



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

TESTIMONY BY CLYDE T. HAYASHI
HAWAII LECET

HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

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Rep. Bertrand Kobayashi	Rep. Kyle T. Yamashita
Rep. Nicole E. Lowen	Rep. Beth Fukumoto
Rep. Dee Morikawa	Rep. Gene Ward

NOTICE OF HEARING

DATE: Wednesday, April 2, 2014
TIME: 3:30 P.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

TESTIMONY ON HCR 88 / HR 63

TO THE HONORABLE SYLVIA LUKE, CHAIR; SCOTT NISHIMOTO AND AARON JOHANSON, VICE CHAIRS, AND MEMBERS OF THE COMMITTEE:

My name is Clyde T. Hayashi, and I am the Director at Hawaii Laborers-Employers Cooperation and Education Trust (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 **OPPOSITION** to HCR 88 / HR 63 which encourages the Contractors License Board to reconsider its October 18, 2013 Final Order. The Board discussed the Court's Opinion at its May 17th and July 19th meetings. DC50 and its counsel were present at the July 19th meeting and provided comments to the Board. On October 18, 2013, the Board issued its Final Order which defined and affirmed that "incidental and supplemental work" must be less than fifty percent (50%) of the project and "be subordinate to, directly related to, and necessary for the completion of the work of greater importance...".

The Board consists of thirteen (13) members...five (5) representing general contractors, five (5) representing specialty contractors, and three (3) representing the public. Twelve members of the Board were present at its October 18, 2013 meeting and the vote was unanimous.

Since the Board's Final Order, nothing new has come to light to justify the Board to reconsider its position. For these reasons, I am in **OPPOSITION** to HCR 88 / HR 63.

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.

Uploaded via Capitol Website

April 2, 2014

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO,
HONORABLE AARON JOHANSON, VICE CHAIRS AND MEMBERS OF
HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO HCR 88/HR 63:** ENCOURAGING THE
CONTRACTORS LICENSE BOARD TO RECONSIDER ITS OCTOBER 18,
2013, FINAL ORDER AND FOLLOW LEGISLATIVE INTENT AND THE
HAWAII SUPREME COURT'S RULING THAT THE "INCIDENTAL AND
SUPPLEMENTAL" EXCEPTION FOR SPECIALTY CONTRACTORS TO
COMPLETE WORK FOR WHICH THEY ARE UNLICENSED IS VERY
LIMITED IN SCOPE.

Hearing

DATE: Wednesday, April 2, 2014

TIME: 3:30 p.m.

PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee,

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

The GCA is **in strong opposition** to House Concurrent Resolution (HCR) 88 AND House Resolution (HR) 63 because it attempts to revisit the issue of what constitutes incidental and supplemental work that can be performed by individuals and firms holding specialty contractors licenses including those held by "A" and "B" contractors. This issue has been extensively examined and debated since the award of the Lanakila Elementary School renovation project awarded in 2005. The proponents of these Resolutions have exhausted all administrative and judicial remedies and continue to be unsatisfied with the final rulings.

Background

The term incidental and supplemental has been a topic of much debate in disputes regarding jurisdiction and the performance of work by general and specialty contractors. Incidental and supplemental is currently defined in Hawaii Administrative Rules 16-77-34 as "work in other trades directly related to and necessary for the completion of the project undertaken by a licensee pursuant to the scope of the licensee's license." These Resolutions and other bills this session attempts to curtail the recent decision by the Contractors License Board (CLB) in response to the

remand request by the Hawaii Supreme Court decision in District Council 50 v. Lopez, SCWC-28762, 2012 Haw. LEXIS 384 (December 3, 2012), in which the Court upheld the CLB's determination that "[b]ased on the Court's explanation, the Board reaffirms its longstanding interpretation that "A" general engineering and "B" general building contractors who hold specialty contractor's licenses that were automatically provided under HAR chapter 16-77 (such as a C-5 specialty contractor license), or obtained on their own, may perform other specialty contracting work that is 'incidental and supplemental' to the licensed specialty contracting work. In other words, general contractors are not prohibited under Okada Trucking from performing specialty contracting work outside of their specialty contractor licenses when that work is incidental and supplemental to work within the scope of their specialty contractor licenses." This holding confirms that the application of incidental and supplemental work between general contractors and specialty contractors is not in need of a change.

HCR 88 & HR 63 is flawed and would create more confusion.

