



STATE OF HAWAII  
KA MOKU'ĀINA O HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
KA 'OIHANA PONO LIMAHANA

March 29, 2023

To: The Honorable David A. Tarnas, Chair,  
The Honorable Gregg Takayama, Vice Chair, and  
Members of the House Committee on Judiciary & Hawaiian Affairs

Date: Wednesday, March 29, 2023  
Time: 2:00 p.m.  
Place: Conference Room 325, State Capitol

From: Jade T. Butay, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. 415 S.D. 2 H.D. 1 RELATING TO WAGES**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The **DLIR supports** this proposal. SB415 SD2HD1 proposes to amend the Payment of Wages and Other Compensation Law, Chapter 388, Hawaii Revised Statutes (HRS), by adding a new section to make a general contractor, entering into or under a private construction contract, liable for any unpaid wages and interest owed by a subcontractor, at any tier, to the subcontractor's employees for work performed under the contract. The measure also authorizes enforcement actions by the Director or a joint labor-management cooperation committee to recover unpaid wages for the subcontractor's employees and amends the definition of "employer" in section 388-1, HRS, to include a general contractor, for purposes of wages owed to a subcontractor's employees.

**II. CURRENT LAW**

Chapter 388, HRS, requires private employers to pay their employees all wages due at least twice a month and within seven days after the end of each pay period except under certain exceptions. DLIR enforces laws for employees of all private employers in the State. The law does not require an employer to pay for any unpaid wages from another employer.

**III. COMMENTS ON THE SENATE BILL**

This proposal seeks to hold a general contractor liable for any unpaid wages and interest that a subcontractor at any tier owes to its employees for work performed under a private construction contract.

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

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

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

March 29, 2023

Testimony To: House Committee on Judiciary  
Representative David A. Tarnas, Chair

Presented By: Tim Lyons, President

Subject: S.B. 415, S.D. 2, H.D. 1 – RELATING TO WAGES.

Chair Tarnas 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:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

HAWAII FLOORING ASSOCIATION

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL & AIRCONDITIONING CONTRACTORS' NATIONAL ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

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 must do his 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 (h) (page 6) 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 recommend inserting the same prompt payment language that already appears in statutes for prompt payment from a general contractor to a subcontractor on public works projects which could be inserted on page 6, line 10, "in a timely manner as follows:

(a) any money paid to a contractor shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.

(b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract."

(Reference: 103 – 10.5 Prompt Payment)

We would also ask that the Committee to 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 5). 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 of 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 overall is ill advised but with our suggested amendments is favorable.

Thank you.

Testimony of  
Pacific Resource Partnership

House Committee On Judiciary & Hawaiian Affairs  
Representative David A. Tarnas, Chair  
Representative Gregg Takayama, Vice Chair

SB 415, SD2, HD1—Relating To Wages  
Tuesday, March 29, 2023  
2:00 P.M.

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

Pacific Resource Partnership (PRP) is a non-profit market recovery trust fund which represents approximately 7,000 men and women union carpenters and 240 large and small contractors. With our expertise in research, compliance, marketing, and project advocacy, we are committed to building a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents of Hawaii.

PRP writes in **strong support** of SB 415, SD2, HD1, 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 415, SD2, HD1 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 the 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 415, SD2, HD1 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 415, SD2, HD1 provides the 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.



**(Continued From Page 1)**

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, taxpayers, and the public as a whole.

As such, we respectfully request your favorable decision on this measure. Thank you for this opportunity to submit written testimony.



GENERAL  
CONTRACTORS  
ASSOCIATION  
OF HAWAII

Uploaded via Capitol Website

March 29, 2023

TO: HONORABLE DAVID A. TARNAS, CHAIR, HONORABLE GREGG TAKAYAMA, VICE CHAIR, COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

SUBJECT: **COMMENTS ON S.B. 415 SD2 HD1, RELATING TO WAGES.** Makes general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

HEARING

DATE: Wednesday, March 29, 2023  
TIME: 2:00 p.m.  
PLACE: Capitol Room 325

Dear Chair Tarnas, Vice Chair Takayama and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA provides comments on S.B. 415 SD2 HD1, which makes general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

GCA is currently working with the stakeholders to find an equitable solution. We believe that this draft reflects compromise language between the GCA and some of its labor counterparts.

Thank you for the opportunity to provide comments on this measure.

