

TESTIMONY BEFORE THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

By Joseph P. Viola  
Manager, Legal Department  
Hawaiian Electric Company, Inc.

**9:00 a.m., March 13, 2012**

**House Bill 1969 HD1**  
Relating to Contracts

Chair Baker, Vice Chair Taniguchi and Committee members:

My testimony is presented on behalf of Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company. For ease of reference, I will refer to all three companies collectively as "Hawaiian Electric Company".

Hawaiian Electric Company respectfully opposes HB 1969 HD1 because it may unnecessarily raise costs for consumers. The bill:

- Appears to be unnecessary with respect to private contracts because subcontractors already have the ability to enforce their right to prompt payment against the private property owners by filing a mechanics' lien action within 45 days of substantial completion of the work (*see* HRS §507-43).
- In Section 5, the bill appears to limit the amount of retainage in private contracts to 5%. The industry norm is 10%. Private owners and contractors should be allowed to negotiate an appropriate level of retainage based on the particular circumstances of the job. Indeed, a level of retainage higher than 5% may be the most economical way to address risk for certain work (for example, the cost of performance bonds is normally passed on to the owner as part of the charge for the services).

Thank you for the opportunity to testify on this Bill.

LATE

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

**Testimony to Senate Committees on Commerce and Consumer Protection**

Tuesday, March 13, 2012

9:00am

Capitol Room 229

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

Good morning Chair Baker, Vice-Chair Taniguchi, and members of the Committee:

My name is Gladys 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 **strongly opposed** to HB 1969 HD1 because it will interfere with contracts between private parties.

The alleged purpose of H.B. 1969, HD1 is to provide for the prompt payment of subcontractors and materialmen on government and private projects; however its effects on future and existing private contracts may result in legal disputes, especially because government will interfere with private contractual provisions.

The bill is unnecessary, as these issues were already addressed in 2006 resulting in the adoption of Act 291 (SLH 2006) whereby a working group, comprised of general contractors, subcontractors, the Department of Accounting and General Services and other interested parties worked together in passing Act 291. Additionally, this bill overreaches into private contracts, whose terms and conditions are privately negotiated between parties.

BIA-Hawaii **strongly opposes** H.B. 1969 HD1 and respectfully requests that this bill be held by this Committee. Thank you for the opportunity to testify.



LATE

**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

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 368

NOLAN MORIWAKI  
Bricklayers & Ceramic Tile Setters  
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

March 12, 2012

Honorable Senator Rosalyn Baker, Chair  
Honorable Senator Brian Taniguchi, Vice Chair  
Members of the Committee on Consumer Protection and Commerce  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

RE: **IN SUPPORT of HB1969 HD1**, RELATING TO CONTRACTS  
Hearing: Tuesday, March 13, 2012, 09:00 a.m. Conference Room 229

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



Testimony of Maurice Morita  
Assistant Director  
Hawaii LECET  
1617 Palama Street  
Honolulu, HI 96817

SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION  
Tuesday, March 13, 2012  
9:00 a.m., Conference Room 229

### HB 1969, HD1 - RELATING TO CONTRACTS

Aloha Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

My name is Maurice Morita and I am the assistant director of Hawaii LECET (Laborers-Employers Cooperation and Education Trust). Hawaii LECET is a partnership between the Hawaii Laborers' Union, Local 368 and our union contractors.

The Hawaii LECET **strongly opposes** HB 1969, HD1, which shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects. It provides interest penalties for late payments.

The Hawaii LECET opposes HB 1969, HD1, because of its interference into private contracts. The purpose is to provide for the prompt payment of subcontractors and materialmen on government and private projects, however, its effects on future and existing private contracts may result in legal disputes, especially if government will interfere with private contractual provisions. Additionally, this bill over-reaches into private contracts, whose terms and conditions are privately negotiated between parties.

Thank you for the opportunity to submit this testimony.