These Resolutions together with the failed proposed bills earlier this session (H.B. 1500) attempt to force the CLB to further define incidental and supplemental, which is not necessary because Section 444-8(c) references the term and its applicability to the performance of such work. It would be improper to attempt to further define the term by quantifying "incidental and supplemental" with a percentage which goes directly against the sustained interpretation by the Contractors License Board (CLB). The CLB has consistently held that the term "incidental and supplemental" **is not a matter of size or percentages, but as work in other trades directly related to and necessary for the completion of the project undertaken.** What is incidental and supplemental to a project must be determined on a case by case basis, since every project is different and flat percentages do not work. This is a common sense approach, essentially approved by the Supreme Court since the CLB has the expertise and experience to evaluate each project since the membership of the CLB comprise both specialty and general contractors as well as public members.

For these reasons, GCA is in **strong opposition** to HCR 88/HR 63 and we respectfully request that these Resolutions be deferred.

SAH - Subcontractors Association of Hawaii

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

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

April 2, 2014

Testimony To: House Committee on Finance
Representative Sylvia Luke, Chair

Presented By: Tim Lyons
President

Subject: HCR 88/HR 63 - ENCOURAGING THE CONTRACTORS LICENSE BOARD TO RECONSIDER ITS OCTOBER 18, 2013, FINAL ORDER AND FOLLOW LEGISLATIVE INTENT AND THE HAWAII SUPREME COURT'S RULING THAT THE "INCIDENTAL AND SUPPLEMENTAL" EXCEPTION FOR SPECIALTY CONTRACTORS TO COMPLETE WORK FOR WHICH THEY ARE UNLICENSED IS VERY LIMITED IN SCOPE.

Chair Luke 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 subcontracting organizations which include:

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
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

We are in support of this Resolution.

This Resolution has come about as a result of the Contractors License Board providing, as we understand it, a definition of "incidental and supplemental" as work occurring outside of the contractor's specialty license that is no more than 49% of the job. While we would agree that this section needs some freedom for interpretation, we are not quite sure 49% is the way to go.

Unfortunately, the concept of "incidental and supplemental" has been the subject of a great deal of discussion and admittedly, is very difficult to define. What works in one case may not work in another case however while some people say it should be 1%, the License Board says 49%. Somewhere in between is probably the more proper amount.

At any rate, rather than debate this subject in front of this Committee, we think that it is important that the Contractors License Board reconsider its opinion on this subject and work with industry in order to come up with something that appears to be practical.

Based on the above, we support this Resolution.

Thank you.

Testimony of Michael A. Lilly
In Support of HCR 88 and HR 63

I am Michael A. Lilly, representing District Council 50 of the International Union of Painters and Allied Trades and Aloha Glass Sales & Service, Inc.

We strongly support the subject Resolutions which are intended to require the Contractor's License Board ("CLB") to comply with the Legislature's limited "incidental and supplemental" exception in § 444-8(c).

The Hawai'i Supreme Court in *District Council 50 v. Lopez*, 129 Hawai'i 281, 298 P.3d 1045 (2013) ("*District Council 50*") held that the CLB's previous interpretation of the "incidental and supplemental" exception was "plainly erroneous" and presented a potential "**grave risk to public health and safety**" (129 Hawai'i at 291).

By its October 18, 2013 Final Order Upon Remand (the "**CLB Final Order**"), the CLB erroneously interpreted the decision in *District Council 50* as defining the limited "incidental and supplemental" exception as any work less than 50%, thereby **expanding** its definition, and allowing **unlicensed contracting**, far beyond anything intended by this Legislature or the Supreme Court.

"Incidental", the Supreme Court found, was "subordinate to something of greater importance; **having a minor role**". 129 Hawai'i at 290, 298 P.3d at 1054 (emphasis added). "Supplemental" was defined as "supplying something additional; adding what is lacking". *Id.* Accordingly, "it is apparent that the legislature meant to provide specialty contractors with a **limited ability** to perform work outside their licensed specialty area". *Id.* (emphasis added).

The Court held that the CLB's "expansive interpretation of the 'incidental and

supplemental' exception **creates a loophole** for C-5 contractors to **complete unlimited amounts** of specialty work for which they do not hold the requisite specialty license.” *Id.* (emphases added). The CLB’s **broad definition** of ‘incidental and supplemental’ allows C-5 specialty contractors to complete substantial amounts of work for which they are unlicensed”, thereby presenting a potential **grave risk to public health and safety.**” *Id.* (emphasis added).

The Court therefore held that the “exception must be **interpreted narrowly**”. 129 Hawai`i at 292, 298 P.3d at 1056 (emphasis added).

