

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

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

February 9, 2023

To: The Honorable Angus L.K. McKelvey, Chair,
The Honorable Mike Gabbard, Vice Chair, and
Members of the Senate Committee on Government Operations

Date: Thursday, February 9, 2023
Time: 3:00 p.m.
Place: Conference Room 225, State Capitol

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

Re: S.B. 415 RELATING TO WAGES

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this proposal. SB415 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.

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

February 9, 2023

Testimony To: Senate Committee on Government Operations
Senator Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: S.B. 415 – RELATING TO WAGES.

Chair McKelvey 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 (i) (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 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 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 is ill advised.

Thank you.



February 9, 2023

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **COMMENTS ON S.B. 415, 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: Thursday, February 9, 2023
TIME: 3:00 p.m.
PLACE: Capitol Room 225

Dear Chair McKelvey, Vice Chair Gabbard 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, 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. As a result of those discussions, GCA recommends the following highlighted amendments:

SECTION 1. Chapter 388, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§388- Contractor liability; unpaid wages. (a) A general contractor entering into or under a contract in the State for the erection, construction, alteration, or repair of a



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building, structure, or other private work not subject to chapter 104 shall assume and is liable for any debt owed to a claimant for wages incurred by a subcontractor at any tier acting under, by, or for the general contractor, for the claimant's performance of labor included in the contract between the general contractor and the owner. The general contractor's liability under this section shall extend only to unpaid wages to the claimant, including any interest owed, but shall not extend to penalties, consequential or liquidated damages, or any benefit, fringe benefit, or contribution claims.

A general contractor shall not evade or commit any act that negates the requirements of this section; provided that this section does not prohibit a general contractor or subcontractor from contracting with or enforcing any lawful remedies against a subcontractor for the liability created by the nonpayment of wages by the subcontractor or by a subcontractor at any tier working under another subcontractor.

(b) Notwithstanding any law to the contrary, actions to enforce a general contractor's liability for unpaid wages may include the following:

- (1) The director may enforce liability for unpaid wages established by subsection (a) against a general contractor. The general contractor's liability shall be limited to unpaid wages, including any interest owed; or
- (2) A joint labor-management cooperation committee established pursuant to section 175a of the federal Labor Management Cooperation Act of 1978 (29 U.S.C. 175a) may bring an action in any court of competent jurisdiction against a general contractor or subcontractor at any tier for unpaid wages owed to a claimant by the general contractor or subcontractor for the performance of private work not subject to chapter 104, including unpaid wages owed by the general contractor, pursuant to subsection (a). The court ~~shall~~ may award a prevailing party in such an action reasonable attorney's fees and costs, including expert witness fees~~[-], provided however, attorneys fees and costs, including expert witness fees, shall not be awarded against a general contractor for unpaid wages except for those of its direct employees.~~ 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 and
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,
but no later than forty-five days after the date of
completion as defined in section 507-43, 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 and subcontractor at any place the general
contractor or subcontractor maintains an office or
conducts 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.



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No other party may bring an action against a general contractor to enforce the liability established in this section.

(c) Unless otherwise provided by law, property of the general contractor may be attached for the payment of any judgment received after trial and pursuant to this section.

(d) An action brought pursuant to this section shall be filed within ~~[one year after actual completion of the work covered by the direct contract between the owner and general contractor]~~ one year from the date on which the person did or performed the ~~[last]~~ labor for which claim is made, but no later than forty-five days after the date of completion as defined in section 507-43.

(e) This section does not apply to work performed by an employee of the State or any political subdivision of the State.

(f) Upon request by a general contractor to a subcontractor, the subcontractor and any 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 work. The payroll records shall be marked or obliterated only to prevent disclosure of an

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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, the subcontractor and any 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, 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.

(g) For purposes of this section:

"General contractor" means a contractor who has a direct contractual relationship with an owner.

"Subcontractor" means a contractor who does not have a direct contractual relationship with an owner. The term includes a contractor who has a contractual relationship with a general contractor or with another subcontractor.



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(h) The obligations and remedies in this section shall be in addition to any obligations and remedies otherwise provided by law, except that nothing in this section shall be construed to impose liability on a general contractor for anything other than unpaid wages to the claimant, including any interest owed[-], and shall not extend to penalties, consequential or liquidated damages, or any benefit, fringe benefit or contribution claims.

(i) 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; provided that a general contractor may withhold all sums owed to a subcontractor if the subcontractor does not provide the information requested under subsection (f) in a timely manner and until such time that the information is provided.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application."



SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2023.

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



HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Government Operations
Senator Angus L.K. McKelvey, Chair
Senator Mike Gabbard, Vice Chair

Statement of the Hawaii Regional Council of Carpenters
SUPPORT for SB 415 Relating to Wages

Aloha Chair McKelvey, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Regional Council of Carpenters (HRCC) strongly supports HB 167, 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 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.