QUALITY PEOPLE. QUALITY PROJECTS





# HAWAII REGIONAL COUNCIL OF CARPENTERS

House Committee on Judiciary & Hawaiian Affairs

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Statement of the Hawaii Regional Council of Carpenters

SUPPORT for SB 415 SD2 HD1

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Hawaii Regional Council of Carpenters (HRCC) strongly supports SB 415 SD2 HD1, which would make general contractors entering into or under contracts in Hawaii for work on building 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.

HRCC has identified numerous projects where unscrupulous employers engage in payroll and tax fraud by hiring shady subcontractors.

For example, in the Maile Sky Court case, the general contractor working on the site utilized subcontractors who were underpaying employee wages and not providing necessary benefits and safety standards. When Pacific Resource Partnership (PRP), a joint labor-management cooperation committee, brought this matter to the attention of federal and state authorities, the subcontractor received a number of fines from federal and state agencies. However, the general contractor involved in the scheme received no penalties related to the payroll fraud happening on site.

Detractors of this bill question whether general contractors will be able operate under the “heavy burden” of the proposed law, prolonged payment issues, and that general contractors will be “responsible for the financial condition of his subcontractors but also the subcontractors at any tier, in other words, the subs of subs”.

Does this bill create a “heavy burden” on general contractors? The “burdensome” requirements that employers need to comply with simply requires all employers to keep records of their employees, the hours they worked, and their rates of pay for those hours worked. These requirements have been in effect since 1985 and apply to all industries (not just construction). Record keeping does become a “burden” if a contractor is paying a mix of checks and cash, which requires two separate set of books in

## STATE HEADQUARTERS & BUSINESS OFFICES

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MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961

KAUAI OFFICE: Kuhio Medical Ctr Bldg., 3-3295 Kuhio Hwy, Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

order to keep track of payments that require federal and state taxes, overtime, and unemployment....and the other hours where a worker is paid in cash.

Does this bill create “prolonged payment issues for subcontractors? The bill doesn’t prevent a contractor from using any lawful remedies for nonpayment, and one could argue the most effective means of obtaining payment is available to construction companies in the form of a mechanic’s lien. In fact, in jurisdictions that have passed similar wage fraud legislation, they have noticed that law abiding subcontractors are get selected more often because upper tier contractors want reputable subs who they know can complete jobs and do not want to be liable for unpaid wages.

Does this make the general contractor responsible for the financial condition of their subcontractors? Again, what this bill does is move general contractors away from lowest bid system that rewards bad actors who cheat, to a system where generals select reputable subcontractors that have the financial wherewithal to pay their workers.

Last, but not least, we would also like to add that California [California Law Lab Code 218.7 Law](#) and New Jersey [New Jersey 34:11-67.1\\*](#) both provide for a right of action by labor management committees and include larger potential damages.



**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**  
**State Capitol**  
**415 South Beretania Street**  
**2:00 PM**

MARCH 29, 2023

RE: SB 415 SD2 HD1 - RELATING TO WAGES

Chair Nakashima, Vice Chair Sayama, and members of the committee:

My name is Max Lindsey, 2023 Government Relations Committee Chair of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

**BIA-Hawaii is in opposition to SB 415 SD2 HD1, Relating to Wages.** This bill would make general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner.

While SB 415 might be suitable for larger construction companies with large office/support staff, it is extremely anti-small business. Smaller general contractors tend to have limited or no direct office help and are not capable of dedicating the time needed to ensure every subcontractor is paying their wages. Furthermore, the actions of one or two unscrupulous subcontractors could endanger the very existence of smaller general contractors. It seems wrong that any one company should be held accountable for another company's payroll. However, we would not object to such a bill if it provided exemptions for small businesses.

The state of Hawaii is in a dire housing crisis. As the Legislature is aware, the cost of housing in Hawaii is extremely high, with Oahu's median price of homes being currently over \$1 million. Approximately 153,967 U.S. households are priced out of buying a home for every \$1000 increase in price, according to the National Association of Home Builders (NAHB).

We appreciate the opportunity to share our comments.



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PH: (808) 597-1216

GREGG S. SERIKAKU  
EXECUTIVE DIRECTOR

Via E-File

March 28, 2023

Representative David A. Tarnas, Chair  
Representative Gregg Takayama, Vice-Chair  
House Committee on Judiciary and Hawaiian Affairs

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

**SUBJECT: SB415 SD2 HD1 Relating to Wages**

My name is Gregg Serikaku, Executive Director for the Plumbing and Mechanical Contractors Association of Hawaii, and we are the State's largest association representing contractors in the plumbing, air conditioning, refrigeration, steamfitter, and fire sprinkler trades throughout Hawaii.

