

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Report non-wage payments of construction service providers

BILL NUMBER: SB 1289, SD-2

INTRODUCED BY: Senate Floor Amendment 4

BRIEF SUMMARY: Adds a new section to HRS chapter 231 to require any payor engaged in a trade or business that makes a payment, other than wages, in the course of the payor's trade or business to another person, corporation, partnership, association, or limited liability company valued of at least \$600 in any taxable year for the receipt of construction services, including payment for materials, equipment or both associated with construction services, to submit a report of the payment to the provider of construction services and the department of taxation.

Requires the report to contain: (1) the name, address, and tax identification number of the payor; (2) the name, address, and tax identification number of the provider of construction services; (3) the total amount that the payor paid to the provider of construction services in the taxable year; and (4) any other information that the department of taxation may require. Requires the report to be transmitted by the payor on or before the last day of the third month following the close of the taxable year in which the payments were made. Also requires the payor to transmit the report to the director of labor and industrial relations (DLIR) for securing contributions into the unemployment compensation fund by the first day of the month following the calendar quarter in which the report was received.

If a payor who is required to file an annual report fails to file the report by the due date, they shall be assessed a civil penalty of \$1,000 per month for each month the report is not filed, not to exceed a total of \$6,000 for every annual report not filed. In addition to any other civil or criminal penalty that may be imposed under this chapter, a payor required to file an annual report who wilfully fails to file the report by the due date shall be subject to HRS section 231-35.

This section shall not apply to any payment for construction services by a person whose business plan does not include the contracting of construction services while in the course of the person's trade or business.

Defines "construction services" as the erection, excavation, installation, alteration, addition, modification, repair, improvement, demolition, destruction, dismantling, or removal of all or any part of a building, structure, dock, wharf, surface, or subsurface construction on or attached to any real property.

Also defines "construction service provider," "person" and "payment" for purposes of the measure.

EFFECTIVE DATE: Tax years beginning after December 31, 2013

STAFF COMMENTS: This measure would require the reporting of any payment of construction services over \$600 to the department of taxation and DLIR for securing contributions into the

unemployment compensation fund. While the measure provides that payments other than wages shall be reported and specifically states that payments for materials and equipment shall also be reported, it is questionable what the intent of the measure is since payment for materials and equipment is not subject to unemployment compensation. If the intent of this measure is to ensure that contributions are made into the unemployment compensation fund, then this measure does not achieve that goal.

It should be noted that under federal law, anyone who makes a payment to a person other than an employee for services or products rendered must give that person FORM 1099 MISC if the total amount paid is more than \$600. A copy of that form is also sent to the Internal Revenue Service to insure that the income has been reported on the recipient's tax return. Thus, there is already a procedure in place to document such services. If the aim of this bill is to capture cash payments to avoid the reporting of income, no requirement such as the proposed is going to change that situation. The department of taxation with the Internal Revenue Service already have a process with which to capture such miscellaneous payments for services.

Digested 4/2/13

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Finance

Wednesday, April 3, 2013

2:30 p.m.

Capitol, Conference Room 308

RE: RELATING TO TAXATION

Dear Chair Luke, Vice Chairs Nishimoto and Johanson, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii respectfully offers **comments** on S.B. 1289, S.D. 2, which requires payors of non-wage payments for construction services to report the payments to the department of taxation and the director of labor and industrial relations. The measure also establishes penalties for failure to report. *However*, if the intent is to detect fraud, BIA-Hawaii believes, as written, the bill *will not* accomplish what the proponents aim to resolve.

BIA-Hawaii has concerns and questions regarding this proposed measure:

1. We are concerned that proprietary and confidential information will be shared with departments other than the Department of Taxation.
2. How are services from a vendor that are non-construction related handled?
3. If the intent is to capture unreported cash payments, this measure will not change that situation.
4. We believe this measure creates double reporting, additional paperwork, and is unnecessary.
5. This measure places the compliance, record keeping, filing, as well as the economic burden on small businesses that have limited resources.

