

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE
ON CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 11, 2015
2:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 1232, RELATING TO THE CONTRACTORS
LICENSE BOARD.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, Chairperson of the Contractors License Board's ("Board") Legislative Committee. Thank you for the opportunity to testify on House Bill No. 1232 which proposes to require a contractor to pay a subcontractor within ten days of receipt of an invoice regardless of whether payment was received from the owner; and increases the interest rate on unpaid amounts to 1.5 percent per month. The Board has not had an opportunity to discuss this bill and is not able to offer comments on the proposed amendments at this time. The Board will discuss this bill at its meeting on February 20, 2015.

Thank you for the opportunity to provide testimony on House Bill No. 1232.

Hawai'i Construction Alliance

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

February 10, 2015

The Honorable Angus L.K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
and members
House Committee on Consumer Protection & Commerce
Hawai'i State Legislature
Honolulu, Hawai'i 96813

Dear Chair McKelvey, Vice Chair Woodson, and members:

The Hawai'i Construction Alliance **is strongly opposed to HB1232**, relating to contractors.

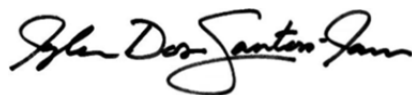
The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

HB1232 would require a contractor to pay a subcontractor within 10 days after receipt of an invoice by the subcontractor that includes any supporting documents pursuant to the subcontract terms. HB1232 achieves this by eliminating the phrase "and after receipt by the contractor of payment from the owner for the subcontractor's work, whichever occurs later" from HRS §444-25.

Eliminating this phrase would detrimentally harm the business of contracting in Hawai'i by placing an undue burden on the primary contractor, regardless of whether the owner has paid for the work performed or not.

Mahalo for the opportunity to provide these comments.

Aloha,



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

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 11, 2015

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1232 - RELATING TO CONTRACTORS

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting associations who have combined their testimony in the interest of saving time and resources.

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

We support this bill.

The purpose of this bill is to repeal the "pay if paid" clause. That is the deleted language in this bill which basically says that "only after receipt by the prime contractor of payment from the owner shall the general contractor be required to pay for the subcontractors work".

Our understanding is if "pay if paid" clauses have been ruled invalid in the Ninth Circuit and this is based on the fact that it effectively removes the mechanic lien rights from the subcontractor which is a recourse provision that he is entitled to once he performs work on the job. Subcontractors' contracts are between the sub and general, not the owner. Payment to the general on the subs behalf is irrelevant. The sub did his work for the general and should be paid regardless.

Based on that it would appear that this clause that is in the current law is no appropriate and we would agree with its repeal.

Thank you.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 10, 2015 2:20 PM
To: CPCtestimony
Cc: lornaw31@yahoo.com
Subject: *Submitted testimony for HB1232 on Feb 11, 2015 14:30PM*

HB1232

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lorna Woo, Director of Government Affairs	International Union of Painters and Allied Trades, District Council 50	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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LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 1232
Relating To Contractors

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund in **support** of HB1232.

Construction subcontractors often have to wait months, in some cases years, for payment from general contractors for materials that have already been paid for and/or work that has already completed and accepted by the owner. Subcontractors are often told that they cannot get paid until the general contractor first gets paid by the owner, a right which is codified in Hawaii Revised Statutes ("HRS") §444-25. Such language is known as a "pay-when-paid" or "pay-if-paid" clause.

Subcontractors are often small businesses operating on tight profit margins with high cost of labor and materials that must be paid up front. Any significant delay in payment makes it very difficult for subcontractors to operate as a viable business. HRS §444-25 thus makes subcontractors more vulnerable to demands from general contractors to accept less than what they are owed in order to get timely payment.

In other states, such as California and New York, courts have held that pay-when-paid/pay-if-paid clauses are not enforceable. See William R. Clarke Corp. v. Safeco Ins. Co., 15 Cal.4th 882, 64 Cal.Rptr.2d 578, 938 P.2d 372 (Cal. 1997)(a pay-if-paid clause is unenforceable because it amounts to a waiver of a subcontractor's constitutional right to assert a mechanic's lien for unpaid labor and material); West-Fair Elec. Contrs. v. Aetna Cas. & Sur. Co., 87 N.Y.2d 148, 661 N.E.2d 967, 638 N.Y.S.2d 394 (1995)(a pay-when-paid provision in a subcontract, which transfers the risk of an owner's default from a general contractor to a subcontractor, violates New York public policy as set forth in the Lien Law).

