

SAH - Subcontractors Association of Hawaii

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February 20, 2020

Testimony To: Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosaly H. Baker, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2961, SD 1 – RELATING TO WAGES.

Chair Baker 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 & AIRCONDITIONING CONTRACTORS' NATIONAL ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

This bill imposes some very heavy responsibilities upon general and subcontractors 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) (page 4) requires payment in a "timely manner" it does not specify what that is. Timely to a general contractor who is holding someone else's money could be 90 or 120 days. Timely to a subcontractor who needs to pay bills is 30 days.

We would also ask that the Committee pause just a minute and review all the information a sub has to deliver to a general as prescribed by 387-6 HRS (subsection f, page 4). These are:

- (1) The name, address, and occupation of each employee;
- (2) The amount paid each pay period to each employee;
- (3) The hours worked each day and each workweek by each employee;
- (4) The rate or rates of pay of each employee and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages; and more specifically,
- (5) The employee's total hours worked;
- (6) The employee's regular and overtime hours;
- (7) The employee's straight-time compensation;
- (8) The employee's overtime compensation;
- (9) Any other compensation, including allowances, if any, claimed as part of the minimum wage;
- (10) The employee's total gross compensation;
- (11) The amount and purpose of each deduction
- (12) The employee's total net compensation;
- (13) The date of payment;
- (14) The pay period covered; and
- (15) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis, including overtime rate or rates of pay. For employees paid a piece rate, the record shall indicate the applicable piece rate or rates of pay, and the number of pieces completed at each piece rate.

This is for each and every employee of each and every sub and of all subs!

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 contractor.

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

Thank you.

SB-2961-SD-1

Submitted on: 2/15/2020 1:35:02 PM

Testimony for CPH on 2/20/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI
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ANNE EUSTAQUIO
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**STATE OF HAWAII
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February 20, 2020

To: The Honorable Rosalyn H. Baker, Chair,
The Honorable Stanley Chang, Vice Chair, and
Members of the Senate Committee on Commerce, Consumer Protection,
and Health

Date: Thursday, February 20, 2020

Time: 10:00 a.m.

Place: Conference Room 229, State Capitol

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

Re: S.B. No. 2961 S.D.1 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

The measure 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.

The DLIR provides comments.

II. CURRENT LAW

There is no law that requires the Department to enforce private contract rights beyond an employee and employer.

III. COMMENTS ON THE SENATE BILL

The DLIR recognizes that this measure is attempting to provide an additional recourse for employees of a subcontractor who did not pay their employees. It is not clear why the protection is only for the construction industry. There are many types of employers that close down, notably in the retail and restaurant industries, leaving unfortunate

workers without paychecks and often few or no assets.

This measure segregates the construction industry, reaching into a private contractual relationship, which may already be pursuable in a court of law. The proposal provides that no other party except the Department and a labor management committee may bring an action against a general contractor to enforce the liability established in this section (pg. 4, lines 7-8).

This bill prohibits by omission the claimant from obtaining and enforcing a judgment against the general, which gives no recourse to the claimant to pursue their own wage claim. There appears to be no reason that the claimant should not be allowed to pursue their individual claims against the general contractor.

The DLIR suggests deleting “after trial” (pg. 4, line 11) as this may prohibit the Department from filing a judgment lien against a general after an Order of Wage Payment Violation administrative action.

Enactment of this measure would require additional resources to Department for effective implementation.



HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

Thursday, February 20, 2020
10:00AM, Conference Room 229

Statement of the Hawaii Regional Council of Carpenters Support for SB 2961, SD1, Relating to Wages and Proposed Amendment

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee:

The Hawaii Regional Council of Carpenters **strongly supports SB 2961, 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.

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SB 2961, 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.

California adopted a measure very similar to SB2961, SD1, in 2017, and it has already been utilized to against a general contractor who chose a subcontractor who left 62 workers unpaid for weeks of work in Hollywood and Ventura. The press release from the California Department of Industrial Relations, which follows our testimony, provides further information including data on the nearly \$600,000 in unpaid wages and nearly \$70,000 worth of citations in that case.

