



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

March 21, 2023

To: The Honorable Scot Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett, Vice Chair, and
Members of the House Committee on Labor & Government Operations

Date: Tuesday, March 21, 2023
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: S.B. 415 S.D.2 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this proposal and **offers clarifying amendments**. SB415 SD2 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.

SB415 SD2

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DLIR suggests inserting “construction” between “private” and “work” on Pg. 1, line 7, Pg. 3, line 2, and Pg. 5 line 6 to clarify the provision applies to construction work.



**HOUSE COMMITTEE ON LABOR & GOVERNMENT OPERATIONS
State Capitol
415 South Beretania Street
9:30 AM**

MARCH 21, 2023

RE: SB 415 SD2 - RELATING TO WAGES

Chair Matayoshi, Vice Chair Garrett, 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, 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 HB 167 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.



March 21, 2023

TO: HONORABLE SCOT Z. MATAYOSHI, CHAIR, HONORABLE ANDREW TAKUYA GARRETT, VICE CHAIR, COMMITTEE ON LABOR AND GOVERNMENT OPERATIONS

SUBJECT: **COMMENTS ON S.B. 415 SD2, 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: Tuesday, March 21, 2023
TIME: 9:30 a.m.
PLACE: Capitol Room 309

Dear Chair Matayoshi, Vice Chair Garrett 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, 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.



OPERATING ENGINEERS LOCAL UNION No. 3

2181 LAUWILIWILI STREET, KAPOLEI, HI 96707 • (808) 845-7871 • FAX (808) 682-0906
Jurisdiction: Northern California, Northern Nevada, Utah, Hawaii, and the Mid-Pacific Islands

March 20, 2023

The Honorable Scot Z. Matayoshi, Chair
The Honorable Andrew Garrett, Vice Chair
House Committee on Labor & Government Operations

RE: SB415 SD20 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.

Dear Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

My name is Ana Tuiasosopo. I am the District Representative and Trustee for Operating Engineers Local 3. We are the largest construction union in the United States, covering California, Nevada, Utah, and Hawaii. I and the members of Operating Engineers Local 3 STRONGLY SUPPORT SB 415 SD2- Relating to Wages.

This bill 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 testify in support of this bill.

Sincerely,



Ana Tuiasosopo
District Representative
Operating Engineers Local 3 - Hawaii



HAWAII REGIONAL COUNCIL OF CARPENTERS

House Committee on Labor & Government Operations
Rep. Scot Z. Matayoshi, Chair
Rep. Andrew Takuya Garrett, Vice Chair

Statement of the Hawaii Regional Council of Carpenters
SUPPORT for SB 415 SD2

Aloha Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

The Hawaii Regional Council of Carpenters (HRCC) strongly supports SB 415 SD2, 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.

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 federal and state agencies, however the general contractor involved in the scheme received no penalties related to the payroll fraud happening on 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 contractors, to report and pay lower taxes, and avoid the liability for unpaid wages. Had the case not been caught by federal and state agencies, he could have repeated the scheme elsewhere in the state without any consequences, to the detriment of the local construction community.

SB415 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 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.

Mahalo.

STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 440-9188
HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576
KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376
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

Testimony of
Pacific Resource Partnership

House Committee On Labor & Government Operations
Representative Scot Z. Matayoshi, Chair
Representative Andrew Takuya Garrett, Vice Chair

SB 415, SD2—Relating To Wages
Tuesday, March 21, 2023
9:30 A.M.

Aloha Chair Matayoshi, Vice Chair Garrett, 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, 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 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 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 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.