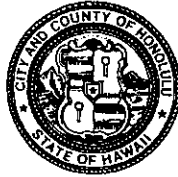


DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

NELSON H. KOYANAGI, JR.
DEPUTY DIRECTOR

March 28, 2012

TESTIMONY OF MICHAEL R. HANSEN, DIRECTOR
DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

Rep. Robert N. Herkes, Chair,
and Members of Committee on
Consumer Protection & Commerce
Rep. Gilbert S.C. Keith-Agaran, Chair,
and Members of Committee on
Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Herkes, Chair Keith-Agaran and Members:

Subject: CPC/JUD Committee – March 29, 2012 at 2:30 p.m. HST
Senate Bill No. 2412 SD2 HD1 Relating to Contracts

Thank you for the opportunity to testify. The Department of Budget and Fiscal Services (BFS) respectfully opposes Senate Bill No. 2412 SD2 HD1 which shortens the time by which subcontractors are to receive progress and final payments from contractors on government construction projects.

The 15 day time limit is impractical and does not allow the City to complete a thorough inspection of the contractor's work prior to acceptance and payment and may not be achievable for complex construction projects.

To ensure satisfactory performance of a construction project, the Department of Design and Construction (DDC) must check invoices against the project's design, the status of construction progress, and other project information. This process can take as much as two weeks on complex construction projects. Furthermore, BFS must verify the financial technicalities of the invoice before processing payment.

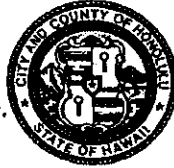
The City's current time limit of 30 calendar days after receipt of an invoice is practical and fair to vendors and contractors. A 15 day time limit will either increase the effective cost of construction projects to taxpayers or increase the risk of not receiving satisfactory contractor performance on taxpayer funded construction projects.

Thank you for the opportunity to testify.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

PETER B. CARLISLE
MAYOR



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

CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

March 27, 2012

The Honorable Robert N. Herkes, Chair
and Members
House Committee on Consumer Protection and Commerce
State Capitol
Honolulu, Hawaii 96813

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Dear Chair Herkes, Chair Keith-Agaran, and Members:

Subject: Senate Bill No. 2412 SD2 HD1, Relating to Contracts

The Department of Design and Construction (DDC) respectfully **opposes**
Senate Bill No. 2412 SD2 HD1 for the following reasons:

1. Section 5 of the bill proposes to amend Hawaii Revised Statutes, Section 444-25, to 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, as considerable information from various sources is required in order to verify that the work is complete according to the applicable plans, specifications, and standards.
 - 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. 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 take more than two weeks on complex construction projects. Once approved, the invoice is forwarded to the Department of Budget and Fiscal Services (BFS), the agency that processes the

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection and Commerce
The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
March 27, 2012
Page 2

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 an invoice. This limit is practical and, we believe, fair to vendors and contractors.


The proposed 15-day time limits identified under both bullet points above would be extremely difficult to meet on many construction contracts that DDC administers and likely impossible on some.

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 capital improvement projects to taxpayers.

For the reasons indicated above, DDC respectfully **opposes** Senate Bill No. 2412 SD2 HD1.

Thank you for the opportunity to testify.

Very truly yours,


Lori M. K. Kahikina, P.E.
Director

LK/WB:lm

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

**TWENTY-SIXTH LEGISLATURE
Regular Session of 2012**

**Thursday, March 29, 2012
2:30 p.m.**

**TESTIMONY ON SENATE BILL NO. 2412, S.D.2, H.D.1, RELATING TO
CONTRACTS.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEES:**

My name is Denny Sadowski, Chair of the Contractors License Board's Legislation Committee. Thank you for the opportunity to testify in opposition to Senate Bill No. 2412, S.D.2, H.D.1, which amends Chapter 444, HRS, by establishing a timeline for the payment of contractors and subcontractors.

The Board submitted testimony in opposition to the companion bill, House Bill No. 1969, H.D.1, at your hearing on February 22, 2012, and we have similar concerns regarding this measure.

This bill creates a new section in Chapter 444, HRS, which establishes a procedure for obtaining performance bonds for every project or establishing alternate procedures for retainage and final payment. The Board feels that imposing such a process on all projects is unduly burdensome, and may result in additional expenses for

the consumer. While these procedures may be applicable for public works or large commercial projects, subjecting all contracting work to this process is not appropriate.

Furthermore, this bill imposes a requirement for the owner to pay interest of one and one-half percent per month on the final payment due to the contractor. However, the purpose of Chapter 444, HRS, is to regulate contractors for the protection of the public. It is not meant to impose and enforce requirements on the consumer, and we feel that this measure is contrary to the Board's mission of protecting the public.

For these reasons, the Board feels that imposing these requirements on all projects is not warranted, and we oppose the proposed amendments to Chapter 444, HRS, as incorporated in Sections 2 and 5 of this bill.

Thank you for the opportunity to testify on Senate Bill No. 2412, S.D.2, H.D.1.