The CLB Final Order ignored the Court’s expressed limitations and failed to quote the Court’s definition of “incidental” as “having a **minor** role”. Rather than establish a “limited exception”, the CLB Final Order latched onto a single phrase of the Court’s decision (“‘incidental and supplemental’ work must not make up the majority of the project”, 129 Hawai`i at 290, 298 P.3d at 1054) and, taking that phrase out of context, leaped to the erroneous conclusion that the Supreme Court ruled that so long as the work is less than 50% of the project, it is “incidental and supplemental”. The Supreme Court made no such finding.

By defining “incidental and supplemental” as any work 49% or less, the CLB has given “B” Contractors, through their automatic C-5 license, virtually unlimited carte blanche to perform unlicensed specialty work on any project so long as it is no more than 49% of the work. Here, the CLB’s new definition of the “incidental and supplemental” exception as authorizing unlicensed work so long as it is no more than 49% of a project is not only a perversion of the statute and the decision in *District Council 50* but would produce patently absurd results.

First, it expands, rather than limits, the rule far beyond anything intended by this Legislature or the Supreme Court. As the Supreme Court ruled, the exception is a “**narrow**” and “**limited**” one. But the CLB went far beyond something “incidental” to one of major

proportions.

Second, a practical example demonstrates the absurdity of the new rule. Consider a \$100 million public works project (e.g., a subcontract of the \$5 billion rail project) in which the C-specialty work comprised 49% or \$49 million of the project. Under the CLB's illogical interpretation of the limited exception, a general contractor could perform that work even though it was *not licensed* to do that work. Does that not fly against the duty of the CLB to "protect public health and safety" by adopting rules that "ensure that fully qualified contractors are completing all **major work**" in a project. 129 Hawai'i at 291, 298 P.3d at 1055 (emphasis added).

The Supreme Court found the CLB's existing rule too broad by allowing contractors to perform work for which they were not licensed or qualified, thereby presenting a "**grave risk to public health and safety**". *Id.* The new less-than 50% rule is worse.



From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 02, 2014 8:54 AM
To: FINTestimony
Cc: lhoshijo-hrcc@hawaii.rr.com
Subject: Submitted testimony for HCR88 on Apr 2, 2014 15:30PM

HCR88

Submitted on: 4/2/2014

Testimony for FIN on Apr 2, 2014 15:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
leonard hoshijo	hawaii regional council of carpenters	Oppose	No

Comments: All parties just took many months completing this work.

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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Hawaii-Kauai

Marshall Hickox

Homeworks Construction, Inc.

Michael Watanabe

JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Stephen Hanson

simplicityHR by ALTRES

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

Wednesday, April 2, 2014

3:30 p.m.

HAWAII STATE CAPITOL - ROOM 308

SUBJECT: H.C.R. 88/H.R. 63, ENCOURAGING THE CONTRACTORS LICENSE BOARD TO RECONSIDER ITS OCTOBER 18, 2013, FINAL ORDER AND FOLLOW LEGISLATIVE INTENT AND HAWAII SUPREME COURT'S RULING THAT THE "INCIDENTAL AND SUPPLEMENTAL" EXCEPTION FOR SPECIALTY CONTRACTORS TO COMPLETE WORK FOR WHICH THEY ARE UNLICENSED IS VERY LIMITED IN SCOPE

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly opposes** H.C.R. 88/H.R. 63, which encourages the contractors license board to reconsider its October 18, 2013, final order and follow Legislative intent and Hawaii Supreme Court's ruling that the "incidental and supplemental" exception for specialty contractors to complete work for which they are unlicensed is very limited in scope.

The Contractors License Board (CLB) has historically held that the term "incidental and supplemental" is not a matter of size or percentages, but as work in other trades directly related to and necessary for the completion of the project undertaken. H.B. 1500 is in direct conflict with this interpretation.

Furthermore, the Hawaii State Supreme Court, in its recent denial of a mandamus seeking to challenge the CLB's definition, asked the CLB to provide their measure of incidental and supplemental. The CLB responded that such work must be less than fifty percent of the project and "be subordinate to, directly related to, and necessary for the completion of the work of greater importance..." What is incidental and supplemental to a project must be assessed on a project-by-project basis, since every project is different and flat percentages are not workable. The Supreme Court essentially deferred to the expertise of the CLB in evaluating each project.

