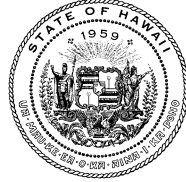


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
Phone: (808) 587-1540 / Fax: (808) 587-1560
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RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Laura H. Thielen, Chair;
The Honorable Lorraine R. Inouye, Vice Chair;
and Members of the Senate Committee on Government Operations

The Honorable Clarence K. Nishihara, Chair;
The Honorable Glenn Wakai, Vice Chair;
and Members of the Senate Committee on Public Safety, Intergovernmental, and
Military Affairs

From: Rona M. Suzuki, Director
Department of Taxation

Re: S.B. 2078, Relating to Contracting

Date: Thursday, February 6, 2020

Time: 2:45 P.M.

Place: Conference Room 225, State Capitol

The Department of Taxation (Department) offers the following comments on S.B. 2078.

S.B. 2078 adds a new requirement for all contractors and subcontractors applying for a building license for private developments valued at \$195,000 or more to obtain tax clearances from the Department and the Internal Revenue Service (IRS) as a condition to obtain the license. S.B. 2078 authorizes the Director of Taxation to waive the IRS tax clearance requirement if the Director determines that it is in the best interest of the State, and it authorizes the Department to require applications for tax clearances to be submitted through electronic means. The bill is effective on July 1, 2020.

The State Contractors License Board presently requires contractors to renew their contractor's licenses every two years. One of the requirements to renew the license is to submit a tax clearance certificate. This measure will require Contractors and Subcontractors subject to this requirement to stay current with tax obligations throughout the licensed period.

The Department appreciates the inclusion of language authorizing mandatory electronic submittal of tax clearance applications, which greatly relieves potential administrative burden. The Department's new tax system automated the tax clearance process and allows for the transmittal of tax clearance information easily from the Department to a requesting agency. To further leverage this technology, the Department requests that subsection (a) be amended to add: "Notwithstanding any law to the contrary, the department of taxation may disclose tax information relevant to the applicant's state tax compliance to the issuing agency."

The Department will be able to administer the measure with its current effective date.
Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Require Tax Clearance to Obtain Building Permit

BILL NUMBER: SB 2078

INTRODUCED BY: DELA CRUZ, KIDANI, Kanuha, Keith-Agaran, Shimabukuro

EXECUTIVE SUMMARY: Requires contractors and subcontractors to submit tax clearances as a condition of obtaining building permits for private developments exceeding a certain value. Requires contractors and subcontractors to submit additional tax clearances before final inspection of private developments exceeding a certain value. Contractors already need tax clearances to obtain and renew their licenses, and to bid or receive final payment on state or county government contracts. It is questionable whether these additional clearances are justified given the massive delays in the permitting process that already exist.

SYNOPSIS: Adds a new section to chapter 46 providing that no building license is to be granted for a private development valued at \$195,000 or greater unless tax clearances for state and federal tax are presented for the contractor and any subcontractors.

Provides that the director of taxation may waive the IRS tax clearance requirement if the director determines that it is the best interest of the State.

Any assignment of a contract for a private development valued at \$195,000 or greater shall require the assignee to present a bulk sales certificate if required, or tax clearance as above if a bulk sales certificate is not required, to the state or county contracting officer or agent.

Requires all state and county contracting officers or agents to withhold final inspection of a private development valued at \$195,000 or greater until the receipt of tax clearances from the director of taxation and the Internal Revenue Service on behalf of the building contractor and any subcontractors. The tax clearances shall be dated no earlier than forty-five days prior to the date of the request for final inspection of the private development.

Does not apply if the contractor is current under a payment plan with the taxing authority, or if the taxes are being contested in an administrative or judicial appeal.

An officer or employee of any governmental agency who intentionally or knowingly violates any provision under this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

EFFECTIVE DATE: July 1, 2020.

STAFF COMMENTS: In general, a tax clearance is issued when a taxpayer has filed all required returns and has paid all tax assessed on those returns.

Tax clearances are now required to obtain or renew a contractor's license under Hawaii Admin. Rules section 16-77-8(b)(2) and 16-77-55(b)(2). Contractor's licenses are renewed during each even-numbered year. Section 444-15, HRS.