TESTIMONY BEFORE THE HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE AND JUDICIARY

By Joseph P. Viola
Manager, Legal Department
Hawaiian Electric Company, Inc.

2:30 pm, March 29, 2012

Senate Bill 2412 HD 1
Relating to Contracts

Chairs Herkes & Keith-Agaran, Vice Chairs Yamane & Rhoads, and Committee Members:

My testimony is presented on behalf of Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company. For ease of reference, I will refer to all three companies collectively as "Hawaiian Electric."

Hawaiian Electric respectfully opposes SB 2412 HD1 because it may unnecessarily raise costs for consumers. The Bill:

- Appears to be unnecessary with respect to private contracts. Subcontractors already have the ability to enforce their right to prompt payment against private party owners by filing a mechanics' lien action within 45 days of substantial completion of the work (*see* HRS §507-43). This is a very effective remedy.
- In Section 5, the bill appears to limit the amount of retainage in private contracts to 5%. The industry norm is 10%. Private owners and contractors should be allowed to negotiate an appropriate level of retainage based on the particular circumstances of the job. Indeed, a level of retainage higher than 5% may be the most economical way to address risk for certain work (the cost of performance bonds is normally passed on to the owner as part of the charge for the services).

Thank you for the opportunity to testify on this Bill.



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

Via E-mail: CPCTestimony@capitol.hawaii.gov
Facsimile: (808) 586-8404

March 29, 2012

TO: HONORABLE REPRESENTATIVES ROBERT HERKES, CHAIR, RYAN YAMANE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

HONORABLE REPRESENTATIVES GILBERT KEITH-AGARAN, CHAIR, KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **STRONG OPPOSITION TO S.B. 2412, SD2, HD1, 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. Effective July 1, 2112. (SB2412 HD1)

HEARING

DATE: Thursday, March 29, 2012
TIME: 2:30 p.m.
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and Members of the Committee:

S&M Sakamoto, Inc. strongly opposes S.B. 2412, SD2, HD1, Relating to Contracts because it is unnecessary due to existing remedial measures and because of its interference into private contracts.

The alleged purpose of S.B. 2412, SD2, HD1 is to provide for the prompt payment of subcontractors and materialmen on government and private projects; however the bill's effects on future and existing private contracts may result in legal disputes, especially because of the government's interference with private contractual provisions.

First of all, this bill will overreach into private contracts whose terms and conditions are privately negotiated between parties. Terms and conditions in private contracts include provisions that address payments to subcontractors and materialmen. If such provisions are not met by either party, proper remedies may be exercised, including, but not limited to, existing law, the Mechanic's Lien Law under Chapter 507, HRS and Contractors License Law, Chapter 444, HRS.

Secondly, this bill is unnecessary, as these issues related to prompt payment were carefully addressed by stakeholders in 2006 resulting in the adoption of Act 291 (SLH

2006). In 2006, a working group, comprised of the State Department of Accounting and General Services, general contractors, subcontractors and other interested parties worked together in passing Act 291 (2006). The implementation of Act 291 (2006) was delayed for one year to address department and contractors concerns regarding implementation. GCA believes if there are issues of concern, there should be another working group formed to address these concerns, before a law is passed that would greatly affect the industry in both public and private projects.

For these reasons, S&M Sakamoto, Inc. **strongly opposes** S.B. 2412, SD2, HD1 and **respectfully recommends this Committee hold this bill.**

Sincerely,

S&M Sakamoto, Inc.

A handwritten signature in black ink, appearing to read 'Dennis M. Ideta'.

Dennis M. Ideta
Senior Vice President

KING & NEEL, INC.

1164 Bishop Street • Suite 1710 • Honolulu, Hawaii 96813
Telephone: (808) 521-8311
Fax: (808) 526-3893



Via E-mail: CPCTestimony@capitol.hawaii.gov
Facsimile: (808) 586-8404

March 27, 2012

TO: HONORABLE REPRESENTATIVES ROBERT HERKES, CHAIR, RYAN YAMANE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

HONORABLE REPRESENTATIVES GILBERT KEITH-AGARAN, CHAIR, KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

FROM: JOHN BUSTARD, EXECUTIVE VICE PRESIDENT, KING & NEEL, INC.

SUBJECT: **STRONG OPPOSITION TO S.B. 2412, SD2, HD1, 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. Effective July 1, 2012. (SB2412 HD1)

HEARING

DATE: Thursday, March 29, 2012
TIME: 2:30 p.m.
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and Members of the Committee:

King & Neel, Inc. strongly opposes S.B. 2412, SD2, HD1, Relating to Contracts because it is unnecessary due to existing remedial measures and because of its interference into private contracts.

The alleged purpose of S.B. 2412, SD2, HD1 is to provide for the prompt payment of subcontractors and materialmen on government and private projects; however the bill's effects on future and existing private contracts may result in legal disputes, especially because of the government's interference with private contractual provisions.