Over the course of the hearings for SB 1082, which was last session's bill which dealt with this same issue, we and other industry stakeholders agreed on further amendments, which we would like to propose to your committee for consideration, specifically:

Removing the phrase "The general contractor's liability shall be limited to unpaid wages, including any interest owed" from Page 2, Lines 13-15.

We and our other industry stakeholders previously agreed that this phrase is redundant, as a general contractor's liability is already limited to unpaid wages on Page 2, Line 9.

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



N E W S R E L E A S E

News Release No.: 2019-43

Date: May 29, 2019

Labor Commissioner's Office Issues Wage Theft Citations for Subcontractor's Failure to Pay 62 Construction Workers

General contractor also found responsible for unpaid wages under contractor liability law that went into effect in 2018

Los Angeles—The Labor Commissioner's Office has issued citations totaling \$597,933 in unpaid wages and penalties to Universal Structural Building Corp. of Chatsworth after 62 construction workers were never paid for weeks of work on two projects in Hollywood and Ventura. J.H McCormick Inc., a general contractor for one project, was named jointly and severally responsible for \$68,657 of the citations pursuant to a [section of the labor code](#) added last year by [Assembly Bill 1701](#) that holds general contractors liable for their subcontractor's wage theft violations.

"Up-the-chain general contractors are now responsible for wage theft committed by their subcontractors on all construction projects in the state," said California Labor Secretary Julie A. Su. "General contractors who choose subcontractors that do not pay wages owed will pay a hefty price. The Labor Commissioner's Office will use all the tools at its disposal to return these stolen wages – including the placement of liens on these properties which will have a hold until the labor these workers poured into these projects is paid for in full."

Universal Structural Building is a subcontractor that provides concrete building services for residential and mixed-use developments at jobsites in Los Angeles and Ventura. J.H McCormick and Universal signed a contract in February 2018 for a residential and commercial project, the [Essex Hollywood](#). A large group of Universal's employees came to the Labor Commissioner's Office last November after working five to six days a week for eight to 14 hours a day without pay for the final weeks of that project. Investigators filed a mechanic's lien in December to secure \$110,000 for 39 of the 42 workers affected by the wage theft on this project.

Investigators also received reports of wage theft at the [Portside Ventura Harbor](#) project when another group of Universal's workers came to the Labor Commissioner's Office in January. Workers said when they asked for their final pay they were told the company had no money, and the general contractor was supposed to pay them. The Labor Commissioner's Office filed another mechanic's lien against Universal to secure

\$26,464 in wages for the 20 workers. The project's general contractor could not be held liable in the citations as the contract began prior to January 1, 2018.

The investigation into both projects determined that Universal Structural Building employees are owed \$477,533 in unpaid wages and penalties, with an additional \$49,220 for contract wages due. The citations issued include:

- \$62,207 in unpaid minimum wages and \$64,131 in liquidated damages for 62 employees
- \$4,900 in unpaid overtime for 37 employees
- \$15,950 for wage statement violations owed to 62 employees
- \$330,345 in waiting time penalties owed to 62 employees
- \$120,400 in civil penalties, including \$15,000 for misclassifying a foreman as an exempt employee

The Labor Commissioner's Office has filed a civil action with the Los Angeles Superior Court against J.H McCormick to help secure funds to pay back wages.

The mechanic's lien is an important collection tool for construction laborers who have suffered wage theft. [California's Constitution](#) has guaranteed the right of construction workers since 1879 to obtain a court-ordered sale of property that they have worked on in order to recover unpaid wages, even if hired by a subcontractor. Workers should exercise their mechanic's lien rights within 90 days of the work being completed or they may lose their right to file.

When workers are paid less than minimum wage, they are entitled to liquidated damages that equal the amount of underpaid wages plus interest. Waiting time penalties are imposed when the employer intentionally fails to pay all wages due to the employee at the time of separation. This penalty is calculated by taking the employee's daily rate of pay and multiplying it by the number of days the employee was not paid, up to a maximum of 30 days.

