

SB 2412

Measure Title: RELATING TO CONTRACTS.

Report Title: Construction Contracts; Subcontractors and Materialmen; Payments

Description: 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.

Companion:

Package: None

Current Referral: CPN, WAM

Introducer(s): WAKAI, CHUN OAKLAND, Baker, Dela Cruz, Espero, Fukunaga, Gabbard, Galuteria, Kahele, Kidani, Ryan

<u>Sort by Date</u>		<u>Status Text</u>
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN, WAM.
1/27/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-07-12 9:30AM in conference room 229.

**DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU**

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HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR



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

CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

February 3, 2012

The Honorable Rosalyn H. Baker, Chair
and Members
Senate Committee on Commerce and Consumer Protection
State Capitol
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

Subject: Senate Bill No. 2412, Relating to Contracts

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 2412 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 30th 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.

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.


The Honorable Rosalyn Baker, Chair
and Members
February 3, 2012
Page 2

2. The interest that would accrue on payments starting on the 30th 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

IRONWORKERS STABILIZATION FUND

February 2, 2012

Roz Baker, Chair
Committee on Commerce & Consumer Protection
State Senate
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

DATE: February 7, 2012
TIME: 9:30 a.m.
PLACE: Conference Room 229

Dear Honorable Chair Baker and Members of the Committee on Commerce & Consumer Protection:

Re: Strong Support for SB2412 – Relating to Contracts

We are in strong support of SB 1969, 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 John Burns School of Medicine; although the project has been completed two years ago. Many subcontractors are awaiting their final payments. 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,

Arnold Wong /s/

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Universal Construction, Inc.

President-Elect
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Complete Construction Services Corp.

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Pacific Rim Partners

Sunny Walsh
Hunt Building Company, Ltd.

W. Bruce Barrett
Castle & Cooke Homes Hawaii, Inc.

Testimony to the Senate Committee Commerce and Consumer Protection

Tuesday, February 7, 2012

9:30 a.m.

State Capitol, Room 229

RE: S.B. 2412, Relating to Contracts

Good morning Chair Baker, Vice Chair Har, and members of the committee:

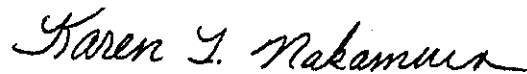
My name is Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii 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 **opposed** S.B. 2412, which proposes to shorten 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.

We believe S.B. 2412 is unnecessary as similar issues were addressed in 2006 when the legislature passed Act 291 (SLH 2006), whose purpose was to provide 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.

For the foregoing reasons, BIA-Hawaii is **opposed** to S.B. 2412.

Thank you for the opportunity to testify.



EVP/CEO
BIA-Hawaii

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Honolulu, HI 96819
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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 7, 2012

TO: THE HONORABLE SENATORS ROSLYN BAKER, CHAIR, BRIAN TANIGUCHI, VICE CHAIR AND SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2412, 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.

HEARING

DATE: Tuesday, February 7, 2012
TIME: 9:30 AM
PLACE: Conference Room 209

Dear Chair Baker, Vice Chair Taniguchi 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. GCA is submitting testimony **in strong opposition** to S.B. 2412, Relating to Contracts.

The purpose of S.B. 2412 is to provide for the prompt payment of subcontractors and materialmen on government and nongovernment projects.

GCA is in **strong opposition** to S.B. 2412 because it extends to private contracts, which makes it difficult for general contractors to manage its subcontractor's performance when government begins interfering with contractual provisions in private contracts. Further, GCA opposes this bill because the proposed legislation 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 7, 2012

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: S.B. 2412 – RELATING TO CONTRACTS

Chair Baker and Members of the 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

While we are still in the process of studying this bill to determine all of its implications, 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 most state and county work already is 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 have not had an opportunity to study all of the details.

Thank you.

STEEL FABRICATORS AND ERECTORS OF HAWAII

P.O. Box 30062, Honolulu, Hawaii 96820-0062

February 2, 2012

Roz Baker, Chair
Committee on Commerce & Consumer Protection
State Senate
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

DATE: February 7, 2012
TIME: 9:30 a.m.
PLACE: Conference Room 229

Dear Honorable Chair Baker and Members of the Committee on Commerce & Consumer Protection:

Re: Strong Support for SB2412 – Relating to Contracts

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The purpose of this bill allows subcontractors to receive payment for work that they have done on construction projects. One example is the John Burns School of Medicine; although the project has been completed two years ago. Many subcontractors are awaiting their final payments. 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.

Respectfully submitted,

T. Kawika Chun, President