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For these reasons, **King & Neel, Inc. strongly opposes S.B. 2412, SD2, HD1 and respectfully recommends this Committee hold this bill.**



general contractor license #ABC 21576

Via E-mail: CPCTestimony@capitol.hawaii.gov
Facsimile: (808) 586-8404

March 29, 2012

TO: HONORABLE REPRESENTATIVES ROBERT HERKES, CHAIR, RYAN YAMANE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

HONORABLE REPRESENTATIVES GILBERT KEITH-AGARAN, CHAIR, KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **STRONG OPPOSITION TO S.B. 2412, SD2, HD1, 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. Effective July 1, 2112. (SB2412 HD1)

HEARING

DATE: Thursday, March 29, 2012
TIME: 2:30 p.m.
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and Members of the Committee:

LYZ, Inc. strongly opposes S.B. 2412, SD2, HD1, Relating to Contracts because it is unnecessary due to existing remedial measures and because of its interference into private contracts.

The alleged purpose of S.B. 2412, SD2, HD1 is to provide for the prompt payment of subcontractors and materialmen on government and private projects; however the bill's effects on future and existing private contracts may result in legal disputes, especially because of the government's interference with private contractual provisions.

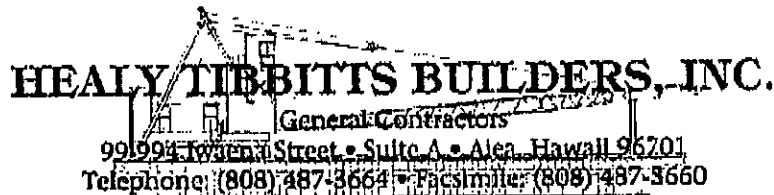
First of all, this bill will overreach into private contracts whose terms and conditions are privately negotiated between parties. Terms and conditions in private contracts include provisions that address payments to subcontractors and materialmen. If such provisions are not met by either party, proper remedies may be exercised, including, but not limited to, existing law, the Mechanic's Lien Law under Chapter 507, HRS and Contractors License Law, Chapter 444, HRS.

Secondly, this bill is unnecessary, as these issues related to prompt payment were carefully addressed by stakeholders in 2006 resulting in the adoption of Act 291 (SLH 2006). In 2006, a working group, comprised of the State Department of Accounting and General Services, general contractors, subcontractors and other interested parties worked together in passing Act 291 (2006). The implementation of Act 291 (2006) was delayed for one year to address department and contractors concerns regarding implementation. GCA believes if there are issues of concern, there should be another working group formed to address these concerns, before a law is passed that would greatly affect the industry in both public and private projects.

For these reasons, **LYZ, Inc. strongly opposes** S.B. 2412, SD2, HD1 and **respectfully recommends this Committee hold this bill.**



James N. Kurita
Vice President/ Chief Operating Officer



Via E-mail: GPCTestimony@capitol.hawaii.gov
Facsimile: (808) 586-8404

March 29, 2012

TO: HONORABLE REPRESENTATIVES ROBERT HERKES, CHAIR, RYAN YAMANE, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

HONORABLE REPRESENTATIVES GILBERT KEITH-AGARAN, CHAIR, KARL RHOADS, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **STRONG OPPOSITION TO S.B. 2412, SD2, HD1, 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. Effective July 1, 2112. (SB2412 HD1)

HEARING

DATE: Thursday, March 29, 2012
TIME: 2:30 p.m.
PLACE: Conference Room 325

Dear Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and Members of the Committee:

Healy Tibbitts Builders, Inc. **strongly opposes** S.B. 2412, SD2, HD1, Relating to Contracts because it is unnecessary due to existing remedial measures and because of its interference into private contracts.

The alleged purpose of S.B. 2412, SD2, HD1 is to provide for the prompt payment of subcontractors and materialmen on government and private projects; however the bill's effects on future and existing private contracts may result in legal disputes, especially because of the government's interference with private contractual provisions.

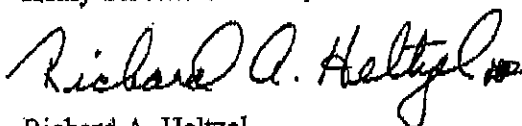
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Committee on Consumer Protection and Commerce
Committee on Judiciary
March 29, 2012
Page 2 of 2

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For these reasons, Healy Tibbitts Builders, Inc. strongly opposes S.B. 2412, SD2, HD1 and respectfully recommends this Committee hold this bill.

Very truly yours,
Healy Tibbitts Builders, Inc.



Richard A. Heltzel
President

IRONWORKERS STABILIZATION FUND

March 26, 2012

Robert Herkes, Chair & Gil Keith-Agaran, Chair
Committee on Consumer Protection and Commerce
Committee on Judiciary
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Herkes & Chair Keith-Agaran and Members of the Committee on Consumer Protection and Commerce and Members of the Committee on Judiciary:

Re: Strong Support for SB2412 SD2 HD1 – Relating to Contracts

We are in strong support of SB2412 SD2 HD1, 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 Aulani construction project by Disney where the construction job was completed and the final payment still was not paid out for the past years. Many subcontractors are small business owners that are trying to stay afloat and that if they do not get final payment in time this could mean bankruptcy for them. 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.