Enforcement investigations typically include a payroll audit of the previous three years to determine minimum wage, overtime and other labor law violations, and calculate payments owed and penalties due. Civil penalties collected are transferred to the State's General Fund as required by law.

The Department of Industrial Relations' Division of Labor Standards Enforcement, or the [California Labor Commissioner's Office](#), combats wage theft and conducts on-site inspections to investigate and enforce compliance with minimum wage and other California labor laws. Its wide-ranging responsibilities include retaliation complaint investigations, public works enforcement, licensing and registration, as well as multilingual labor law education and outreach for workers and employers.

In 2014, the Labor Commissioner's Office under Julie A. Su's leadership launched the [Wage Theft is a Crime](#) multilingual public awareness campaign. The campaign defines wage theft and informs workers of their rights and the resources available to them to recover unpaid wages or report other labor law violations.

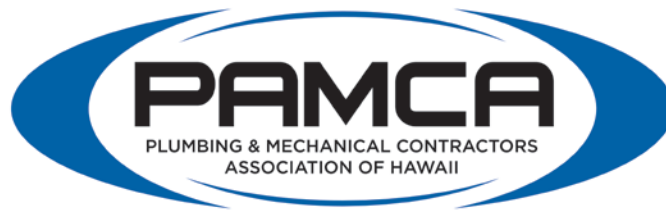
Employees with work-related questions or complaints may contact DIR's Call Center in English or Spanish at 844-LABOR-DIR (844-522-6734).

Members of the press may contact Erika Monterroza or Frank Polizzi at (510) 286-1161, and are encouraged to [subscribe to get email alerts](#) on DIR's press releases or other departmental updates.

#



The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#). For general inquiries, contact DIR's Call Center at 844-LABOR-DIR (844-522-6734) for help in locating the appropriate [division or program](#) in our department.



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GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

February 19, 2020

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice-Chair
The Senate, Committee on Commerce, Consumer Protection and Health
The 31st Legislature, Regular Session of 2020

Chair Baker, Vice Chair Chang, and Members of the Committee:

SUBJECT: SB 2961 SD1 Relating to Wages

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii and we are the largest association representing the plumbing, air conditioning, fire sprinkler, and refrigeration mechanical specialty contractors in Hawaii.

The Association for which I speak is **strongly opposed** to SB 2961 SD1.

While this bill may be well intended, the proposed requirements will create a huge burden of time and money to both General Contractors and Subcontractors, and will not remedy the issues with unscrupulous contractors who do not pay their workers appropriately. Here are some of the problems we see:

1. The data required by HRS 387-6 is extremely exhaustive and will require much more administrative work because it will need to be pulled on a project by project basis. This additional work will ultimately increase costs of construction.

2. The data provided may create privacy issues if third party joint labor management committees, with no contractual relationship, are allowed to see last 4 of SSN, mailing address, hours worked, etc.

3. How will these 3rd party LM committees be regulated? What if such committee has a vendetta against a subcontractor for unrelated issues such as trade jurisdiction, and uses this process to create more costs to that sub by continually bringing frivolous action against them? Is there any oversight or guidelines for the LM committee actions?

4. Even if the data is supplied, how will the GC or other labor-management group use this info to verify payments to workers? Basically, the only way that the GC can verify the payroll data provided by the subcontractor, is for the GC to have one of their employees hovering over the work of every employee of the sub and the sub's subs, and tracking their names and hours worked. Since it is ridiculous for the GC to do this, how can they possibly verify the hours provided? Therefore, the proposed data accomplishes nothing toward insuring workers get paid everything they are owed because there is no reasonable way for the GC or LM committee to verify the accuracy of the data.

5. Since GCs do not want to be on the hook for any of the subs or sub-subs wages, and because they are unable to verify the data submitted to them, the GCs will likely opt to withhold payments to their subs until after the one year filing period is over. This delay will be enough to put many subcontractors in financial distress or out of business.