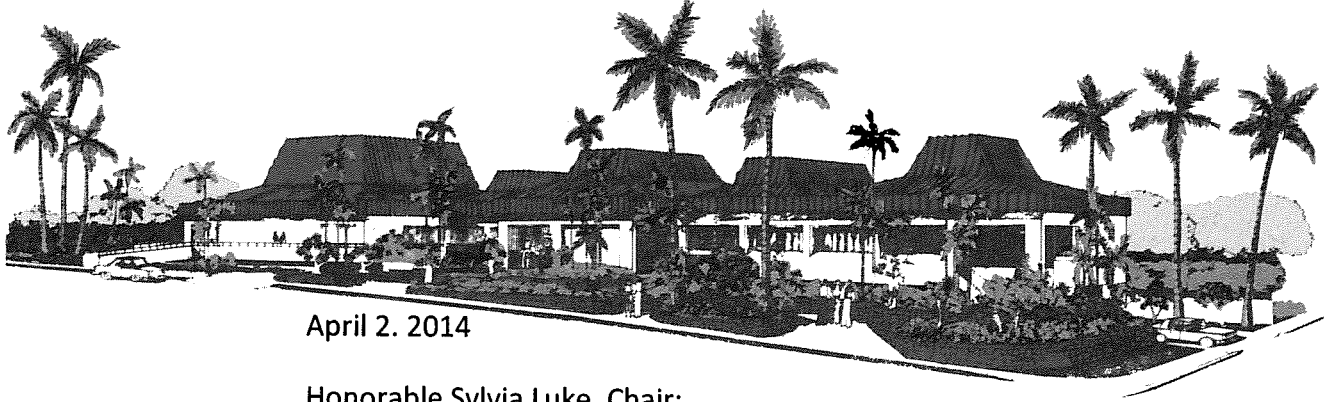
H.C.R. 88/H.R. 63 would further confuse the procurement process and increase costs to taxpayers.

Based on the foregoing reasons, BIA-Hawaii is in **strong opposition** to H.C.R. 88/H.R. 63.

We appreciate the opportunity to share with you our views.



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

THOMAS CATHCART
Executive Board

JAMES DRUMGOLD JR.
Executive Board

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Executive Board

MARK MAGUSARA
Auditor

MARK TRAVALINO
Auditor

JOSEPH YAW
Auditor

NELSON S. TERRADO
Sergeant-At-Arms

April 2, 2014

Honorable Sylvia Luke, Chair;
Honorable Scott Nishimoto, Vice Chair
Honorable Aaron Ling Johanson, Vice Chair
and Members of the Finance Committee
Hearing: Wednesday, April 2, 2014, 3:30 p.m.
Conference Room 308

LATE

RE: Strong Opposition o HCR 88/HR 63 Encouraging the Contractor License Board to Reconsider its October 18, 2013 Final Order and Follow Intent and the Hawaii Supreme Court's Ruling that the "Incidental and Supplemental" Exception for Specialty Contractors to Completer Work for Which they are Unlicensed is Very Limited in Scope.

Dear Chair Luke:

On behalf of Mr. Peter Ganaban, Business Manager, Secretary/Treasurer of the Hawaii Laborers' Union, we are in **STRONG OPPOSITION** to HCR 88/HR 63. The subject resolutions are attempting to bypass the ruling of the Contractor License Board on "incidental and supplemental" work.


The Contractor License Board (CLB) consists of 13 members of whom 10 are highly skilled and active in the construction trades. The total years of experience and knowledge of the construction trades if counted, is overwhelming. These board members made their decision on facts as they saw them along with their personal skills and knowledge of the issue. Their decision should be respected if they are to maintain their independence in judgment and review on construction issues.

The CLB continues to hold that "incidental and supplemental" is not a matter of size or percentages, but as work in other trades directly related to and necessary for the completion of the project undertaken.

The projects differ in many ways and must be taken individually. This was essentially approved by the Supreme Court in its decision on District Council 50 vs Lopez.

Thank you for the opportunity to submit this testimony.

Sincerely,



Al Lardizabal,
Government Relations



LATE

Testimony of Gerald Peters, HPS Construction Services, Ltd., and Fixitfridays Home Improvement Radio on The Mike Buck Show

**(FIN) House Finance Committee. Weds April 2, 2014. Room 308. 3:30pm. RE:
HCR 88/HR63 CLB SUPREME COURT REVIEW OF INCIDENTAL AND
SUPPLEMENTAL SPECIALTY CONTRACTING WORK**

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee;

My name is Gerald Peters. I am testifying as a Licensed General Contractor for 20+ years on Oahu and Maui, and for 9 years as on air Co-Host and content producer of Fixitfridays Home Improvement Radio on The Mike Buck Show **IN THE STRONGEST POSSIBLE OPPOSITION. THIS RESOLUTION IGNORES IMPACT ON RESIDENTIAL HOME AND CONDO OWNERS.**

Most of your testimony is from commercial contractors. We do work for residential homeowners. This special interest proposal would cripple residential remodeling. For example, let's say there is a \$5000 bathroom upgrade. Under this proposal, we could only do five tiles, or hire whomever is promoting this idea to do the tile and double the price to the homeowners. That is if you could even get the whomever to bid on doing the other 45 tiles or whatever. The promoters of this bill do not care, have not considered homeowner, small job work. The legitimate residential remodeling business would grind to a halt.