We understand this is a work in progress and stakeholders have contributed much effort to devise less harmful language. However, if passed, we believe this measure, in any form, will penalize contractors and individuals currently complying with all rules and regulations by encumbering them with additional paperwork, which require additional resources. Perhaps we should instead focus on tools to encourage the construction industry towards recovery, versus further stifling the industry.

Thank you for the opportunity to share with you our views.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

April 2, 2013

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
Committee on Finance
Hawai'i State House of Representatives
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and members of the committee:

The Hawai'i Construction Alliance **supports SB1289 SD2**, relating to taxation. We also **support the amendments being proposed by the Hawai'i Regional Council of Carpenters**, which have been informed by ongoing discussions with the General Contractors Association, the State Department of Taxation, and other stakeholders.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local 3. Together, the four member unions of the Hawai'i Construction Alliance represent over 15,000 working men and women in the four basic crafts of Hawai'i's construction industry.

We believe that SB1289 SD2 addresses an important issue within the construction industry. In the absence of a tax reporting law such as SB1289 SD2, a subcontractor receiving a payment from a contractor is free to report and pay taxes on whatever he or she wants - or nothing at all - to state and federal tax authorities. By requiring payments to be reported, the state can ensure that the construction business receiving the payment is paying the correct amount in taxes.

For example, one source of tax fraud within the industry comes from contractors who use subcontractors that break the law by paying their workers off the books. In this way, these contractors can evade payments on state and federal employment taxes and workers' compensation premiums, and can underbid and steal work away from honest tax-paying contractors. A tracking and reporting mechanism for these payments will encourage compliance and discourage evasion, to the benefit of both the state and our honest, taxpaying contractors.

By passing SB1289 SD2, the state will take an affirmative step toward cutting down on fraud, ensuring that proper revenues are raised, and leveling out the playing field for the many law-abiding construction businesses here in our state.

Mahalo for the opportunity to testify on this issue.

Aloha,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

The House of Representatives
The Twenty-Seventh Legislature
Committee on Finance
2:30 p.m., April 3, 2013
Conference Room 308

Statement of the Hawaii Regional Council of Carpenters
On SB 1289, SD 2 Reporting of Transactions in the Construction Industry

The Carpenters Union strongly supports the passage of SB 1289, SD 2, with the amendments proposed below to compose an HD 1. Information Technology data matching opens possibilities for increasing tax revenue without raising taxes, by way of equal payment by all. Detecting tax fraud in the high dollar volume construction industry also addresses unfair competition faced by law abiding contractors.

Amendments below are in part based on consistency with Department of Taxation and industry practices and capacity, including the department's capacity to utilize the same report related to this Bill, for GE tax deductions. Claiming GET deductions, while an incentive to report payments, are by choice, and can be selective.

While addressing tax cheating, we must not forget the construction workers having to take jobs "off-the-books", facing grueling days without accruing benefit credits or insurance and wage protections. This practice is central to cost undercutting by contractors seeking to under-report in the tax system. The more this is goes unchecked, the more workers will have to choose between taking off-the-books jobs, and not working.

Yes, making a difference will take effort, but it needs to be done. No, there are no guarantees that all contractors will be set straight, but action must be taken.

Factoring construction transaction data into State IT upgrades makes sense. It closes a loophole whereby reporting (1099) of payments for construction services is not required if a contractor is incorporated, as most are. Such contractors can under-report, or not report income. Encouraging proper declaration of construction income has raised revenue in Canada. It will reduce work lost by law abiding contractors to cheating contractors who pay workers in cash, evading state and federal income and business taxes, Unemployment Insurance and workers compensation premiums.

Proposed amendments to the SD 2 are as follows (Additions are **underlined and boldfaced**, deletions are *[bracketed and italicized]*, numbering and lettering are re-ordered.):

(a) Page 1, line 11: "...equipment, or both, **if included in the payment for** *[associated with]* the construction ..."

