

DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

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

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March 14, 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: Thursday, March 14, 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: S.B. No. 1082 S.D. 2 RELATING TO WAGES**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB1082SD2 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, prescribes 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 intends to support the

enforcement of wage 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 allows 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.

The Department notes the following:

- Page 1, lines 14-16 the Department suggests a clarification is required to address how the general contractor is to pay the liability if use of the retainage is not permissible. If wages claims are not a permissible use of the retainage, then the general contractor will need to use other assets to pay the claim.
- If enacted, the measure could cause two remedies to operate at the same time: 1. An administrative process under the auspices of chapter 388 or a civil action by the Director, and 2. An action in any court of competent jurisdiction.
- This measure also limits the employee's ability to collect the penalties and interest due under Chapter 388, HRS. The new section provides only the Director or a labor-management committee can bring a claim, which takes away a claimant's ability to bring an action under 388-11 (Employees remedies), HRS, and obtain penalties and interest owed to them under 388-10 (Penalties), HRS.
- This new section also provides for a two-year window to file a claim when other claims filed under Chapter 388 with the Director allows only one year.
- 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 as well as HB1186 would be greatly appreciated as a method to bolster enforcement and restore the capacity of the Wage Standards Division.

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

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

SB 1082, SD2 Relating to Wages

Thursday, March 14, 2019  
9:00 A.M.  
Conference Room 309

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

Pacific Resource Partnership (PRP) **strongly supports** SB 1082, SD2 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, SD2 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, SD2 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, SD2 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, SD2.

Thank you for this opportunity to testify.



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

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

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

March 14, 2019

Testimony To: House Committee on Labor & Public Employment  
Representative Aaron Ling Johansen

Presented By: Tim Lyons, President

Subject: S.B. 1082, SD 2 – RELATING TO WAGES.

Chair Johnasen 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, especially on private work.

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.

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) requires payment in a "timely manner" it does not specify what that is.

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.

# Hawai'i Construction Alliance

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

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March 14, 2019

The Honorable Aaron Ling Johanson, Chair  
The Honorable Daniel Holt, Vice Chair  
and members  
House Committee on Labor & Public Employment  
415 South Beretania Street  
Honolulu, Hawai'i 96813

**RE: Strong Support for SB1082, Relating to Wages**

Dear Chair Johanson, Vice Chair Holt, 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](mailto:execdir@hawaiiconstructionalliance.org)





ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

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**LATE**

March 12, 2019

To: House Committee on Labor & Public Employment  
Honorable Chairperson Aaron Johnson & Vice Chairman Stacelynn Eli

From: Al Itamoto, Executive Director  
Electrical Contractors Association of Hawaii  
National Electrical Contractors Association, Hawaii Chapter

Subject: SB 1082, SD2 Relating to Wages

Notice of Hearing

Date: Thursday, March 14, 2019  
Time: 9:00 AM  
Place: Conference Room 309  
State Capitol  
415 South Beretania Street

Dear Chairs Johnson, Eli and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH is the Hawaii Chapter of the National Contractors Association (NECA). ECAH **Opposes** the intent and purpose of SB 1082, SD2 making the general contractors liable for debt incurred by subcontractors for wages due claimants for the performance of labor in the contract between the general contractor and the owner. This measure is an overreach placed on all general contractors caused by a predatory and irresponsible general contractor who had subcontracted with the same irresponsible subcontractors. Creating new law to accommodate one predatory general contractor at the expense of all general contractors is not good law. This measure places additional burdens to

those general (prime) contractors and subcontractors that have conducted business within the laws and increases the liability for them to conduct business. All of the additional administrative costs to properly monitor the subcontractors will only add costs to construction projects in a time when we are looking for solutions to reduce cost to create affordable projects. There are existing labor laws in place to effectively protect employees including penalties to those that are not complying.

This measure could create an unintended consequence whereby the generals will withhold payments to subcontractors using the provisions of this measure to benefit themselves. Prompt payment is already an issue for many subcontractors and may be the cause of wages paid late.

This measure is one of those, “would like to have” because of one bad general contractor and their subcontractors. It however, fails to address all the potential pitfalls in administering its provisions and without further research, we should not rush into new legislation. Based on the above, ECAH **Opposes** the passage of SB 1082, SD2 and encourage this committee to kill this bill.

Thank you for the opportunity to provide testimony on this issue.



**LATE**

## HAWAII REGIONAL COUNCIL OF CARPENTERS

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

Thursday, March 14, 2019  
9:00AM, State Capitol Room 309

### Statement of the Hawaii Regional Council of Carpenters Support for SB 1082, SD2 and Recommended Amendments

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

The Hawaii Regional Council of Carpenters **strongly supports SB 1082, SD2**, 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, SD2 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.

#### STATE HEADQUARTERS & BUSINESS OFFICES

**OAHI:** 1311 Houghtailing Street, Honolulu Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 440-9188

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Over the past several weeks, we have met with other industry stakeholders who expressed a desire for a number of amendments to the bill, including (1) clarifying that the bill would only apply to private work not subject to Chapter 104; (2) specifying that a general contractor's liability does not extend to fringe benefits; (3) aligning the notification requirements to be similar to the deadlines and processes in the Little Miller Act; and (4) reducing the time after a project's completion for an action to be brought.

