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**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 26, 2019

To: The Honorable Karl Rhoads, Chair,
The Honorable Glenn Wakai, Vice Chair, and
Members of the Senate Committee on Judiciary

Date: Tuesday, February 26, 2019

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

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

Re: S.B. No. 1082 S.D. 1 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

SB1082 SD1 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 supports the intent of this measure and offers comments.

II. CURRENT LAW

Chapter 388, HRS, generally dictates how and when private employers must pay their employees including requiring employers to pay all wages due to the employer's employees at least twice a month and within seven days after the end of each pay period except under certain exceptions. The DLIR enforces these laws for employees of all private employers in the State.

The Wage Standards Division enforces Chapter 388.

III. COMMENTS ON THE SENATE BILL

The Department supports the intent of this measure as it is intended to support the enforcement of the laws. DLIR recognizes that the liability for wages in construction projects, especially large ones, may involve subcontractor's subcontracting other subcontractors.

DLIR notes that a similar, but not identical concept, is contained in Chapter 386, Hawaii's Workers' Compensation Law, which has a "statutory employer" concept under the definition of employee that permits an injured employee for a subcontractor without workers' compensation coverage to proceed up to the next contractor with workers' compensation coverage. This concept was upheld by the Hawaii Supreme Court.

Although DLIR believes that this proposed additional function would likely not require too many 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 SB797 SD1 would be appreciated as a method to bolster enforcement and restore the capacity of the Wage Standards Division.

SAH - Subcontractors Association of Hawaii

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

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

February 26, 2019

Testimony To: Senate Committee on Judiciary
Senator Karl Rhoads, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1082, SD 1 – RELATING TO WAGES.

Chair Rhoads 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.

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

Senate Committee on Judiciary
Karl Rhoads, Chair
Glenn Wakai, Vice Chair

SB 1082, SD1 Relating to Wages

Tuesday, February 26, 2019
9:00 A.M.
Conference Room 016



Aloha Chair Rhoads, Vice Chair Wakai, and members of the Committee:

Pacific Resource Partnership (PRP) **strongly supports** SB 1082, SD1 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.

SB 1082, SD1 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.

SB 1082, SD1 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, SB 1082, SD1 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 SB 1082, SD1.



(Continued From Page 1)

Thank you for this opportunity to testify.



HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Judiciary
The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai, Vice Chair

LATE

Tuesday, February 26, 2019
9:00am, State Capitol Room 016

Statement of the Hawaii Regional Council of Carpenters – Support for SB 1082, SD1

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

The Hawaii Regional Council of Carpenters **strongly supports SB 1082, SD1**, which would make 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.

We are grateful for the legislature's recent efforts to increase accountability for employers both inside and outside of the construction industry to ensure that Hawaii workers are fairly protected. Such efforts included raising fines for employers in the construction industry who do not pay proper prevailing wages (SB 2723 2016), increasing penalties for employers in all industries who fail to provide TDI and Workers' Compensation coverage to their employees (HB 2363 2016), and allowing the Attorney General to obtain an injunction against a business in default of workers' compensation and allowed DLIR to issue an "order of wage payment violation" against employers who deny pay to their workers (HB 208 2017).

While these efforts have certainly increased protections for Hawaii workers, they have also left open other avenues for unscrupulous employers to 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 state and federal agencies, however, the general contractor involved in the scheme received no penalties related to the payroll fraud happening on the 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 local contractors, to report and pay lower taxes, and avoid liability for the unpaid wages. Had the arrangement involved not been caught by state or federal agencies, he could have repeated the scheme elsewhere in the state without any consequences, to the detriment of the local construction community.

SB 1082, 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 be 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.

Thank you for the opportunity to voice our opinion on this important matter.

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Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 220-8892

February 26, 2019

The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai, Vice Chair
and members
Senate Committee on Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

LATE

RE: Strong Support for SB1082, Relating to Labor

Dear Chair Rhoads, Wakai, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

The Alliance strongly supports SB 1082, 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. SB 1082 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 \$25 million job should have gone to a law-abiding subcontractor who employed local laborers. Unfortunately, that job was lost to an out-of-state subcontractor who employed out-of-state workers who paid no taxes, and knowingly attempted to evade federal and state labor laws.

In fact, what we see occurring across the state is the same type of "paper" general contractors that were caught at Maile Sky Court, who deliberately subcontract work to contractors who purposefully employ out-of-state workers who are afraid, unable, or unwilling to report the illegal activities occurring on these jobsites. When a general contractor does not have any direct link to the financial stability or condition to the subcontractors on the jobsite, what would stop a general from hiring a subcontractor who knowingly utilizes illegal immigrants and pays them slave wages?

SB 1082 provides protection 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, SB 1082 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 SB1082.

Mahalo,

A handwritten signature in black ink, appearing to read "Nathaniel Kinney". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Nathaniel Kinney
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org