

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Testimony to House Committee on Economic Revitalization and Business

Thursday, March 22, 2012

9:15am

Capitol Room 312

RE: H.B. 2412 HD2, Relating to Contracts

Good morning Chair McKelvey, Vice-Chair Choy, 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 2412 SD2 because it interferes with contracts between private parties.

The alleged purpose of HB 2412 SD2 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** HB 2412 SD2 and respectfully requests that this bill be **held** by this Committee. Thank you for the opportunity to testify.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE TESTIMONY

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March 22, 2012

TO: THE HONORABLE REPRESENTATIVES ANGUS MCKELVEY, CHAIR, ISAAC CHOY, VICE CHAIR AND HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

SUBJECT: **STRONG OPPOSITION TO S.B. 2412 SD2, 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 07/01/2050. (SD2)

HEARING

DATE: Tuesday, March 22, 2012
TIME: 9:15 a.m.
PLACE: Conference Room 312

Dear Chair McKelvey, Vice Chair Choy and Members of the Committee:

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 80th anniversary this year; GCA remains the largest construction association in the State of Hawaii whose mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in strong opposition to S.B. 2412, SD2, Relating to Contracts because of its bad implications and interference into private contracts. GCA respectfully requests that this Committee hold this bill.

The purported purpose of S.B. 2412, SD2 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 contractual provisions in private contracts.

GCA is in strong opposition to S.B. 2412, SD2 because:

- 1) **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; and**
- 2) **The bill overreaches into private contracts, whose terms and conditions are privately negotiated between parties.**

First, GCA opposes this bill because the proposed legislation is not necessary as similar issues were addressed when the legislature passed Act 291 (SLH 2006). In 2006, a working group of all stakeholders worked together and 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. 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's 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.

Second, this bill is overreaching as it will make it difficult for general contractors to manage its subcontractor's performance in private projects. Terms governing private contracts already include provisions that address payments to subcontractors and materialmen. Delay in payments on private projects could be due to a number of factors including, but not limited to: 1) owner not paying per contract; 2) issue with sub-performance by subcontractors that may result in liquidated damages assessed by owner; or 3) subcontract agreement and specifications may have dictated withholding until the end of entire project in which case subs need to bid accordingly knowing must wait for retention. In these situations, other avenues of relief exist and should be addressed appropriately between disputing parties.

In private contracts, private parties should resolve their differences on their own by practicing good business practices and using tools already in existence. We respectfully request that this bill be held by this Committee.

Thank you for the opportunity to testify on this measure.



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LATE TESTIMONY

March 22, 2012

TO: THE HONORABLE REPRESENTATIVES ANGUS MCKELVEY, CHAIR, ISAAC CHOY, VICE CHAIR AND HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

SUBJECT: **STRONG OPPOSITION TO S.B. 2412 SD2, RELATING TO CONTRACTS.**
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Dear Chair McKelvey, Vice Chair Choy and Members of the Committee:

My name is Lance Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI), General Contractor and a member of the General Contractors Association of Hawaii (GCA). RSI is in strong opposition to S.B. 2412, SD2 Relating to Contracts because of its bad implications and interference into private contracts.

The stated purpose of S.B. 2412, SD2 is to provide for the prompt payment of subcontractors and materialmen on government and private projects. We are concerned the bill may instead create serious problems for our industry and that of the entire State trying to recover from the recent downturn in the economy. It is our opinion that the bill:

- 1) Overreaches into private contracts, whose general terms and conditions in our industry are well-established and understood by owners, the design community, contractors, subcontractors, and materialmen of all tiers; and
- 2) For public contracts, the changes proposed appear unnecessary as comprehensive prompt payment issues for public contracts were already addressed in 2006 culminating in the passage of Act 291 (SLH 2006).

As written, to solve what appears to be isolated subcontractor payment issues on certain projects, government would now be dictating specific terms of private contracts not only between the contractor and subcontractor, but also between the owner and contractor, contractor and subcontractor, subcontractor to lower tier subcontractors. This bill would make it difficult for owners, contractors, and even subcontractors to manage lower tier subcontractors to ensure the work is done properly and timely. Standard construction contractual terms and practices that have been in use for many years (e.g., standard AIA and AGC contract forms), would need to be revamped to comply with provisions. We're afraid this would delay project startup and exacerbate the common perception that Hawaii is not a good place to do business because of government overregulation. In addition, project delays may ensue. This is not the message we want conveyed especially now, when we are trying to jump start this economy.

RSI also opposes this bill because it makes changes to public contract provisions that are not only unnecessary but confuses what was done to address prompt payment issues that were already addressed when the legislature passed Act 291 (SLH 2006).

Finally, we think there are adequate laws currently in effect in both the public (Act 291) and private (e.g., the mechanics lien law, HRS sections 507-41 et seq., and HRS section 444-25) sectors to protect all construction contractors from prompt payment issues if used judiciously and by using good business practices.

Accordingly, we respectfully request that this bill be held by this Committee.

Thank you for the opportunity to testify on this measure.