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

Senate Committee On Government Operations
Senator Angus L.K. McKelvey, Chair
Senator Mike Gabbard, Vice Chair

SB 415—Relating To Wages
Thursday, February 9, 2023
3:00 P.M.

Aloha Chair McKelvey, Vice Chair Gabbard, 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, 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 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 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 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, HB 167 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 following 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 such, we respectfully request your favorable decision on this measure. Thank you for this opportunity to submit written testimony.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

February 8, 2023

To: **Senate Committee on Government Operations (GVO)**

Re: **Testimony on SB415, Relating to Wages**

For GVO Hearing on Thursday, February 9, 2023 at 3:00 pm in Conference Room 225

Aloha Honorable **Chair Angus McKelvey, Vice Chair Mike Gabbard**, and Senate Government Operations Committee Members,

The **Hawaii Laborers & Employers Cooperation and Education Trust Fund** (Hawaii LECET) is a labor + management partnership established in 1992 between the 5,000 statewide members of the Hawaii Laborers Union and over 250 construction contractor members of the *General Contractors Association* and the *Building Industry Association*. The Laborers International is the largest construction trade union in North America, and Hawaii LECET is part of a network of 38 labor-management LECET Funds across the country.

We offer our support for SB415 with amendments. SB415 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 prime general contractor and owner.

The proposed amendments crafted between union and management will deter cheating in the construction industry by making the general contractor responsible for their projects, and making sure their subcontractors are properly paying their employees, especially on private jobs where there are less worker and labor protections available. SB415 will hold prime contractors accountable for selecting and supervising reputable subcontractors, and will help protect consumers.

Thank you for offering us this opportunity to testify in support of SB415 and the proposed amendments between management and labor.

Mahalo,

**Hawai'i Laborers & Employers
Cooperation and Education Trust Fund**

TO: Members of the Committees Government Operations

FROM: Natalie Iwasa
808-395-3233

HEARING: 3 p.m. Thursday, February 9, 2023

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

Aloha Chairs McKelvey and Committee Members,

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

This is so wrong. If a general wants to put that in the agreement with the sub, that's one thing, but to mandate it is not only bad policy, it's flat out wrong. If a subcontractor isn't paying its liabilities, its owners should be held accountable, not some other party merely because they agreed to work together.

Please vote "no" on SB415.



February 9, 2023

LATE

Kevin Schmid
Oceanic Companies, Inc.
Chairman

To: Committee on Government Operations
Senator Angus L.K. McKelvey, Chair
Senator Mike Gabbard, Vice Chair

Canaan Shon
Hawaii Geophysical
Services, LLC
Past Chairman

From: Malcolm Barcarse, Jr. ABC Hawaii Board Legislative Committee Chair

Christine Lanning
Integrated Security
Technologies, Inc.
Chairman Elect

Associated Builders and Contractors Hawaii Chapter Testimony in **OPPOSITION** to SB 415

Ross Kawano
ECA, LLP
Treasurer/Secretary

Chair McKelvey, Vice Chair Gabbard and members of the Committee:

Malcolm Barcarse, Jr.
A&B Electric Co., Inc.

Thank you for the opportunity to testify, my name is Malcolm Barcarse, Jr. I am the Chair of the Legislative Committee of Associated Builders and Contractors, Hawaii Chapter which represents over 150 member companies in the Construction Industry in Hawaii. We also have a State Approved Trade Apprenticeship Program in the trades of Carpentry, Electrical, Painting, Plumbing and Roofing. Our national organization has over 21,000 members across 69 chapters.

Ralph Sakauye
Bora, Inc.

Paulina Baker
Redhammer LLC

Jarrett Walters
Hawaiian Building
Maintenance



We stand in opposition to this bill for two reasons. First for public projects these provisions and this type of liability already exists under Chapter 104 and this bill would create a conflict with Chapter 104. Chapter 104 requires subcontractors to submit certified payroll to the State through their general contractors. Violations for noncompliance can extend to GC on the project through the existing law so because of that this bill is not necessary for public projects. On private projects, this bill would put construction in a different category than all other industries. In no other industry does Chapter 388 extend liability to a general contractor for the wages of their subs. We feel that it is unfair to subject the construction industry to increased paperwork, compliance and liability under Chapter 388 as opposed to every single industry in the economy. Protections for these violations are covered in Chapter 388 and federal law so we encourage the State to focus on enforcing the laws that are already on the books.

Austin Doherty
Helix Electric
Chairman

Geoffrey Chu
Oceanic Companies, Inc.
Past Chairman

Kathryn Mashima
Mashima Electric
Chairman Elect

For the reasons stated above we ask that this bill be HELD. Thank you for the opportunity to testify.

David Tsuda
First Hawaiian Bank
Treasurer

Ross Kawano
ECA, LLP
Secretary

Maurice Torigoe
M. Torigoe Plumbing, Inc.

Michelle Taketa
StarCom Builders, Inc.

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