the subcontractor.  
18          No other party may bring an action against a general contractor  
19          to enforce the liability established in this section.



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

4        (d) An action brought pursuant to this section shall be  
5 filed within two years after actual completion of the work  
6 covered by the direct contract between the owner and general  
7 contractor.

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

10       (f) Upon request by a general contractor to a  
11 subcontractor, the subcontractor and any lower tier  
12 subcontractors under contract with the subcontractor shall  
13 provide payroll records, which, at a minimum, shall contain the  
14 information set forth in section 387-6 of its employees who are  
15 providing labor on a private work. The payroll records shall be  
16 marked or obliterated only to prevent disclosure of an  
17 employee's full social security number, except that the last  
18 four digits of the employee's social security number shall be  
19 provided. Upon request of a general contractor to a  
20 subcontractor, the subcontractor and any lower tier  
21 subcontractors under contract with the subcontractor shall



1 provide the general contractor with award information that  
2 includes the project name, name and address of the  
3 subcontractor, lower-tier subcontractor with whom the  
4 subcontractor is under contract, anticipated start date,  
5 duration, and estimated journey person and apprentice hours, and  
6 contact information for the subcontractors on the project. A  
7 subcontractor's failure to comply with this subsection shall not  
8 relieve a general contractor from any of the obligations  
9 contained in this section.

10 (g) For purposes of this section:

11 "General contractor" means a contractor who has a direct  
12 contractual relationship with an owner.

13 "Retainage" means a percentage of what a general contractor  
14 withholds from payment to a subcontractor until construction of  
15 the project has been satisfactorily completed in all aspects  
16 according to contract.

17 "Subcontractor" means a contractor who does not have a  
18 direct contractual relationship with an owner. The term  
19 includes a contractor who has a contractual relationship with a  
20 general contractor or with another subcontractor.



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

6       (i) Nothing in this section shall alter an owner's  
7 obligation to pay a general contractor, or the general  
8 contractor's obligation to pay a subcontractor, in a timely  
9 manner; provided that a general contractor may withhold all sums  
10 owed to a subcontractor if the subcontractor does not provide  
11 the information requested under paragraphs (1) and (2) of  
12 subsection (f) in a timely manner and until such time that the  
13 information is provided.

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

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



# S.B. NO. 1082

1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:                     *AMN. W.*                    

**By Request**



# S.B. NO. 1082

**Report Title:**

Wages; Timely Payment; General Contractors; Subcontractors;  
Liability

**Description:**

Makes 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.

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