(a)(1) “The name, address and **General Excise** tax identification number **and Federal tax identification number or Social Security Number of the payor;**”

(a)(2) “**Where the payor is claiming a General Excise tax deduction for the amount paid to the provider of construction services,** *[T]*the name, *[address]* and General Excise tax identification number of each provider of construction services;”

(a)(3) “**Where the payor is not claiming a General Excise tax deduction for the amount paid to the provider of construction services, the name and Federal tax identification number or Social Security Number of each provider of construction services;**”

(a)(4) “The total amount that the payor paid to the provider of construction services **during** *[in]* the payor’s taxable year; and”

(a)(5) “Any other information that the department shall require *[by rule]*.”

(b) “The annual payment report shall be transmitted by the payor to the department on or before the **twentieth** *[last]* day of the **fourth** *[third]* month following the close...”

(c) “**The annual payment report required under subsection (a) may be utilized by the payor to meet the administrative requirements of claiming the deduction under Section 237-13(3)(B).**”

[(c) The payor shall also transmit the report to the director of labor and industrial relations... in a manner prescribed by the director of labor and industrial relations.]
(Delete (c) of SD 2 entirely.)

(e) “A payor required to file an annual report under subsection (a) who fails to file the report by the due date shall be assessed a civil penalty of **\$250** *[1,000]* per month for each month the report is not filed, not to exceed a total of **\$3***[6]*,000 for every annual report not filed. For the purposes of this subsection...”

(g) “The requirements of this section shall not apply to any payment for construction services by a person whose **activities** *[business plan]* do*[es]* not include the contracting of construction services while in the normal or regular course of the person’s trade or business *[, as determined by the director through rules]*.”

(i) (definitions)

“Person” includes an individual, corporation, partnership, association, *[or]* limited liability company, **or any other business entity.**”

The proposed amendments, and previous testimony and discussion indicate:

- The Department of Taxation will be able to match data, so that a report generated for this section may be utilized to claim a G.E.T deduction.
- Payment for materials and/or equipment is not subject to reporting unless included in a payment for construction services, e.g. the total amount paid a drywall subcontractor providing sheetrock with its installation service.
- Wage payments need not be separated from other parts of a payment for construction services.
- Payors for construction services that are not engaged in a construction trade or business, such as homeowners or a restaurant renovating their kitchen, need not report. Reporting may apply to developers, certain commercial chains, universities, etc., if their business activities regularly involve contracting construction services, as well as to contractors paying subcontractors.

SB 1289, with the amendments proposed for effective implementation, should be passed. Thank you for considering our support for SB 1289.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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April 3, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO,
VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND
HOUSE COMMITTEE ON FINANCE

SUBJECT: **S.B. 1289, SD2, PROPOSED HD1, RELATING TO TAXATION.** Requires
payors of non-wage payments for construction services to report the payments to
the department of taxation and the director of labor and industrial relations.
Establishes penalties for failure to report.

HEARING

DATE: Wednesday, April 3, 2013
TIME: 2:30 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson 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 the largest construction association in the State of Hawaii. The GCA's 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.

The GCA supports the intent S.B. 1289, SD2, Proposed HD1 draft being proposed by the Hawaii Regional Council of Carpenters (HRCC). GCA understands HRCC's desire to address the issue of cash transactions by some contractors to avoid paying the required GET. The proponents of this measure have amended the bill in the Proposed HD1 version to insure no double reporting to the Department of Taxation.

The GCA supports the Proposed HD1 version in place of the current SD2 version. The Proposed HD1 version would still require that all non-wage payments for construction service providers be reported to the Department of Taxation, whether or not a payor is claiming a general excise deduction for such payment. The Proposed HD1 version also deletes the requirement that the payment report should be sent to the Department of Labor and Industrial Relations, which was a major concern, due to the potential to reveal confidential and proprietary information. The Proposed HD1 reduces the fine for failing to report by the due date and also allows Department of Taxation the ability to create new forms to meet this requirement.

