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January 29, 2019

To: The Honorable Aaron Ling Johanson, Chair,  
The Honorable Stacelynn K.M. Eli, Vice Chair, and  
Members of the House Committee on Labor and Public Employment

Date: Tuesday, January 29, 2019

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

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

**Re: H.B. No. 95 RELATING TO WAGES**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB95 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.

DLIR provides supports the intent of this measure and offers comments.

**II. CURRENT LAW**

§388-2 Semimonthly payday; method of payment of wages. requires employers to pay all wages due at least twice monthly and within seven days after the end of each pay period except for under certain exceptions. DLIR currently obtains the due wages for employees of subcontractors from contractors in prevailing wages cases (Chapter 104, HRS).

**III. COMMENTS ON THE HOUSE BILL**

The Department supports the intent of this measure as it is intended to support the enforcement of the law and this proposed added function would not likely require

additional resources.

DLIR notes that for the general functioning of the Wage Standards Division that consideration of the request for an additional staff as identified in the Governor's Biennium Budget request and in HB1186 would be appreciated as a method to bolster enforcement and restore the capacity of the Wage Standards Division.

**HB-95**

Submitted on: 1/28/2019 8:51:26 AM

Testimony for LAB on 1/29/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Oahu County Committee on Legislative Priorities, Democratic Party of Hawai'i	Support	No

Comments:

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

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

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

**LATE**

January 29, 2019

Testimony To: House Committee on Labor & Public Employment  
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: H.B. 95 – RELATING TO WAGES.

Chair Johanson 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 CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

This bill imposes some very heavy responsibilities upon general contractors and ones that we believe are not entirely fair.

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.

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 general contractor.

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

Thank you.

**LATE**

**HB-95**

Submitted on: 1/28/2019 10:47:39 AM

Testimony for LAB on 1/29/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arnold	Ironworkers Stabilization	Support	Yes

Comments:

We support this bill. We additionally would like to amend it to add benefits and contribution claims.

**LATE**

**HB-95**

Submitted on: 1/28/2019 4:21:52 PM

Testimony for LAB on 1/29/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
	Hawaii Regional Council of Carpenters	Support	No

Comments:

**LATE**

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

House Committee on Labor & Public Employment  
Aaron Ling Johanson, Chair  
Stacelynn K.M. Eli, Vice Chair

HB95 Relating to Wages

Tuesday, January 29, 2019  
9:00 A.M.  
State Capitol – Room 309

Aloha Chair Johanson, Vice Chair Eli, and members of the Committee:

Pacific Resource Partnership (PRP) **strongly supports** HB 95, 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.

HB 95 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. This job should have gone to one of the law-abiding subcontractors who bid on this work. Unfortunately, in the end, the general contractor benefitted from the subcontractor's unfair labor practices by obtaining cheap labor without any consequences.

HB 95 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 does his/her due diligence upfront, they will ensure that unscrupulous subcontractors are not on the job and avoid liability. Moreover, HB 95 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.

If general contractors are held liable for their cheating subcontractors, they will take extra precautions to hire responsible subcontractors. This will benefit honest contractors, workers and their families, tax-payers and the public as a whole. Therefore, we strongly ask for your committee's favorable action on HB 95.

Thank you for this opportunity to testify.

