

STAND. COM. REP. NO.

625

Honolulu, Hawaii

MAR - 1 2013

RE: S.B. No. 1289
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred S.B. No. 1289 entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose and intent of this measure is to require payors of non-wage payments for construction services valued at \$600 or more to report the payments to the Department of Taxation and the provider of the construction services.

In addition, the measure also establishes a fine of:

- (1) \$10,000 for failure to file a report or filing an incomplete report; and
- (2) \$20,000 for knowingly failing to file a report, or knowingly filing an incomplete, false, or misleading report.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations, Hawaii Regional Council of Carpenters, Hawaii Construction Alliance, and Pacific Resource Partnership. One individual testified in opposition to the measure. The Department of Taxation, Office of Information Practices, and Tax Foundation of Hawaii submitted comments.



Your Committee finds that federal law requires form 1099 reporting only if the subcontractor or service provider is unincorporated. Although most construction businesses are incorporated, some unscrupulous construction businesses that are unincorporated may underreport income and defraud the State of tax revenues. Your Committee finds that this measure will close this loophole by requiring reporting of payments for construction services irrespective of whether the business is incorporated.

Your Committee has amended this measure by:

- (1) Clarifying that the report is to reflect the aggregate payments made to each provider of construction services and that the manner of reporting prescribed by the Department of Taxation may include mandatory electronic submission;
- (2) Requiring that reports include the tax identification number of the payor;
- (3) Changing the deadline for the report to be submitted to the Department of Taxation to "on or before the last day of the third month following the close of the taxable year in which the payments were made";
- (4) Requiring the payor, instead of the Department of Taxation, to also transmit the report to the Director of Labor and Industrial Relations;
- (5) Changing the penalties to provide that:
 - (A) A payor who fails to file a report by the due date 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; and
 - (B) A payor who wilfully fails to file a report by the due date shall be subject to section 231-35, Hawaii Revised Statutes;
- (6) Changing the taxable years to which the Act applies from those beginning after December 31, 2012, to those beginning after December 31, 2050, to facilitate further discussion on this measure; and



- (7) Making technical nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1289, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1289, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,



DAVID Y. IGE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB 1289	Committee Referral: WAM	Date: 2-12-13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
IGE, David Y. (C)	✓			
KIDANI, Michelle N. (VC)	✓			
CHUN OAKLAND, Suzanne	✓			
DELA CRUZ, Donovan M.	✓			
ENGLISH, J. Kalani	✓			
ESPERO, Will	✓			
KAHELE, Gilbert				✓
KEITH-AGARAN, Gilbert S.C.	✓			
KOUCHI, Ronald D.				✓
RUDERMAN, Russell E.	✓			
THIELEN, Laura H.	✓			
TOKUDA, Jill N.				✓
SLOM, Sam		✓		
TOTAL	9	1	0	3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;">Michelle N. Kidani</div>				
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*Only one measure per Record of Votes