The GCA prefers HRCC's recommended amendments in the Proposed HD1. Thank you for the opportunity to present our views 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

April 3, 2013

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons
President

Subject: S.B. 1289, SD 2 – RELATING TO TAXATION

Chair Luke and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii.

The Subcontractors Association of Hawaii is composed of the following nine separate and distinct 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 opposed to this bill.

While we support the intent of this bill, we believe that the practical effect will be to create a great deal of paperwork for people who are already complying and no additional burden for those who are in non-compliance. After all, what this bill requires is that if a contractor has paid for construction services to someone other than another licensed contractor who regularly reports his income and pays his taxes, they would have to provide a report to the Department of Taxation. It is well known within the construction industry that everyone must be licensed. It is not well known outside of the industry. A contractor who has hired an illegitimate contractor is not about to now comply with this law by providing a report to the Department of Taxation on their illegal acts and payments.

Again, while we appreciate the intent of this bill which is to crack down on those who are being paid illegitimately, we don't think that this bill will do it and that it will create an incredible burden on legitimate contractors for multiple transactions. This bill is similar to one by the federal government which was ultimately repealed based on the "squawks" of businesses who found it to be over burdensome. This bill is the same and will cause the same kinds of problems.

Based on the above we do not support this bill.

Thank you.

April 3, 2013

The Honorable Sylvia Luke, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: S.B. 1289, S.D.2, Relating to Taxation

HEARING: Wednesday, April 3, 2013, at 2:30 p.m.

Aloha Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,000 members. HAR **opposes** S.B. 1289, S.D.2, which requires payors of non-wage payments for construction services to report the payments to the Department of Taxation and the Director of Labor and Industrial Relations and establishes penalties for failure to report.

HAR would note that HRS §235-96 currently reads as follows:

. . . By duly promulgated regulations, the department of taxation may require that any individual, partnership, corporation, joint stock company, association, insurance company, or other person, being a resident or having a place of business in this State, in whatever capacity acting, including lessees or mortgagors of real and personal property, fiduciaries, employers, and all officers and employees of the State or of any political subdivision thereof, having the control, receipt, custody, disposal, or payment of any annuity or interest on deposits or funds held in trust, including taxable income from endowment policies, other interest (except interest coupons payable to bearer), dividends, wages, rentals, royalties, premiums, or other emoluments, gains, profits, and income, paid or payable during any year to any person, shall, on such date or dates as the department shall from time to time designate, make a return to the department furnishing the information required by the regulations.

Under HRS §235-96 and HAR §18-235-96, each payor must file a Hawaii Form N-196, Annual Summary and Transmittal of Hawaii Information Returns, and a federal Form 1099-MISC, Miscellaneous Income, for each person to whom they have paid during the year, “at least \$600 in...services (including parts and materials...)” HAR therefore believes that the new reporting requirement under HRS Chapter 231 contained in S.B. 1289, S.D.2, will lead

to the double reporting of many construction service payments to the Department of Taxation.

HAR further believes that HRS §235-96 is the appropriate place to report the information required under S.B. 1289, S.D.2, inasmuch as compliance with HRS §235-96 is already required of by payors including our licensed property managers.

Based on the above, HAR opposes S.B. 1289, S.D.2, because it unnecessarily imposes overlapping reporting requirements under a new section in HRS Chapter 231 and an existing section (HRS §235-96) in HRS Chapter 235.

Mahalo for the opportunity to testify.

CONSTRUCTION FINANCIAL MANAGEMENT ASSOCIATION



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April 2, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO,
VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND
HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1289, SD2, RELATING TO TAXATION**
Requires payors of non-wage payments for construction services to report the
payments to the department of taxation and the director of labor and industrial
relations. Establishes penalties for failure to report.

