A BILL FOR AN ACT

RELATING TO WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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 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, 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 award a prevailing party in such an action reasonable attorney's fees and costs, including expert witness fees. 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 not 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.

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.

(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
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.

(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, including any interest owed.

(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 upon its approval.

INTRODUCED BY: [Signature]
Report Title:
Wages; Timely Payment; General Contractors; Subcontractors; Liability

Description:
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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.