Then the black market, unlicensed work would expand exponentially, allowing another few million dollars of reported revenue and unpaid taxes to bypass our State Tax revenues, and leave thousands of additional homeowners unprotected by our Consumer Protection Contractor Laws.

We should instead be empowering DCCA and RICO with a Resolution and grant them funds and/or authority to do a meaningful public awareness campaign about black market, so-called contracting and scams perpetrated on our senior citizens in particular.

That would be a wise approach in the wider public interest, instead of a special interest, not to mention an effort to start the State collecting the probable millions of dollars of unreported revenue and tax collections.

OUR CITIZENS ARE BEING VICTIMIZED BY THIS UNLICENSED BLACK MARKET EPIDEMIC. HUNDREDS OF ADS ON CRAIGSLIST ALONE SHOW UNLICENSED HAWKERS LISTING G.E.TAX LICENSE AS MEANING CONTRACTOR LICENSE, FOOLING THE PUBLIC, AND THEN THEY STILL DON'T PAY THEIR SHARE EVEN THOUGH THEY CLAIM G.E.T. LICENSES. Thank you, Gerald Peters

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Wednesday, April 2, 2014
3:30 p.m.



TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 88 AND HOUSE RESOLUTION NO. 63, ENCOURAGING THE CONTRACTORS LICENSE BOARD TO RECONSIDER ITS OCTOBER 18, 2013, FINAL ORDER AND FOLLOW LEGISLATIVE INTENT AND THE HAWAII SUPREME COURT'S RULING THAT THE "INCIDENTAL AND SUPPLEMENTAL" EXCEPTION FOR SPECIALTY CONTRACTORS TO COMPLETE WORK FOR WHICH THEY ARE UNLICENSED IS VERY LIMITED IN SCOPE .

TO THE HONORABLE SYLVIA LUKE, 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 Concurrent Resolution No. 88 and House Resolution No. 63, which encourages the Board to reconsider its October 18, 2013 "Board's Final Order Upon Remand" ("BFO") in In the Matter of the Petition for Declaratory Relief of District Council 50 of the International Union of Painters and Allied Trades and Aloha Glass Sales & Service, Inc. ("DC 50"), CLB-DR-2006-2.

The Board strongly opposes these proposed resolutions for the following reasons.

First, the Board believes that its BFO complies with the Hawaii Supreme Court's decision in the District Council 50 v. Lopez, 129 Hawai'i 281, 287, 298 P.3d 1045, 1051 (2013) case. For your information, the Board was well aware of the significance of the

Court's decision on the construction industry and did not take it lightly. The Board carefully reviewed and analyzed the decision for approximately six months before issuing its BFO. This demonstrates that the Board was diligent in issuing the BFO, and the members strongly believe that it complied with the Court's decision and remand order.

Second, the matter is currently being appealed by DC 50 at Circuit Court. Because of this appeal, the Board believes that its BFO should be resolved judicially.

Third, based on the language in the proposed resolutions and testimony that the BFO has generated, the Board believes that there is a significant misunderstanding or misinterpretation of the BFO. Most of the testimony and belief by advocates of the proposed resolutions focus on the "less than a majority" (or less than 50%) component of the BFO. The Board would like to point out that this selective focus fails to acknowledge the other major component of the BFO, the "nexus" test.

In general, the "nexus" test requires the other specialty contracting work to be subordinate to, directly related to, and necessary for the completion of the work of greater importance that is within the scope of the licensee's license. Thus, the other specialty contracting work in question must meet both components before it is deemed to be "incidental and supplemental". Just because a particular type of other specialty contracting work is less than the majority of the project does not make it "incidental and supplemental".

In determining whether there is a "nexus", the Board looks at several factors. For example, the Board considers cost, extent of work, number of man hours, amount of

materials involved, proximity of the other specialty contracting work to the primary work, life safety, and the plans and specifications. Thus, contrary to the assertions being made about the BFO, there are many additional factors that the Board considers than just percentage or cost when making an “incidental and supplemental” determination.

