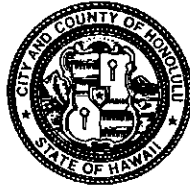


DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov



PETER B. CARLISLE
MAYOR

MICHAEL R. HANSEN
DIRECTOR

NELSON H. KOYANAGI, JR.
DEPUTY DIRECTOR

March 20, 2012

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

Rep. Angus L.K. McKelvey, Chair,
and Members of Committee on
Economic Revitalization & Business
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair McKelvey, Vice Chair Choy and Members:

Subject: ERB Committee – March 22, 2012 at 9:15 a.m. HST
Senate Bill No. 2412 SD2 Relating to Contracts

Thank you for the opportunity to testify on S.B. No. 2412 SD2. The Department of Budget and Fiscal Services (BFS) respectfully **opposes** Senate Bill No. 2412 SD2 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.

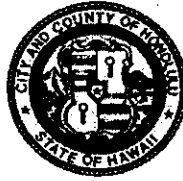
The City's current time limit of 30 calendar days after receipt of an invoice is practical and fair to vendors and contractors. A 15 day time limit will either increase the effective cost of construction projects to taxpayers or increase the risk of not receiving satisfactory contractor performance on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



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

CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

March 20, 2012

The Honorable Angus L.K. McKelvey, Chair
and Members
House Committee on Economic Revitalization and Business
State Capitol
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

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

The Department of Design and Construction (DDC) respectfully **opposes**
Senate Bill No. 2412 SD2 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.
 - 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 as much as 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 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 Honorable Angus L.K. McKelvey, Chair
and Members
March 20, 2012
Page 2


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 projects to taxpayers.

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

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
ECONOMIC REVITALIZATION & BUSINESS**

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

**Thursday, March 22, 2012
9:15 a.m.**

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

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

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, which amends Chapter 444, HRS, by establishing a timeline for the payment of contractors and subcontractors.

The Board did not submit testimony on the companion bill, House Bill No. 1969, at your hearing on January 24, 2012; therefore, we would like to express our reasons for opposing this measure at this time.

Currently, section 444-25, HRS, states that a contractor must pay its subcontractor within 60 days of receipt of a statement that the work has been performed or pay one percent interest per month. 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.1.

Testimony In Opposition to
SB2412, SD2 Relating to Contracts

By Al Lardizabal, Government Relations
Hawaii Laborers' Union

Committee on Economic Revitalization & Business
Thursday, March 22, 2012, 9:15 a.m.
Room 312, State Capitol

Chair Angus L.K. McKelvey; Vice Chair Isaac W. Choy and members of the
Committee:

The Hawaii Laborers' Union appreciates the intention of the bill for prompt payment but is unable to support SB2412, SD2 because current law already provides means for prompt payment. Act 291 (SLH 2006) was passed after the same issue was discussed in depth and agreed to by representatives in the industry and DAGS at that time. It accelerated payment to subcontractors and is codified under HRS 103-10.5 and 103-32.1.

We also understand that the bill if enacted into law may cause legal disputes by government interference into private contracts. If so, this could only exacerbate any progress of the project and subsequent payments.

Thank you for the opportunity to submit this testimony.



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

Senate Committee on Economic Revitalization & Business
Representative Angus L.K. McKelvey, Chair
Representative Isaac W. Choy, Vice Chair

SB 2412, SD2 - Relating to Contracts
Thursday, March 22, 2012
9:15 am
Conference Room 312

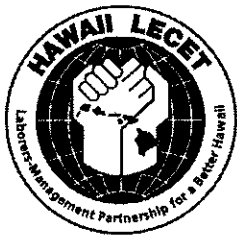
Aloha Chair McKelvey, Vice Chair Choy, and Members of the Committee:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters, formerly the Hawaii Carpenters Union.

PRP respectfully **opposes** SB 2412, SD2 which shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects. This measure would also provide interest penalties for late payments.

PRP believes this bill will seriously jeopardize the legislature's efforts to stimulate the economy. Placing more burdens on private construction contracting may delay and possibly halt potential private construction projects from commencing. General Contractors and project owners/developers are facing similar economic challenges that subcontractors and materialmen are facing.

Thank you for the opportunity to share our views with you and we respectfully request that SB 2412, SD2 be held in this committee.



Testimony of Maurice Morita
Assistant Director
Hawaii LECET
1617 Palama Street
Honolulu, HI 96817

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
Thursday, March 22, 2012
9:15 a.m., Conference Room 312

SB 2412, SD2 - RELATING TO CONTRACTS

Aloha Chair McKelvey, Vice Chair Choy, and Members of the Committee:

My name is Maurice Morita and I am the assistant director of Hawaii LECET (Laborers-Employers Cooperation and Education Trust). Hawaii LECET is a partnership between the Hawaii Laborers' Union, Local 368 and our union contractors.

The Hawaii LECET **"strongly opposes"** SB 2412, SD2, which shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects. It provides penalties for late payments.

This bill makes sweeping changes without any justified reasons. The parties in support of SB 2412, SD2, state examples of delayed payments. It didn't state what the problems were for the subcontractors to receive any progress and final payments.

