

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 983; SB 1289; HB 691 (Identical)

INTRODUCED BY: SB 983 by Kouchi by request; SB 1289 by Kidani and 6 Democrats; HB by Luke

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, 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 and address 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 to the department and the provider of construction services on or before January 31 following the taxable year in which the payment was made.

Requires the department of taxation to transmit the report to the director of labor and industrial relations for purposes of securing contributions into the unemployment compensation fund by the first day of the month following the calendar quarter in which the report was received. Allows the department to share the report, upon request, with any other state or federal law enforcement agency.

Failure to file a report, or filing an incomplete report, shall result in a fine of \$10,000 and knowingly failing to file a report, or knowingly filing an incomplete, false, or misleading report shall result in a fine of up to \$20,000.

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. If the payment to the construction service provider includes payment for materials and equipment as well as construction services, the payment shall also be reported.

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

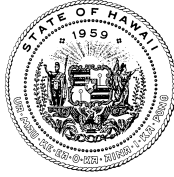
EFFECTIVE DATE: Tax years beginning after December 31, 2012

STAFF COMMENTS: This measure would require the reporting of any payment of construction services over \$600 to the department of taxation who, in turn, will submit it to the department of labor

and industrial relations 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 1/31/13



NEIL ABERCROMBIE
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DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

February 3, 2013

To: The Honorable David Y. Ige, Chair,
The Honorable Michelle N. Kidani, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Monday, February 4, 2013

Time: 10:00 a.m.

Place: Conference Room 211, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 1289 RELATING TO TAXATION

The department has been involved with several efforts recently to address various issues involving the administration of labor laws including the Construction Task Force that reported to the 2012 Legislature and resulted in Act 244. The department strongly supports this proposal, as it will enhance the administration and enforcement of labor laws in addition to reducing unfair competition. DLIR also supports the amendments suggested by the Carpenters Union in consultation with DoTAX.

S.B. 0000
January 25, 2013
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To: Senate Committee on Ways and Means

From: Cheryl Kakazu Park, Director

Date: February 4, 2013, 10:00 a.m.
State Capitol, Conference Room 211

Re: Testimony on S.B. No. 1289
Relating to Taxation

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) takes no position on the substance of this bill, which would require payors of non-wage payments for construction services to report the payments to the Department of Taxation. OIP seeks to clarify a provision dealing with the Department’s ability to share the reports with other state and federal law enforcement agencies and suggests a technical amendment to the bill.

Proposed section 231-___(c), on page 2 of the bill, states that the Department “may share the report, upon request, with any other state or federal law enforcement agency, notwithstanding chapter 92F.” The “notwithstanding chapter 92F” clause is unnecessary because chapter 92F, Hawaii Revised Statutes (“HRS”), would not prohibit such interagency sharing in any case. Section 92F-19, HRS, allows for interagency sharing of non-public records. Further, section 92F-12(b)(2) requires an agency to disclose “[g]overnment records which, pursuant to . . . a statute of this state, are expressly authorized to be disclosed to the person requesting access.” Since the language of the proposed new section specifically

authorizes the Department to share the reports with any other state or federal law enforcement agency, chapter 92F would actually require the Department to disclose the reports to such an agency.

Because the “notwithstanding chapter 92F” clause is unnecessary to allow for the interagency sharing described in the bill, and including it could thus lead to confusion as to whether it was intended to achieve some other goal, **OIP recommends that this committee delete the “notwithstanding” clause so that the sentence in question reads simply, “The department may share the report, upon request, with any other state or federal law enforcement agency.”**

Thank you for the opportunity to testify.

The Senate
The Twenty-Seventh Legislature
Committee on Ways and Means
10:00 a.m., February 4, 2013
Conference Room 211

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

The Carpenters Union believes SB 1289 will positively address conditions in the high dollar-volume construction industry. Based on further evaluation, we propose amendments below, for feasible and effective implementation.

The Bill closes a loophole that allows payments for construction services to go completely unreported if a contractor is incorporated, as most are. Such contractor can under-report, or report no income. Federal 1099 requires reporting, but only to un-incorporated contractors, and with no systematic data transfer to the State. Both forms of data are building blocks for tax fraud detection.

