

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

**TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE**

**AND**

**TO THE HOUSE COMMITTEE ON JUDICIARY**

**TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012**

**Wednesday, February 22, 2012  
2:00 p.m.**

**TESTIMONY ON HOUSE BILL NO. 1969, H.D.1, RELATING TO CONTRACTS.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
AND MEMBERS OF THE COMMITTEES:**

My name is Denny Sadowski, Chair of the Contractors License Board's Legislation Committee. Thank you for the opportunity to testify in opposition to House Bill No. 1969, H.D.1, which amends Chapter 444, HRS, by establishing a timeline for the payment of contractors and subcontractors.

Currently, section 444-25, HRS, states that a contractor must pay its subcontractor within 60 days of receipt of a statement that the work has been performed or pay one percent interest per month. This bill creates a new section in Chapter 444, HRS, which establishes a procedure for obtaining performance bonds for every project or establishing alternate procedures for retainage and final payment.

The Board feels that imposing such a process on all projects is unduly burdensome, and may result in additional expenses for the consumer. While

these procedures may be applicable for public works or large commercial projects, subjecting all contracting work to this process is not appropriate. Furthermore, this bill imposes a requirement for the owner to pay interest of one and one-half percent per month on the final payment due to the contractor. However, the purpose of Chapter 444, HRS, is to regulate contractors for the protection of the public. It is not meant to impose and enforce requirements on the consumer, and we feel that this measure is contrary to the Board's mission of protecting the public.

For these reasons, the Board feels that imposing these requirements on all projects is not warranted, and we oppose the proposed amendments to Chapter 444, HRS, as incorporated in Sections 2 and 5 of this bill.

Thank you for the opportunity to testify on House Bill No. 1969, H.D.1.

# IRONWORKERS STABILIZATION FUND

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January 23, 2012

Robert Herkes, Chair & Gil Keith-Agaran, Chair  
Committee on Consumer Protection and Commerce  
Committee on Judiciary  
House of Representative  
State Capitol  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Dear Honorable Chair Herkes & Chair Keith-Agaran and Members of the Committee on Consumer Protection and Commerce and Members of the Committee on Judiciary:

Re: Strong Support for HB 1969HD1 – Relating to Contracts

We are in strong support of HB 1969HD1, Relating to Contracts; that shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects.

The purpose of this bill allows subcontractors to receive payment for work that they have done on construction projects. One example is the Board of Water Supply where the construction job was completed in 2002 and the final payment was not done until 2009. Many subcontractors are small business owners that are trying to stay afloat and that if they do not get final payment in time this could mean bankruptcy for them. During this tough economic time it is imperative to allow small businesses to run instead of letting them close shop and put a lot of hard working men and women out of jobs and on the unemployment line. Consequently, we believe that this bill will assist in providing small companies stability in these uncertain economic times

Again we strongly support this measure for the working men and women of Hawaii. Thank you for your time and consideration.

Sincerely,

T. George Paris /s/  
Managing Director

DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 11<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 768-8480 • Fax: (808) 768-4587  
Web site: [www.honolulu.gov](http://www.honolulu.gov)

PETER B. CARLISLE  
MAYOR



LORI M.K. KAHIKINA, P.E.  
DIRECTOR

CHRIS TAKASHIGE, P.E.  
DEPUTY DIRECTOR

February 17, 2012

The Honorable Robert N. Herkes, Chair  
and Members  
House Committee on Consumer Protection and Commerce  
State Capitol  
Honolulu, Hawaii 96813

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members  
House Committee on Judiciary  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Herkes, Chair Keith-Agaran, and Members:

Subject: House Bill No. 1969 HD1, Relating to Contracts

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 1969 HD1 for the following reasons:

1. The bill would require agencies to comply with the following time constraints:
  - Accept construction work or notify the contractor of work yet to be performed within 15 days of receipt of a notice indicating that the contractor considers the work complete. This requirement may not be achievable on complex construction projects.
  - Pay retainage to a contractor equal to the amount paid by the contractor to a subcontractor within 15 days after receiving a notice that the contractor paid the subcontractor in full. Interest on any unpaid amount would begin accruing on the 30<sup>th</sup> day following receipt of the statement.

The proposed 15-day time limits would be extremely difficult to meet on many construction contracts that DDC administers. Invoices for construction services need to be checked against the project's design, the status of construction progress, and other project information that may need to be acquired in order to assess the satisfactory completion of the work represented by the invoice. This process can easily take more than a week. Once approved, the invoice is forwarded to the Department of Budget and Fiscal Services (BFS), the agency that processes the payment. BFS needs additional time to verify the financial technicalities of the invoice and process the payment.

The Honorable Robert N. Herkes, Chair  
and Members  
The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members  
February 17, 2012  
Page 2

DDC's current procedures require payment for goods and services within 30 calendar days after receipt of the invoice. This limit is practical and, we believe, fair to vendors and contractors.