SB 415 SD2 HD1 seeks to make general contractors entering into contracts in the State for construction work on buildings, structures, or other private construction works, liable for the unpaid wages of their subcontractors in the performance of labor in contracts between the general contractor and owner. In this regard we have the following comments:

- Subsection (f) should be revised to apply only to those subcontractors for whom an action pursuant to this Subsection (d) is being claimed as follows:

*(f) Upon request by a general contractor to a subcontractor **named in an action pursuant to subsection (d), and or any lower tier subcontractors named in an action pursuant to subsection (d)**, the **named** subcontractor and any **named** lower tier subcontractors under contract with the subcontractor shall provide payroll records, which, at a minimum, shall contain the information set forth in section 387-6 of its employees who are providing labor on a private construction work. The payroll records shall be marked or obliterated only to prevent disclosure of an employee's full social security number, except that the last four digits of the employee's social security number shall be provided. Upon request of a general contractor to a subcontractor **named in an action pursuant to subsection (d), and or any lower tier subcontractors named in an action pursuant to subsection (d)**, the **named** subcontractor and any **named** lower tier subcontractors under contract with the subcontractor shall provide the general contractor with award information that includes the project name, name and address of the subcontractor, lower-tier subcontractor with whom the subcontractor is under contract, anticipated start date, duration, estimated ~~[journeyperson and apprentice]~~ **hours in the applicable trade**, and contact information for the subcontractors on the project. A subcontractor's failure to comply with this subsection shall not relieve a general contractor from any of the obligations contained in this section.*

These revisions clarify that only those subcontractors and lower tier subcontractors who are accused of violating wage laws are required to provide the necessary payroll and project award information. Ethical subcontractors who follow the rules and pay their employees properly should not be subject to the additional reporting requirements.

- Subsection (f) should also be revised to eliminate references to journey person and apprentice classifications, as there are numerous contractors who do not require such classification of their employees, and furthermore, private construction work does not require designation of such. This change will clarify that a subcontractor named in an action pursuant to Subsection (d) will be required to report the estimated hours of all their trade employees providing labor on the subject project, regardless of the employee's classification.
- Subsection (h) should be revised to define timely and also to clarify that the general contractor may only withhold sums owed to subcontractors for whom an action pursuant to this Subsection (d) is being claimed as follows:

*(h) Nothing in this section shall alter an owner's obligation to pay a general contractor, or the general contractor's obligation to pay a subcontractor, in a timely manner, such that a general contractor who receives a payment from an owner in connection with a contract to improve real property shall pay each of its subcontractors the portion of the owner's payment that is attributable to work properly performed or materials suitably stored or specially fabricated as provided under the terms and conditions of the contract by that subcontractor, to the extent of that subcontractor's interest in the owner's payment. The payment required by this subsection must be made not later than the tenth day after the date the general contractor receives the owner's payment, provided there are no bona fide disputes; and provided further that a general contractor may withhold all sums owed to a subcontractor named in an action pursuant to subsection (d) if the named subcontractor does not provide the information requested under subsection (f) in a timely manner and until the time that the information is provided.*

These changes ensure that payments to ethical subcontractors will not be subject to the unnecessary withholding of amounts due to them.

Thank you for this opportunity to provide our testimony.

Respectfully,



Gregg S. Serikaku  
Executive Director

TO: Members of the Committee on Judiciary & Hawaiian Affairs

FROM: Natalie Iwasa  
808-395-3233

HEARING: 2 p.m. Wednesday, March 29, 2023

SUBJECT: SB 415, SD2, HD1, General Contractors Liable for Subcontractor's Unpaid Wages - **OPPOSED**

Aloha Chair Tarnas and Committee Members,

Thank you for allowing the opportunity to provide testimony on SB 415, SD2, HD1, which would make the general contractor liable for a subcontractor's unpaid wages for certain construction projects.

The Department of Labor and Industrial Relations stated in their testimony that current law "does not require an employer to pay for any unpaid wages from another employer." And that's how it should be -- one employer should not be held responsible for another employer's liabilities unless that employer has agreed to do so in a signed contract.

These types of policy changes don't happen in a vacuum. If you make the general liable for a subcontractor's unpaid wages, that general will likely make itself whole by charging more for the contract, in anticipation of additional costs. The result will be increased contract prices on these jobs.

**It is simply wrong to hold a general liable for a sub's unpaid bills.**

**Please vote "no" on SB 415, SD2, HD1.**