Fourth, the proposed resolutions and testimony center around “incidental and supplemental” work that may be performed by general contractors. The Board would point out that the “incidental and supplemental” provisions applies to all specialty contractors, including but not limited to general contractors who are performing specialty contracting work under their specialty contractor licenses.

Fifth, the Board is in the process of amending its administrative rules in response to the requirements of Senate Concurrent Resolution No. 84, Senate Draft 1 (2013). There are proposed amendments to the “A” general engineering, “B” general building, and many “C” specialty contractor classifications (including the C-5).

Finally, although the Board disagrees with some of the representations in the “WHEREAS” paragraphs of the proposed resolutions, the Board reserves its ability to address these at a later date.

For the reasons above, the Board is strongly opposed to House Concurrent Resolution No. 88 and House Resolution No.63 and respectfully requests that they be held. Thank you for the opportunity to testify on these resolutions.



TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

Wednesday, April 2, 2014

3:30 p.m.

HAWAII STATE CAPITOL - ROOM 308

**SUBJECT: H.C.R. 88/H.R. 63, ENCOURAGING THE CONTRACTORS
LICENSE BOARD TO RECONSIDER ITS OCTOBER 18, 2013, FINAL ORDER
AND FOLLOW LEGISLATIVE INTENT AND HAWAII SUPREME COURT'S
RULING THAT THE "INCIDENTAL AND SUPPLEMENTAL" EXCEPTION
FOR SPECIALTY CONTRACTORS TO COMPLETE WORK FOR WHICH
THEY ARE UNLICENSED IS VERY LIMITED IN SCOPE**

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the Committee: My name is Brian Adachi, President BKA Builders Inc., and 2014 President for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders. BKA Builders Inc. is a local Commercial General Contractor doing business in the State of Hawaii since 1990.

As President of BKA Builders Inc. and 2014 President of the BIA-Hawaii **I strongly oppose** H.C.R. 88/H.R. 63, which encourages the contractors license board to reconsider its October 18, 2013, final order and follow Legislative intent and Hawaii Supreme Court's ruling that the "incidental and supplemental" exception for specialty contractors to complete work for which they are unlicensed is very limited in scope.

The Contractors License Board (CLB) has historically held that the term "incidental and supplemental" is not a matter of size or percentages, but as work in other trades directly related to and necessary for the completion of the project undertaken. H.B. 1500 is in direct conflict with this interpretation.

Furthermore, the Hawaii State Supreme Court, in its recent denial of a mandamus seeking to challenge the CLB's definition, asked the CLB to provide their measure of incidental and supplemental. The CLB responded that such work must be less than fifty percent of the project and "be subordinate to, directly related to and necessary for the completion of the work of greater importance..." What is incidental and supplemental to a project must be assessed on a project-by-project basis, since every project is different and flat percentages are not workable. The Supreme Court essentially deferred to the expertise of the CLB in evaluating each project. H.C.R. 88/H.R. 63 would further confuse the procurement process and increase costs to taxpayers.

Based on the foregoing reasons, I am in **strong opposition** to H.C.R. 88/H.R. 63.

Thank You for the opportunity to share my views with you.

Carpet Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund
2240 Young Street
Honolulu Hawaii 96826



Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Nishimoto, Vice Chair
Honorable Representative Aaron Johanson, Vice Chair
Members of the Committee on Finance
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: HCR88 and HR63
Hearing: Wednesday, April 2, 2014, 3:30 p.m. Conference Room 308

Honorable Chair, Vice Chairs, and Committee Members:

My name is Jeffrey S. Masatsugu and I am submitting this testimony on behalf of the Carpet Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund (the "Fund"), a labor-management cooperation fund representing the International Union of Painters and Allied Trades, Carpet Linoleum and Soft Tile Local Union 1926, AFL-CIO and contractors signatory to a collective bargaining agreement with the Union.

The Fund **supports** HCR88 and HR63. These resolutions encourage the Contractors License Board (the "CLB") to reconsider its October 18, 2013 Final Order Upon Remand and follow the intent of the Legislature and the Hawaii Supreme Court's Ruling in District Council 50, of the International Union of Painters and Allied Trades v. Lopez, 129 Hawaii 281, 298 P3d. 1045 (2013) and limit the scope of the "incidental and supplemental" exception for specialty contractors to complete work for which they are unlicensed.

In a nutshell, the CLB's Final Order Upon Remand broadens the scope of the "incidental and supplemental" exception from one that was, by custom and practice, very limited in scope, to one which potentially allows the "B" contractor to self-perform all or very significant amounts of specialty contract work on repair and renovation projects, even though the "B" contractor is not licensed to do so.