2. The interest that would accrue on payments starting on the 30<sup>th</sup> day after receipt of the notice of full payment would increase the effective cost of projects to taxpayers.

Thank you for the opportunity to testify.

Very truly yours,



Lori M. K. Kahikina, P.E.  
Director

LM/WB:lm

**BIA-HAWAII**  
**BUILDING INDUSTRY ASSOCIATION**

**Testimony to House Committees on Consumer Protection & Commerce and  
Judiciary**

Wednesday, February 22, 2012

2:00 p.m.

Capitol Room 325

**RE: H.B. 1969 HD1, Relating to Contracts**

Good morning Chairs Herkes and Keith-Agaran, Vice-Chairs Yamane and Rhoads, and members of the Committees:

My name is Gladys Quinto Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-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.

BIA-Hawaii is **opposed** to HB 1969 HD1, which would provide for the prompt payment of subcontractors and materialmen on government and nongovernment projects. This bill is not necessary as similar issues were addressed in 2006 when the legislature passed Act 291 (SLH 2006). A difficult industry consensus was reached which provides appropriate provisions that balance the need for prompt payment to lower tier contractors/subcontractors, while safeguarding the control needed for the upper tier contractors/subcontractors to ensure work is done timely and properly by its lower tier subcontractors.

The purpose of Act 291 (SLH 2006) was to accelerate a subcontractor's or materialman's right to payment upon completion of the subcontract or the furnishings of materials providing for prompt payment to a subcontractor or materialman upon completion of the subcontractor's or materialman's work in government projects. Act 291 (SLH 2006) is currently codified in HRS §103-10.5 and 103-32.1 and Administrative Rules.

We respectfully request that this bill be held by this Committee. Thank you for the opportunity to testify.

**Testimony for HB1969 on 2/22/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, February 21, 2012 9:08 AM  
**To:** CPCtestimony  
**Cc:** shannon@gcahawaii.org  
**Attachments:** HB 1969 HD1 RELATING TO CO~1.pdf (144 KB)

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Testimony for CPC/JUD 2/22/2012 2:00:00 PM HB1969

Conference room: 325  
Testifier position: Oppose  
Testifier will be present: Yes  
Submitted by: Shannon Alivado  
Organization: General Contractors Association of Hawaii  
E-mail: shannon@gcahawaii.org  
Submitted on: 2/21/2012

**Comments:**

Aloha Committee Clerk,

Please accept GCA's testimony in opposition.

Mahalo  
Shannon Alivado

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 22, 2012

TO: HONORABLE REPRESENTATIVES ROBERT HERKES, CHAIR, RYAN YAMANE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

HONORABLE REPRESENTATIVES GILBERT S.C. KEITH-AGARAN, CHAIR, KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO H.B. 1969, HD1, RELATING TO CONTRACTS.**  
Shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects. Provides interest penalties for late payments. Effective July 1, 2112. (HB1969 HD1)

HEARING

DATE: Wednesday, February 22, 2012  
TIME: 2:00 PM  
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads and Members:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80<sup>th</sup> anniversary; GCA remains the largest construction association in the State of Hawaii and the voice in all matters related to the construction industry. GCA is submitting testimony **in opposition** to H.B. 1969, HD1 Relating to Contracts.

The purpose of H.B. 1969, HD1 is to address the purported delay in payment of subcontractors and materialmen on government and private projects. This bill adds a new section to Chapter 444, Hawaii Revised Statutes (HRS) requiring a performance bond and proposes to change the deadlines governing prompt payment in Section 103-10.5, HRS.

GCA is in opposition to HB 1969, HD1 because the proposed legislation will infringe upon private contracts. This bill proposes to regulate private contracts by imposing prompt payment guidelines on private projects; such implementation is an unwarranted intrusion into private construction contracts and subcontracts made at arms-length. This bill is attempting to solve private disputes through public legislation, which is an erroneous approach to resolving contract disputes. Instead, disputes between private parties regarding payments for completed work shall be resolved in appropriate venues other than public legislation.



Further, GCA is opposed to this bill because is not necessary as similar issues were addressed in 2006 when the legislature passed Act 291 (SLH 2006).The purpose of Act 291 (SLH 2006) was to accelerate a subcontractor's or materialman's right to payment upon completion of the subcontract or the furnishings of materials providing for prompt payment to a subcontractor or matieralman upon completion of the subcontractor's or materialman's work in government projects. Act 291 (SLH 2006) is currently codified in HRS §§103-10.5 and 103-32.1 and Administrative Rules.

In 2006, a difficult industry consensus was reached with the passage of Act 291 (SLH 2006) which provides appropriate provisions that balance the need for prompt payment to lower tier contractors/subcontractors, while safeguarding the control needed for the upper tier contractors/subcontractors to ensure work is done timely and properly by its lower tier subcontractors.