Our discussions with those stakeholders were productive, and to that end, **we would like to propose the following amendments:**

- (1) Insert the words "not subject to chapter 104" after the words "private work" on Page 1, Line 7 and again on Page 3, Line 3, so that in both instances the bill reads "private work not subject to Chapter 104";
- (2) Insert the words "fringe benefit" as a new list item after the word "benefit" on Page 1, Line 15;
- (3) Strike the two sentences on Page 3, Lines 7-17, the first of which begins with "Prior to," and replace it with the following, which was patterned after the notification requirements of the "Little Miller Act" in HRS 103D-324(d):

"As a condition precedent to any such action against a general contractor to enforce the liability established by subsection (a), the committee shall provide written notice to the general contractor or subcontractor who employed the claimant, within ninety days from the date on which the person did or performed the last labor for which claim is made, stating with substantial accuracy the amount claimed and the name of the party for whom the labor was done or performed. The written notice shall be served by registered or certified mailing of the notice, to the general contractor or subcontractor, at any place they maintain an office or conduct their business, or in any manner authorized by law to serve such notice. The written notice shall not limit the liability of the general contractor or preclude subsequent amendments of an action to encompass additional claimants employed by the subcontractor.";

and

- (4) Strike the words "two years" on Page 4, Line 5, and replace them with "one year."

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

**LATE**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
LABOR AND PUBLIC EMPLOYMENT**

**S.B. 1082, SD2**

**Relating to Wages**

Thursday, March 14, 2019  
9:00 AM, Agenda Item # 3  
State Capitol, Conference Room 309

Max Hannemann  
Labor Relations Manager  
Hawaiian Electric Companies

Aloha Chair Johanson, Vice Chair Eli, and Members of the Committee,

My name is Max Hannemann and I am testifying on behalf of the Hawaiian Electric Company, Inc., Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. (collectively, "the Hawaiian Electric Companies") **with comments and a requested amendment to S.B. 1082, SD1, Relating to Wages.**

The Hawaiian Electric Companies are public utility companies, highly regulated by the State of Hawaii through the Hawaii Public Utilities Commission. Due to this government regulation, the Hawaiian Electric Companies respectfully request that we be treated similar to "employees of the State or any political subdivision of the State" in the application of this bill. Per *Standing Committee Report No. 1040 (2019)* by the Senate Committee on Judiciary, the bill is intended to "address unfair labor practices between general contractors and subcontractors including nonpayment of wages." The Hawaiian Electric Companies have contracts that involve oversight by the Public Utilities Commission and the company is held to a very high standard with respect to contracting with external parties. The bill's intent was not meant to apply to regulated utilities, nor any state or county entities, but instead to private contractual parties.

The Hawaiian Electric Companies respectfully request your consideration of the following amendment (underscored language added):

(e) This section does not apply to work performed by an employee of the State or any political subdivision of the State, or work done by electric utility companies or work performed by a contractor engaged by an electric utility company.

Thank you for this opportunity to submit comments and request an amendment to S.B. 1082, SD1.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

**LATE**

Uploaded via Capitol Website

March 14, 2019

TO: HONORABLE REP. AARON LING JOHANSON, CHAIR, REP. STACELYNN K.M. ELI, VICE CHAIR, AND THE MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: TESTIMONY IN SUPPORT OF SB1082 RELATING TO WAGES.

Hearing

DATE: Thursday, March 14, 2019  
TIME: 9:00 a.m.  
PLACE: Conference Room 309  
Hawaii State Capitol

Dear Rep. Aaron Ling Johanson, Chair, Rep. Stacelynn K.M. Eli, Vice Chair, and the members of the House Committee on Labor and Public Employment:

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA supports the intent of SB1082 which 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 on private sector work projects. The measure also authorizes enforcement actions by the Director of the Department of Labor and Industrial Relations or a joint labor-management cooperation committee to recover funds for workers.

While we generally support the intent of SB1082, we do have two specific areas of concern with the current draft. First, we believe it would be more appropriate to define project completion in the same fashion as we do for the purposes of the lien releases rather than little Miller act claims. Second, we would prefer there be a cap on the overall risk exposure to the General Contractor created by this law of 10% of the project.

We would like to propose the following amendments:

(1) Strike the two sentences on Page 3, Lines 7-17, the first of which begins with "Prior to," and replace it with the following, which was patterned after the notification requirements of the Mechanic's and Materialman's Lien in HRS section 507-43:

"As a condition precedent to any such action against a general contractor to enforce the liability established by subsection (a) pursuant to subsections (1) or (2) herein, the director or the joint labor management cooperation committee shall provide written notice to the general contractor

and subcontractor who employed the claimant, not later than forty-five days after the date of completion of the improvement against which it is filed. The claimant of the lien shall apply therefor to the circuit court of the circuit where the property is situated. Such "Application for A Lien" shall be accompanied by a written "Notice of Lien" setting forth the alleged facts by virtue of which the person claims a lien. A copy of the Application and Notice shall be served in the manner prescribed by law for service of summons. The Application shall set forth the amount of the claim, the labor or material furnished, a description of the property sufficient to identify the same, and any other matter necessary to a clear understanding of the claim. The written notice shall not limit the liability of the general contractor or preclude subsequent amendments of an action to encompass additional claimants employed by the subcontractor."

(2) Add to page 5, the end of subsection of the following, "...provided however, that the general contractor's obligation due to the subcontractor's or lower-tier subcontractor's failure to fully comply with this subsection will be limited to 10% of the subcontract amount of the subcontractor under direct contract with the general contractor as adjusted by any approved change orders."

GCA supports SB1082 with the proposed amendments. Thank you for the opportunity to share our support.