6. There are already severe Federal and State measures in place to account for unpaid wages. On the Maile Court project, which is cited by the proponents of this bill, the contractor was fined over \$1 million in lost OT, benefits and penalties. Harsh penalties were also assessed at Ala Moana Ewa wing. The Hawaii DLIR, and Federal DOL are the agencies tasked with enforcing payment of wages, and these agencies make wage violations a top priority with severe penalties meant to not only recover unpaid wages but also to be a detriment to future violations. SB2961 imposes requirements that will have huge negative consequences for Hawaii's entire construction industry, all in an attempt to address the actions of a couple bad actors for which the various state and federal agencies already have severe disciplinary processes in place.

7. If the committee members feel it absolutely necessary to pass this onerous bill, there should be language which exempts employers covered by a labor management agreement, since parties to labor management agreements already have a grievance process in place to address wage payment issues.

Thank you very much for this opportunity to testify.

Respectfully yours,



Gregg S. Serikaku
Executive Director

Testimony of
Pacific Resource Partnership

Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

SB 2961 SD1 Relating to Wages

Thursday, February 20, 2020
10:00 A.M.
Conference Room 229

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee:

Pacific Resource Partnership (PRP) writes in strong support of SB 2961 SD1, which would hold general contractors accountable for supporting or ignoring the unfair labor practices of their subcontractors who fail to pay wages owed to their employees.

SB 2961 SD1 will modernize the law to address new and complicated marketplace abuses that are occurring in the construction industry. Under current state 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 in 2016, the general contractor retained subcontractors who were underpaying employee wages. The subcontractors received significant fines from state and federal agencies for violations of law. In the Maile Sky Court case, under the proposed law, the general contractor who employed the unscrupulous subcontractors would have been responsible for any unpaid wages to subcontractor employees, making sure construction employees in the State of Hawaii are fully paid for the work they perform on a job site.

SB 2961 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 uses safeguards built within the bill protecting general contractors, they will ensure that unscrupulous subcontractors are not on the job and thereby avoid liability. For instance, SB 2961 SD1 provides general contractors with the power to obtain and review a subcontractor's employee payroll records and project award information to ensure that their subcontractors are in compliance with the law. General contractors may also withhold any of all future payments to the subcontractor unless the requested information is submitted promptly. Moreover, this reporting requirement will not overly burden the subcontractor since the existing law already requires subcontractors to keep accurate time and payroll records for each employee for six years.

SB 2961, SD1 is very similar to California's contractor liability law that went into effect on January 1, 2018. In 2019, California's Department of Industrial Relations, Labor Commissioner's Office issued citations totaling \$597,933 in unpaid wages and penalties after 62 construction workers were never paid for weeks of work on



(Continued From Page 1)

two projects. The general contractor for one of the projects was named jointly and severally responsible for \$68,657 of the citations pursuant to California's contractor liability law. Unfortunately, the project's general contractor could not be held liable for the citations since the contract began prior to the law's effective date on January 1, 2018. (See attached) Maryland is another state that recently enacted a law holding general contractors jointly and severally liable for the failure by subcontractors to pay their employees in accordance with Maryland's wage and hour law.

Over the course of the hearings for SB 1082, which was last session's bill which dealt with this same issue, we and other industry stakeholders agreed on further amendments, which we would like to propose to your committee for consideration, specifically:

Removing the phrase "The general contractor's liability shall be limited to unpaid wages, including any interest owed" from Page 2, Lines 13-15.

We and our other industry stakeholders previously agreed that this phrase is redundant, as a general contractor's liability is already limited to unpaid wages on Page 2, Line 9.

If general contractors are held liable for their subcontractors that violate the law, they will take extra precautions to make sure they hire responsible subcontractors. This will benefit honest contractors, workers and their families, taxpayers and the general public, as-a-whole.

Thank you for the opportunity to express our opinion on SB 2961 SD1.



N E W S R E L E A S E

News Release No.: 2019-43

Date: May 29, 2019

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