The CLB's ruling completely undermines the Legislature's purpose and intent in requiring specialty contractors to be licensed. Allowing "B" contractors to self-perform significant amounts of specialty contract work without the requisite license jeopardizes the safety of workers and the public, and places thousands of specialty contractor jobs at risk.

Thus, the Fund respectfully requests that the Committee pass HCR88 and HR63. Thank you for the opportunity to testify on this matter.

Hawaii Glaziers, Architectural Metal Glass Workers Local Union 1889 AFL-CIO Stabilization Fund
2240 Young Street
Honolulu Hawaii 96826

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Nishimoto, Vice Chair
Honorable Representative Aaron Johanson, Vice Chair
Members of the Committee on Finance
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813



Re: HCR88 and HR63
Hearing: Wednesday, April 2, 2014, 3:30 p.m. Conference Room 308

Honorable Chair, Vice Chairs, and Committee Members:

My name is Jeffrey S. Masatsugu and I am submitting this testimony on behalf of the Hawaii Glaziers, Architectural Metal Glass Workers Local Union 1889 AFL-CIO Stabilization Fund (the "Fund"), a labor-management cooperation fund representing the International Union of Painters and Allied Trades, Glaziers, Architectural Metal, and Glass Workers Union, Local 1889, AFL-CIO and contractors signatory to a collective bargaining agreement with the Union.

The Fund **supports** HCR88 and HR63. These resolutions encourage the Contractors License Board (the "CLB") to reconsider its October 18, 2013 Final Order Upon Remand and follow the intent of the Legislature and the Hawaii Supreme Court's Ruling in District Council 50, of the International Union of Painters and Allied Trades v. Lopez, 129 Hawaii 281, 298 P3d. 1045 (2013) and limit the scope of the "incidental and supplemental" exception for specialty contractors to complete work for which they are unlicensed.

In a nutshell, the CLB's Final Order Upon Remand broadens the scope of the "incidental and supplemental" exception from one that was, by custom and practice, very limited in scope, to one which potentially allows the "B" contractor to self-perform all or very significant amounts of specialty contract work on repair and renovation projects, even though the "B" contractor is not licensed to do so.

The CLB's ruling completely undermines the Legislature's purpose and intent in requiring specialty contractors to be licensed. Allowing "B" contractors to self-perform significant amounts of specialty contract work without the requisite license jeopardizes the safety of workers and the public, and places thousands of specialty contractor jobs at risk.

Thus, the Fund respectfully requests that the Committee pass HCR88 and HR63. Thank you for the opportunity to testify on this matter.

Painting Industry of Hawaii Labor Management Cooperation Trust Fund
2240 Young Street
Honolulu Hawaii 96826

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Nishimoto, Vice Chair
Honorable Representative Aaron Johanson, Vice Chair
Members of the Committee on Finance
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

LATE

Re: HCR88 and HR63
Hearing: Wednesday, April 2, 2014, 3:30 p.m. Conference Room 308

Honorable Chair, Vice Chairs, and Committee Members:

My name is Jeffrey S. Masatsugu and I am submitting this testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund (the "Fund"), a labor-management cooperation fund representing the International Union of Painters and Allied Trades, Painters Local Union 1791, AFL-CIO and contractors signatory to a collective bargaining agreement with the Union.

The Fund **supports** HCR88 and HR63. These resolutions encourage the Contractors License Board (the "CLB") to reconsider its October 18, 2013 Final Order Upon Remand and follow the intent of the Legislature and the Hawaii Supreme Court's Ruling in District Council 50, of the International Union of Painters and Allied Trades v. Lopez, 129 Hawaii 281, 298 P3d. 1045 (2013) and limit the scope of the "incidental and supplemental" exception for specialty contractors to complete work for which they are unlicensed.

In a nutshell, the CLB's Final Order Upon Remand broadens the scope of the "incidental and supplemental" exception from one that was, by custom and practice, very limited in scope, to one which potentially allows the "B" contractor to self-perform all or very significant amounts of specialty contract work on repair and renovation projects, even though the "B" contractor is not licensed to do so.

The CLB's ruling completely undermines the Legislature's purpose and intent in requiring specialty contractors to be licensed. Allowing "B" contractors to self-perform significant amounts of specialty contract work without the requisite license jeopardizes the safety of workers and the public, and places thousands of specialty contractor jobs at risk.

Thus, the Fund respectfully requests that the Committee pass HCR88 and HR63. Thank you for the opportunity to testify on this matter.