HEARING

DATE: Wednesday, April 3, 2013
TIME: 2:30 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

The Construction Financial Management Association (CFMA) Honolulu Chapter is an organization comprised of over fifty (50) finance and management professionals at general contractors, subcontractors, and construction related firms. CFMA Honolulu was established in 1986 and is the local chapter of the national CFMA comprising of over eighty (80) chapters. CFMA is the primary resource for finance professionals in the construction industry, and part of its mission is to represent its members in matters related to the construction industry.

CFMA Honolulu strongly opposes S.B. 1289, SD2. Proponents believe that this measure will address unlawful cash transactions in the construction industry; however, through discussions with the Department of Taxation, we understand that little if any immediate benefit will materialize from this reporting due to the fact that systems and resources are not currently available to fully utilize the information in a way that will ensure benefits to the State. Furthermore, the proposed bill imposes reporting requirements and specifies penalties for non-reporting, targeting a specific industry (construction), versus other industries which may have similar GET exemptions/deductions.

CFMA Honolulu strongly opposes the penalties imposed for non-reporting because the definition of "construction service providers" is not clearly stated or understood, so businesses may be unknowingly putting themselves at risk for not reporting certain service providers.

CFMA Honolulu also strongly opposes the reporting of information to DLIR because DLIR monitors “wages” and reporting under this bill specifically relates to “non-wage” payments. There are concerns with confidentiality if Payers are required to disclose non-wage data to DLIR as we do not know how the information may be used. Furthermore, DLIR may also not have the systems or manpower in place to fully use this information that will benefit the State.

Rather than implementing the proposed bill, the Department of Taxation should try to utilize the information already being provided; specifically, cross-referencing Schedule GE Exemptions and Deductions submitted by Payers with the G49 General Excise Annual Returns submitted by corresponding Payees, to uncover underreporting.

Thank you for the opportunity to present our views on this measure.



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



PETER A. GANABAN
Business Manager
Secretary-Treasurer

ALFONSO OLIVER
President

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MARK TRAVALINO
Auditor

JOSEPH YAW
Auditor

LEUMA L. LEATUMAUGA
Sergeant-At-Arms

Testimony in SUPPORT of SB1289 SD2

RELATING TO TAXATION

By Al Lardizabal, Government Relations

Hawaii Laborers' Union

To the House Committee on Finance

Wednesday, April 3, 2012, 2:30 p. m.

State Capitol, Room 308

Chair Sylvia Luke, Vice Chair Scott Nishimoto, Vice Chair Aaron Johanson and members of the committee:

The Hawaii Laborers' Union strongly supports SB1289 SD2 which requires payers of non-wage payments for construction services to report the payments to the department of taxation and the director of the department of Labor and Industrial relations.

If the bill becomes law, it will serve to level the playing field a bit more and increase competition within the construction industry; and the state will have another source of tax revenue where heretofore, it is probably not collecting any taxes from contractors that don't report the transactions due to lack of information.

Thank you for the opportunity to submit this testimony.

SB1289

Submitted on: 4/2/2013

Testimony for FIN on Apr 3, 2013 14:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Pane Meatoga Jr.	Operating Engineers Local Union #3	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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FINTestimony

From: mailinglist@capitol.hawaii.gov
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Cc: tony@rmasalesco.com
Subject: Submitted testimony for SB1289 on Apr 3, 2013 14:30PM

SB1289

Submitted on: 4/2/2013

Testimony for FIN on Apr 3, 2013 14:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Borge	Individual	Comments Only	No

Comments: The proposed amendment will not achieve the desired intent but rather place additional burdens on businesses that currently are compliant. The proposal will require more time, labor and money and acutually penalizes businesses that legitimately conduct business and pay the respective taxes but does nothing for the noncompliant, tax dodging entity. Respectfully submitted by Anthony Borge

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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