The Bill will raise revenue by encouraging proper declaration of construction income, and enhancing tax fraud detection, as it has in Canada. **It does not raise taxes.**

The Bill addresses unfair competition, whereby law abiding contractors are underbid by cheating contractors who pay workers in cash, therefore evading state and federal income and employment taxes, and workers compensation premiums.

In the interest of effective implementation, we propose the following amendments (deletions are *[bracketed and italicized]*, and additions are **bold and underlined**):

- 1) **231-** (a) "...company valued at *[no less than]* \$600 **or more** in any taxable year for the receipt of construction services shall submit a report of the **aggregate payments made to each [the]** provider of construction services *[and]*, **to** the department in a manner prescribed by the department, **including but not limited to mandatory electronic filing of such a report**; provided that the report specifies:
 - (1) The name, *[and]* address, **and tax identification number** of the payor;
- 2) **231-** (b) The payment report shall be transmitted by the payor to the department *[and the provider of construction services]* on or before *[January 31]* **the last day of the third month** following the **close of the** taxable year in which the payments *[was]* **were** made.
 - (c) The *[department]* **payor** shall **also** transmit the report to the director of labor and industrial relations for purposes of securing contributions into the unemployment compensation fund no later than the first day of the month following the calendar quarter in which the report was received. The *[department may share the report, upon request, with any other state or federal law enforcement agency,*

*notwithstanding chapter 92] **payor shall transmit the report in a manner prescribed by the director of labor and industrial relations.***

*(d) [the failure to file a report, or filing an incomplete report, shall result in a fine of \$10,000] **A payor required to file an annual report under subsection (a) that fails to file the report by the due date shall be assessed a 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. For the purposes of subsections (d) and (e), filing an incomplete, misleading, or false report shall be deemed to be a failure to file.***

*(e) [Knowingly failing to file a report, or knowingly filing an incomplete, false, or misleading report shall result in a fine pursuant to of \$20,000] **In addition to any other civil or criminal penalties imposable under this chapter, a payor required to file an annual report under subsection (a) that willfully fails to file the report by the due date shall be subject to section 231-35.***

- 3) Section 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, [2012] **2013**.

Further review indicates that the Bill does not apply to:

- Payors for construction services that are not engaged in a construction trade or business, such as homeowners or a restaurant renovating their kitchen. It would apply to developers, certain commercial chains, universities, etc., if they are regularly and normally building and renovating as a part of their business, as well as to contractors paying subcontractors.
- Purchase of materials, except as a part of a purchase of services, such as a drywall subcontractor providing sheetrock that is will install.

The reporting and collection of the data will be well worth the reduction of jobs lost by law abiding contractors to cheating contractors, and the detection of tax fraud.

SB 1289, with the amendments proposed for effective implementation, should be passed, effective upon approval. Thank you for considering our evaluation of SB 1289.



Hawai'i Construction Alliance

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

February 3, 2013

The Committee on Ways and Means
Hawai'i State Senate
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Testimony in Support of SB 1289, Relating to Taxation

Dear Chair Ige, Vice Chair Kidani, and Members of the Committee,

The Hawai'i Construction Alliance supports SB 1289, which addresses the issue of tax fraud within the construction industry.

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.

In the absence of a tax reporting law such as SB 1289 within the construction industry, 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 SB 1289, 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
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(808) 348-8885

Dear Members of the Ways and Means Committee;

SB 1289 proposes mandatory reporting of non-wage services in the construction industry of a value of greater than \$600.00 for the purpose of collection of taxes for the unemployment compensation fund.

The construction industry currently suffers from the recent economic downturn. Any increase in amounts a contractor must pay to the state will be passed on to the consumer. This further increases the cost of construction which will deter growth in this vital industry.

Also, the value of non-wage services is an arbitrary figure. There can be a huge spread in the value of the same service in this industry. This makes any figure of the value of this service arguable. And that can lead to fines for under-reporting or falsely reporting the value of those services.

This bill hinders growth in the construction industry, which is a vital part of our state's economy. I urge you to strike down this bill.

Rather than adding more taxes, perhaps the state ought to practice what its citizens do when things get financially tight: cut out non-essential services.