One of the primary uses of a tax clearance is to allow persons to bid on, and receive final payment on, a contract with state or county government. HRS section 103D-328, however, provides for two exceptions: (1) if the taxpayer is in good standing on a payment plan with the tax agency; and (2) if the taxpayer is contesting the validity of a tax debt in an administrative or judicial appeal. This bill is consistent with those exceptions.

We are concerned that this bill may be overkill given that contractors are required to obtain tax clearances every two years anyway, and it may further burden a permitting and inspection process that is already fraught with delays. The Department might be able to turn around the applications quickly given that they are to be filed in electronic form, but the county inspecting and permitting agencies are still going to have to wait for the clearances and incorporate that verification step into their own processes.

Digested 1/30/2020

IRONWORKERS STABILIZATION FUND

February 3, 2020

Laura Thielen, Chair, Committee on Government Operations
Clarence Nishihara, Chair, Committee on Public Safety, Intergovernmental Affairs
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Thielen & Chair Nishihara and Members of the Committee on Government Operations & Public Safety:

Re: Opposition for SB 2078 – Relating to Contracting

We are in opposition of HB 2078, Relating to Contracting.

First, it should be recognized that it is the architects and not the contractors that obtain the building permits.

Additionally, for any licensed contractor they must provide a copy of their tax clearance to the State of Hawaii Contractors License Board yearly to renew their license. As such, we believe this bill will create an unnecessary requirement to any business. Since, a tax clearance must be done yearly.

We ask you to defer this bill indefinitely, as it will create an addition burden to our businesses. Thank you for your consideration on this matter.



**SENATE COMMITTEES ON GOVERNMENT OPERATIONS, AND PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS
State Capitol, Conference Room 225
415 South Beretania Street
2:45 PM**

February 6, 2020

RE: SENATE BILL NO. 2078, RELATED TO CONTRACTING

Chairs Thielen and Nishihara, Vice Chairs Inouye and Wakai, and members of the committees:

My name is Dwight Mitsunaga, 2020 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in **strong opposition to S.B. 2078**, which proposes to require contractors and subcontractors to submit tax clearances as a condition of obtaining building permits for private developments exceeding \$195,000. The bill also requires contractors and subcontractors to submit additional tax clearances before assignment of a contract for private developments exceeding \$195,000.

The bill provides no rationale on what specific problem it is attempting to address. The county building permit process, especially on Oahu, is already a time-consuming and inefficient process (See City Auditors Report No. 20-01, January 2020). Adding more requirements to this already dysfunctional process will add more time and uncertainty to the issuance of building permits on Oahu.

Additionally, without a clear understanding of the goal of this bill, it seems rather extreme to include language stating that officers and employees of government agencies can be fined up to \$1,000 or imprisoned for up to one year for violating this process. For simply overlooking the filing of a tax clearance, a government employee could be fined and/or go to jail. This seems extreme.

We are in strong opposition to S.B. 2078, and appreciate the opportunity to express our views on this matter.

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February 6, 2020

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Committee on Public Safety, Intergovernmental,
and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

**ABC Hawaii's COMMENTS Re SB 2078 RELATING TO
CONTRACTING**

Chairs Thielen & Nishihara, Vice Chairs Inouye &
Wakai and members of the committees:

ABC Hawaii is supportive of efforts to ensure that all contractors in the construction industry are playing by the rules and paying their taxes. However, we have concerns about using the county building departments to verify tax clearances. County building departments particularly on Oahu have a substantial backlog and putting this duty on the counties will exasperate this problem as this will create administrative burdens that the county building departments may not be prepared for.

We believe that the agencies with more direct knowledge about the compliance of contractors (the Department of Taxation and the Department of Commerce and Consumer Affairs) should be the ones to enforce tax clearances. For example, if DCCA suspends a contractor's license for tax reasons then the contractor will not be able to get a building permit as the County Building Departments will not issue a building permit to an unlicensed contractor.

We appreciate the Senate's effort to enforce compliance with tax laws, but we feel that this job should not be passed onto the counties. Thank you for the opportunity to testify.



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