
HOUSE RESOLUTION

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.

1 WHEREAS, on January 31, 2005, the Department of Education
2 and Department of Accounting and General Services put out a bid
3 for the renovation of Lanakila Elementary School; and

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5 WHEREAS, the project included extensive glazing work,
6 specifically the fabrication and installation of 476 jalousie
7 windows; and

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9 WHEREAS, on December 20, 2005, the bid was awarded to
10 Allied Pacific Builders; and

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12 WHEREAS, District Council 50, representing the Glaziers
13 Union, filed a protest declaring that Allied Pacific Builders
14 did not possess the necessary C-22 specialty license that allows
15 for glazing and tinting work, including jalousie work; and

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17 WHEREAS, the glazing and tinting work comprised twenty to
18 twenty-five percent of the total Lanakila Elementary School
19 project in dollars; and

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21 WHEREAS, on or about March 24, 2006, District Council 50
22 and Aloha Glass Sales & Service, Inc., collectively filed a
23 petition for declaratory ruling with the Contractors License
24 Board; and

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26 WHEREAS, on April 26, 2006, the Board referred the case to
27 the Office of Administrative Hearings, Department of Commerce
28 and Consumer Affairs, for further proceedings; and

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30 WHEREAS, on October 26, 2006, the hearings officer who
31 heard the case concluded that the jalousie window replacement
32 work could be undertaken by a C-5 specialty contractor; provided



1 that the work was "incidental and supplemental" to the
2 renovation work for which the C-5 contractor is licensed to
3 perform; and

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5 WHEREAS, pursuant to section 16-77-28(c), Hawaii
6 Administrative Rules, and Exhibit A, Specialty Contractor
7 Classifications, a C-5 specialty license allows a contractor to
8 perform cabinet, millwork, and carpentry remodeling and repairs
9 as well as any other work which would be incidental and
10 supplemental to the remodeling or repairing; and

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12 WHEREAS, on January 22, 2007, the Board adopted the
13 hearings officer's recommended decision as the Board's final
14 order; and

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16 WHEREAS, District Council 50 and Aloha Glass Sales &
17 Service, Inc., appealed to the Circuit Court, which affirmed the
18 Board's final order on September 12, 2007; and

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20 WHEREAS, District Council 50 and Aloha Glass Sales &
21 Service, Inc., then appealed to the Intermediate Court of
22 Appeals, which affirmed the Circuit Court decision on July 26,
23 2012; and

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25 WHEREAS, District Council 50 and Aloha Glass Sales &
26 Service, Inc., then appealed to the Hawaii Supreme Court and on
27 April 17, 2013, the Hawaii Supreme Court remanded the case to
28 the Board to reconsider whether the jalousie window work
29 qualified as "incidental and supplemental" to the Lanakila
30 Elementary School project in light of the cost and extent of
31 work involved; and

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33 WHEREAS, in its April 17, 2013, opinion, the Hawaii Supreme
34 Court concluded that, because the Board did not consider the
35 cost and extent of the work when determining whether it
36 qualified as "incidental and supplemental" to the project, the
37 Board's interpretation of the "incidental and supplemental"
38 exception conflicts with the law and the primary purpose of
39 legislation pertaining to contractor licensing; and

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41 WHEREAS, the Hawaii Supreme Court explained that section
42 444-8(c), Hawaii Revised Statutes (HRS), creates a general
43 exception for specialty contractors to complete work for which



1 they are not licensed if the work is incidental and supplemental
2 to the licensed work; and
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4 WHEREAS, the Court further explained that full effect must
5 be given to the plain and obvious meaning of the language in
6 section 444-8(c), HRS, exception for specialty contractors; and
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8 WHEREAS, the Court applied the ordinary meaning of
9 "incidental and supplemental" and found that in drafting section
10 444-8(c), HRS, the Legislature meant to provide specialty
11 contractors with only a limited ability to perform work outside
12 of their specialty; and
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14 WHEREAS, the Court held that, in light of the clear meaning
15 of section 444-8(c), HRS, it was plainly erroneous for the Board
16 to refuse to consider the cost and extent of the work when
17 determining whether the work qualified as "incidental and
18 supplemental"; and
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20 WHEREAS, the Court ultimately concluded that the
21 Legislature meant for the "incidental and supplemental"
22 exception for specialty contractors to be a true exception, and
23 therefore it must be interpreted narrowly to preserve the
24 statute's overarching purpose of protecting public safety by
25 insuring that work is completed by fully competent contractors;
26 and
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28 WHEREAS, the Court found that allowing C-5 specialty
29 contractors to complete all work related to and necessary for
30 the completion of the project, irrespective of cost and extent,
31 contravenes the express purpose of chapter 444, HRS; and
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33 WHEREAS, section 444-9, HRS, broadly prohibits unlicensed
34 contracting work, and the Legislature established chapter 444,
35 HRS, in part to ensure the health and safety of the general
36 public by requiring that contractors possess a minimum level of
37 expertise, experience, and training; and
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39 WHEREAS, the Hawaii Supreme Court did not rule, and the
40 Legislature did not intend, that any work less than forty-nine
41 percent of a project fall within the narrow "incidental and
42 supplemental" exception; and
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1 WHEREAS, despite the holding of the Hawaii Supreme Court in
2 District Council 50 and Aloha Glass Sales & Service, Inc., and
3 the stated purpose of chapter 444, HRS, to protect the general
4 public, on October 18, 2013, the Contractors License Board
5 concluded that for work to qualify as "incidental and
6 supplemental", the work must represent less than fifty percent
7 of the project as measured in relation to the project's total
8 cost or extent; and
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10 WHEREAS, the Board's interpretation expands the definition
11 of "incidental and supplemental" and allows unlicensed work far
12 beyond what the Legislature intended and could pose a grave risk
13 to public health and safety; and
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15 WHEREAS, the Board's definition also would allow general
16 contractors with automatic "C" licenses to perform unlicensed
17 work, thereby depriving licensed specialty contractors from
18 performing work in the fields for which they are trained and
19 licensed; now, therefore,
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21 BE IT RESOLVED by the House of Representatives of the
22 Twenty-seventh Legislature of the State of Hawaii, Regular
23 Session of 2014, that the Contractors License Board is
24 encouraged to reconsider its October 18, 2013, final order and
25 follow legislative intent and the Hawaii Supreme Court's ruling
26 that the "incidental and supplemental" exception is very limited
27 in scope, allowing a specialty contractor a narrow exception to
28 perform very minor work outside its license only when necessary
29 to complete licensed work; and
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31 BE IT FURTHER RESOLVED that the Contractors License Board
32 is requested to report to the Legislature no later than twenty
33 days prior to the convening of the Regular Session of 2015,
34 whether it has amended its October 18, 2013, final order to
35 comply with legislative intent and the Hawaii Supreme Court's
36 ruling; and
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1 BE IT FURTHER RESOLVED that certified copies of this
2 Resolution be transmitted to the Chief Justice of the Hawaii
3 Supreme Court, Director of Commerce and Consumer Affairs,
4 Chairperson of the Contractors License Board, Manager of
5 District Council 50, President of the Glaziers Union, and Aloha
6 Glass Sales & Service, Inc.

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OFFERED BY: _____

A handwritten signature in black ink, appearing to read "Jordan", is written over a horizontal line.

MAR 06 2014