Repealing the language in HRS §444-25 authorizing a general contractor to withhold payment from a subcontractor until paid by the owner would greatly help subcontractors get paid in a timely manner for materials and work already paid for.

Again, thank you for the opportunity to testify on this measure.

**HAWAII OPERATING ENGINEERS
INDUSTRY STABILIZATION FUND**



*Uniting our strengths and working together
for a better tomorrow.*

Affiliated AFL-CIO
OPEIU - 3 - AFL-CIO (3)

LATE

February 10, 2015

Honorable Angus L.K. McKelvey, Chair

Honorable Justin H. Woodson, Vice Chair

And Members of the Committee on Consumer Protection & Commerce
415 South Beretania Street, Room 320
Honolulu, HI 96813

RE: Opposition of HB 1232 – Relating to Contractors

Chair McKelvey and Members of the Committee,

My name is Kimberly Ribellia, Government Liaison, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

HOEISF is testifying in OPPOSITION to House Bill 1232 which requires a contractor to pay a subcontractor within 10 days after receipt of an invoice by the subcontractor that includes any supporting documents pursuant to the subcontract terms.

HOEISF respectfully requests that the bill be deferred. This bill is unrealistic and unfair to require that the general contractors pay once an invoice has been submitted. The terms and conditions of payment for services between the general contractor and subcontractors should remain an issue between two private parties.

Thank you for this opportunity to testify in this matter.

Sincerely,

Kimberly Ribellia
Government Liaison
HOEISF



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
1617 Palama Street · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300 · URL: hilecet.org

LATE

TESTIMONY OF HAWAII LECET
CLYDE T. HAYASHI - DIRECTOR

HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair
Rep. Justin H. Woodson, Vice Chair

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30pm
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

TESTIMONY ON HOUSE BILL NO. 1232, RELATING TO THE CONTRACTORS.

TO THE HONORABLE ANGUS MCKELVEY, CHAIR; JUSTIN WOODSON, VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Clyde T. Hayashi, and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify in strong opposition to House Bill No. 1232, which requires a contractor to pay a subcontractor within 10 days after receipt of an invoice by the subcontractor that includes any supporting documents pursuant to the subcontract terms.

HR§ 444-25 states that "A contractor shall pay the contractor's subcontractor for any goods and services rendered within ten days after receipt of an invoice by the subcontractor that includes any supporting documents as required by the terms of the subcontract and after receipt by the contractor of payment from the owner for the subcontractor's work, whichever occurs later".

This measure will mandate the general contractor to pay the subcontractor within ten days, regardless if the general contractor received payment for services, thus placing an unfair financial burden on the general contractor.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
1617 Palama Street · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300 · URL: hilecet.org

HB 1232 would force the general contractor to subsidize a project(s), as the general contractor would have to use his own money to pay for its own labor and materials, as well as, the labor and materials for the subcontracting work, before receiving payment for services.

Hawaii LECET believes that if payment within 10 days after receipt of an invoice is paramount, then we would be amenable to legislate that owners must pay the general contractor within 10 days after receipt of an invoice.

For this reason, we **strongly oppose** House Bill No. 1232, and humbly ask that it be held.

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 1232
Relating To Contractors

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund in **support** of HB1232.

Construction subcontractors often have to wait months, in some cases years, for payment from general contractors for materials that have already been paid for and/or work that has already completed and accepted by the owner. Subcontractors are often told that they cannot get paid until the general contractor first gets paid by the owner, a right which is codified in Hawaii Revised Statutes ("HRS") §444-25. Such language is known as a "pay-when-paid" or "pay-if-paid" clause.

Subcontractors are often small businesses operating on tight profit margins with high cost of labor and materials that must be paid up front. Any significant delay in payment makes it very difficult for subcontractors to operate as a viable business. HRS §444-25 thus makes subcontractors more vulnerable to demands from general contractors to accept less than what they are owed in order to get timely payment.