In order to fix the problem with this bill, you need to know what the problem was. Our concern is this bill leaves the general contractors "no discretion" regardless of the reason. If it was for substandard work, or the job was not completed as stated in the agreement, etc. With this bill, the contractor have to pay the subcontractor.

For the above reasons, we request this bill be held.

Thank you for the opportunity to submit this testimony.

Testimony of Glenn Ida
Representing,
The Plumbers and Fitters Union, Local 675
1109 Bethel St., Lower Level
Honolulu, Hi. 96813

In Support of SB2412, SD2

Before the House:
Committee on Economic Revitalization and Business
Thursday, Mar. 22, 2012
9:15 AM, Conference Room 312

Aloha Chair Rep. Angus McKelvey and Vice-Chair Rep. Isaac Choy and Members of the Committee,

My name is Glenn Ida; I represent the 1300 plus active members and about 600 retirees of the Plumbers and Fitters Union, Local 675.

Local 675 supports SB 2412, SD2, which 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.

The purpose of this bill is to provide prompt payment to subcontractors for work done on construction projects. They have an obligation to pay for their business costs, material, as well as payroll. Unnecessary delays in receiving final payments will place heavy burdens on their business and their ability to stay viable and competitive in the marketplace.

Therefore Local 675 supports SB 2412, SD2.

Thank you for this opportunity to testify.

Glenn Ida
808-295-1280

IRONWORKERS STABILIZATION FUND

March 21, 2012

Angus McKelvey, Chair
Committee on Economic Revitalization & Business
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair McKelvey and Members of the Committee on Economic Revitalization & Business:

Re: Strong Support for SB2412 SD2 – Relating to Contracts

We are in strong support of SB2412 SD2, 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 Board of Water Supply where the construction job was completed in 2002 and the final payment was not done until 2009. 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.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

Gentry Pacific Design Center, Suite 215A * 560 N. Nimitz Highway, #50 * Honolulu, Hawaii 96817
(808) 524-2249 - FAX (808) 524-6893

REGINALD CASTANARES

President

Plumbers & Fitters Local 675

DAMIEN T.K. KIM

Vice President

International Brotherhood of
Electrical Workers Local 1186

THADDEUS TOMEI

Treasurer

Elevator Constructors Local 126

GARY AYCOCK

Sergeant At Arms

Boilemmakers, Ironship Builders
Local 204

DOUGLAS FULP

Trustee

International Assoc. of Heat & Frost
Insulators & Allied Workers Local 132

PETER GANABAN

Trustee

Laborers' International Union of
North America Local 358

NOLAN MORIWAKI

Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers
Local 630 Cement Masons

JOSEPH O'DONNELL

Iron Workers Local 626

ART TOLENTINO

Sheet Metal Workers I.A. Local 293

LYNN KINNEY

District Council 50

Painters & Allied Trades Local 1791
Local 1926
Carpet, Linoleum, & Soft Tile
Drywall, Tapers & Finishers
Local 1944
Glaziers, Architectural Metal &
Glassworkers Local 1889

PANE MEATOGA

Operating Engineers Local 3

RONAN KOZUMA

Hawaii Teamsters & Allied
Workers Local 996

VAUGHN CHONG

Roofers, Waterproofers & Allied
Workers United Union of Roofer
Local 221

March 22, 2012

Honorable Representative Angus L.K. McKelvey, Chair
Honorable Representative Isaac W. Choy, Vice Chair
Members of the Committee on Economic Revitalization and Business
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT of SB2412 SD2**, RELATING TO CONTRACTS
Hearing: Thursday, March 22, 2012, 09:15 a.m. Conference Room 312

Honorable Chair(s), Vice Chair(s) and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO which was originally chartered in October of 1958 is comprised of 16 out of 17 construction trade unions throughout Hawaii. With an estimated membership of 20,000 statewide, our primary mission is to provide employment opportunities and living wages for the many working men and women we represent.

The Council SUPPORTS SB2412 SD2, which shortens the time by which subcontractors are to receive progress and final payments from contractors on government and private construction projects and provides interest penalties for late payments.

We applaud the efforts of your committee(s) in hearing this very important measure. Subcontractors and its respective labor force and cost of materials is a large part of any construction project. Payroll and benefits cannot be delayed...workers must be paid.

Such labor-related costs are due at time of delivery. It places a great deal of hardship on small businesses when payment for services rendered are delayed for extended periods of time. Some businesses eventually close their doors due to such delayed payment. Any measure that aims at improving the delay in getting paid for services rendered is certainly welcome and greatly appreciated. An extra dollar in the hands of a working man or woman will be re-invested into the economy ten-fold.

The Council supports any effort to improve the construction industry for its members and families.

Thank you for the opportunity to provide testimony in SUPPORT of SB2412 SD2.

Respectfully;
Kika G. Bukoski
Hawaii Building and Construction Trades Council

TESTIMONY BEFORE
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

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

9:15 a.m., March 22, 2012

Senate Bill 2412 SD2
Relating to Contracts

Chair McKelvey, Vice Chair Choy and Committee members:

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

HECO respectfully opposes SB 2412 SD2 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, 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.