We respectfully request that this bill be held by this Committee. Thank you for the opportunity to testify on this measure.

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

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

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

February 22, 2012

Testimony To: House Committee on Consumer Protection & Commerce  
Representative Robert N. Herkes, Chair

House Committee on Judiciary  
Representative Gilbert S.C. Keith Agaran, Chair

Presented By: Tim Lyons  
President

Subject: H.B. 1969, HD 1 – RELATING TO CONTRACTS

Chair Herkes, Chair Keith-Agaran and Members of the Joint Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we support the intent of this bill. The Subcontractors Association of Hawaii is composed of the following nine separate and distinct subcontracting organizations which include:

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 CONTRACTORS ASSOCIATION OF HAWAII  
PAINTING AND DECORATING CONTRACTORS ASSOCIATION  
PACIFIC INSULATION CONTRACTORS ASSOCIATION  
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

We are still in the process of trying to determine where this bill helps. We do know that our subcontractors continually put prompt payment or, should I say the lack of it, as one of their top issues.

It would appear that this bill allows for a performance bond. Typically state and county work over \$25,000 is already bonded work. Other work could be bonded if the contractor has the financial wherewithal. Often times, however that is not the case that the contractor has the ability to be able to bond however, for those that are able to we suppose that this will be a great start.

As noted, we support the intent but we are still studying to see if it is of any benefit, especially in consideration of this legislature actions in 2006 which amend Section 103-105 HRS to provide for payment bonds and performance bonds (retainage).

Thank you.



**HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO**  
Gentry Pacific Design Center, Suite 215A \* 560 N. Nimitz Highway, #50 \* Honolulu, Hawaii 96817  
(808) 524-2249 - FAX (808) 524-6893

February 21, 2012

REGINALD CASTANARES  
*President*  
Plumbers & Fitters Local 675

DAMIEN T.K. KIM  
*Vice President*  
International Brotherhood of  
Electrical Workers Local 1186

THADDEUS TOMEI  
*Treasurer*  
Elevator Constructors Local 126

GARY AYCOCK  
*Sergeant At Arms*  
Boilermakers, Ironship Builders  
Local 204

DOUGLAS FULP  
*Trustee*  
International Assoc. of Heat & Frost  
Insulators & Allied Workers Local 132

PETER GANABAN  
*Trustee*  
Laborers' International Union of  
North America Local 369

NOLAN MORIWAKI  
Bricklayers & Ceramic Tile Sellers  
Local 1 & Plasterers  
Local 630 Cement Masons

JOSEPH O'DONNELL  
Iron Workers Local 625

ART TOLENTINO  
Sheet Metal Workers I.A. Local 293

LYNN KINNEY  
District Council 50  
Painters & Allied Trades Local 1791  
Carpet, Linoleum, & Soft Tile  
Local 1926  
Drywall, Tapers & Finishers  
Local 1944  
Glaziers, Architectural Metal &  
Glassworkers Local 1889

PANE MEATOGA  
Operating Engineers Local 3

RONAN KOZUMA  
Hawaii Teamsters & Allied  
Workers Local 996

VAUGHN CHONG  
Roofers, Waterproofers & Allied  
Workers United Union of Roofer  
Local 221

Honorable Representative Robert Herkes, Chair  
Honorable Representative Ryan Yamane, Vice Chair  
Members of the Committee on Consumer Protection and Commerce  
Honorable Representative Gilbert Keith-Agaran, Chair  
Honorable Representative Karl Rhoads, Vice Chair  
Members of the Committee on Judiciary  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

**RE: IN SUPPORT of HB1969 HD1, RELATING TO CONTRACTS**  
Hearing: Wednesday, February 22, 2012, 2:00 p.m. Conference Room 325

Honorable Chair(s), Vice Chair(s) and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO which was originally chartered in October of 1958 is comprised of 16 out of 17 construction trade unions throughout Hawaii. With an estimated membership of 20,000 statewide, our primary mission is to provide employment opportunities and living wages for the many working men and women we represent.

The Council SUPPORTS HB1969 HD1, which shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects and provides interest penalties for late payments.

We applaud the efforts of your committee(s) in hearing this very important measure. Subcontractors and its respective labor force and cost of materials is a large part of any construction project. Payrolls cannot be delayed...workers must be paid. Such related costs attributed to subcontractors are due at time of delivery. It places a great deal of hardship on small businesses when payment for services rendered are delayed for extended periods of time. Some businesses eventually close their doors due to such delayed payment. Any measure that aims at improving the time delay in getting paid for services rendered is certainly welcome and greatly appreciated. An extra dollar in the hands of a working man or woman will be re-invested into the economy ten-fold.

The Council supports any effort to improve the construction industry for its members and families.

Thank you for the opportunity to provide testimony in SUPPORT of HB1969 HD1.

Respectfully;  
Kika G. Bukoski  
Hawaii Building and Construction Trades Council