In other states, such as California and New York, courts have held that pay-when-paid/pay-if-paid clauses are not enforceable. See William R. Clarke Corp. v. Safeco Ins. Co., 15 Cal.4th 882, 64 Cal.Rptr.2d 578, 938 P.2d 372 (Cal. 1997)(a pay-if-paid clause is unenforceable because it amounts to a waiver of a subcontractor's constitutional right to assert a mechanic's lien for unpaid labor and material); West-Fair Elec. Contrs. v. Aetna Cas. & Sur. Co., 87 N.Y.2d 148, 661 N.E.2d 967, 638 N.Y.S.2d 394 (1995)(a pay-when-paid provision in a subcontract, which transfers the risk of an owner's default from a general contractor to a subcontractor, violates New York public policy as set forth in the Lien Law).

Repealing the language in HRS §444-25 authorizing a general contractor to withhold payment from a subcontractor until paid by the owner would greatly help subcontractors get paid in a timely manner for materials and work already paid for.

Again, thank you for the opportunity to testify on this measure.

LATE

HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

House Bill 1232
Relating To Contractors

Wednesday, February 10, 2015
2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund in **support** of HB1232.

Construction subcontractors often have to wait months, in some cases years, for payment from general contractors for materials that have already been paid for and/or work that has already completed and accepted by the owner. Subcontractors are often told that they cannot get paid until the general contractor first gets paid by the owner, a right which is codified in Hawaii Revised Statutes ("HRS") §444-25. Such language is known as a "pay-when-paid" or "pay-if-paid" clause.

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CONSUMER PROTECTION AND COMMERCE

House Bill 1232
Relating To Contractors

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2:30 p.m.
Conference Room 325

Chair McKelvey, Vice-Chair Woodson, and members of the committee, thank you for this opportunity to submit testimony on behalf of the Hawaii Tapers Market Recovery Trust Fund in **support** of HB1232.

Construction subcontractors often have to wait months, in some cases years, for payment from general contractors for materials that have already been paid for and/or work that has already completed and accepted by the owner. Subcontractors are often told that they cannot get paid until the general contractor first gets paid by the owner, a right which is codified in Hawaii Revised Statutes ("HRS") §444-25. Such language is known as a "pay-when-paid" or "pay-if-paid" clause.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 11, 2015 8:00 AM
To: CPCtestimony
Cc: mazonem002@hawaii.rr.com
Subject: *Submitted testimony for HB1232 on Feb 11, 2015 14:30PM*

LATE

HB1232

Submitted on: 2/11/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Mazzone	Statewide General Contracting & Construction, Inc.	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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1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE

Uploaded via Capitol Website

February 11, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **OPPOSITION OF H.B. 1232, RELATING TO CONTRACTORS.**

Requires a contractor to pay a subcontractor within 10 days after receipt of an invoice by the subcontractor that includes any supporting documents pursuant to the subcontract terms.

HEARING

DATE: Wednesday, February 11, 2015
TIME: 2:30 p.m.
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred eighty 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.

GCA is in strong opposition to H.B. 1232, Relating to Contractors because it is unnecessary and has bad implications and interferes into private contracts. GCA respectfully requests that this Committee hold this bill.

While the bill lacks a preamble to the bill it appears that the purported purpose is to address 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 H.B. 1232 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) This issue was addressed in 2012 whereby the legislature passed Act 260 (SLH 2012) to address prompt payment of subcontractors if the work is found to be complete in accordance with the terms of the subcontract and in the absence of a bona fide dispute between the subcontractor and the contractor concerning goods or services contracted for.**

3) 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) and Act 260 (SLH 2012). 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 if they would be required to pay their subcontractor prior to receiving payment from the owner. Terms governing private contracts already include provisions that address payments to subcontractors and materialmen. Other avenues of relief exist and should be addressed appropriately between disputing parties with regard to payment of the subcontractor.

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.

For these reasons, GCA is in **strong opposition** to H.B. 1232 because it is unnecessary and we respectfully request that bill is deferred.

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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February 11, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

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For these reasons, GCA is in **strong opposition** to H.B. 1232 because it is unnecessary and we respectfully request that bill is deferred.