Hawaii Tapers Market Recovery Trust Fund
2240 Young Street
Honolulu Hawaii 96826

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Nishimoto, Vice Chair
Honorable Representative Aaron Johanson, Vice Chair
Members of the Committee on Finance
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813



Re: HCR88 and HR63
Hearing: Wednesday, April 2, 2014, 3:30 p.m. Conference Room 308

Honorable Chair, Vice Chairs, and Committee Members:

My name is Jeffrey S. Masatsugu and I am submitting this testimony on behalf of the Hawaii Tapers Market Recovery Trust Fund (the "Fund"), a labor-management cooperation fund representing the International Union of Painters and Allied Trades, Drywall Tapers, Finishers & Allied Workers Local Union 1944, AFL-CIO and contractors signatory to a collective bargaining agreement with the Union.

The Fund **supports** HCR88 and HR63. These resolutions encourage the Contractors License Board (the "CLB") to reconsider its October 18, 2013 Final Order Upon Remand and follow the intent of the Legislature and the Hawaii Supreme Court's Ruling in District Council 50, of the International Union of Painters and Allied Trades v. Lopez, 129 Hawaii 281, 298 P3d. 1045 (2013) and limit the scope of the "incidental and supplemental" exception for specialty contractors to complete work for which they are unlicensed.

In a nutshell, the CLB's Final Order Upon Remand broadens the scope of the "incidental and supplemental" exception from one that was, by custom and practice, very limited in scope, to one which potentially allows the "B" contractor to self-perform all or very significant amounts of specialty contract work on repair and renovation projects, even though the "B" contractor is not licensed to do so.

The CLB's ruling completely undermines the Legislature's purpose and intent in requiring specialty contractors to be licensed. Allowing "B" contractors to self-perform significant amounts of specialty contract work without the requisite license jeopardizes the safety of workers and the public, and places thousands of specialty contractor jobs at risk.

Thus, the Fund respectfully requests that the Committee pass HCR88 and HR63. Thank you for the opportunity to testify on this matter.

April 2, 2014



Testimony to House Committee on Finance

Wednesday, Apr 2, 2014 3:30pm Room 308

Subject: HCR 88, H.R.63 Contractors License Board

Sorry for being late but was not aware of this coming to your committee until this morning.

As a past CLB Board member, and past Chair of the Board I strongly oppose HCR88/H.R.63.

During my 8 years on the Board we looked at this idea often, but found that there are way too many tangibles involved to make a unilateral rule. Each project truly is different. Trying to make an exact amount of percentage or dollar amount will not solve the problem, but surly will add to the problem.

Thank you. Mahalo nui loa

F.M. Scotty Anderson

2435 Aha Aina Place

Honolulu, HI 96821

306-5697

finance8-Danyl

From: Dean I. Asahina <uci@att.net>
Sent: Wednesday, April 02, 2014 10:53 AM
To: FINTestimony
Subject: Opposition to H.C.R 88/H.R. 63

LATE

Dear Chair Luke, Vice-Chairs Nishimoto and Johnson, and members of the committee:

We strongly oppose the subject bill.

Respectfully yours,

Dean Asahina
President
Universal Construction, Inc.

Sent from my iPad



From: Evan Fujimoto <evan@grahambuilders.com>
Sent: Wednesday, April 02, 2014 11:29 AM
To: FINTestimony
Subject: OPPOSITION TO HCR88/HR 63

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE
WEDNESDAY APRIL 2, 2014 @ 3:30 PM

OPPOSITION TO HCR 88/HR 63

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the Committee:

My name is Evan Fujimoto, President of Graham Builders, a design+build general contractor specializing in residential construction in Honolulu.

We **strongly oppose** this resolution because it makes it difficult for builders like us to have to second guess what we're doing on each project; if what we're doing falls within the definition of what is "incidental and supplemental" as a cost-percentage or percentage of the total effort involved in the overall scope of work. These are nebulous terms that are difficult to assess on a broad basis.

We do all kinds of renovation work that requires various specialty contractors; however, we often self-perform specific phases of work when unforeseen conditions arise and "time is of the essence" in order to keep the job moving along. Many times the scope of what we're self-performing is small, but critical to the progress of the work. Also, as the CLB stated, it's hard to pin down percentages or the size of the work when trying to determine if something is incidental or supplemental to the overall job.

Therefore, we are in opposition to anything that will lead to further uncertainty about what we can and cannot do within the license classification we currently hold (BC-16446).

Thank you,
Evan K. Fujimoto
Graham Builders, Inc.