

MAR 07 2014

SENATE CONCURRENT 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
4

5 WHEREAS, the project included extensive glazing work,
6 specifically the fabrication and installation of 476 jalousie
7 windows; and
8

9 WHEREAS, on December 20, 2005, the bid was awarded to
10 Allied Pacific Builders; and
11

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
16

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
20

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
25

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
29



1 WHEREAS, on October 26, 2006, the hearings officer who
2 heard the case concluded that the jalousie window replacement
3 work could be undertaken by a C-5 specialty contractor; provided
4 that the work was "incidental and supplemental" to the
5 renovation work for which the C-5 contractor is licensed to
6 perform; and

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

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

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

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

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

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

43



1 WHEREAS, the Hawaii Supreme Court explained that section
2 444-8(c), Hawaii Revised Statutes (HRS), creates a general
3 exception for specialty contractors to complete work for which
4 they are not licensed if the work is incidental and supplemental
5 to the licensed work; and

6
7 WHEREAS, the Court further explained that full effect must
8 be given to the plain and obvious meaning of the language in
9 section 444-8(c), HRS, exception for specialty contractors; and

10
11 WHEREAS, the Court applied the ordinary meaning of
12 "incidental and supplemental" and found that in drafting section
13 444-8(c), HRS, the Legislature meant to provide specialty
14 contractors with only a limited ability to perform work outside
15 of their specialty; and

16
17 WHEREAS, the Court held that, in light of the clear meaning
18 of section 444-8(c), HRS, it was plainly erroneous for the Board
19 to refuse to consider the cost and extent of the work when
20 determining whether the work qualified as "incidental and
21 supplemental"; and

22
23 WHEREAS, the Court ultimately concluded that the
24 Legislature meant for the "incidental and supplemental"
25 exception for specialty contractors to be a true exception, and
26 therefore it must be interpreted narrowly to preserve the
27 statute's overarching purpose of protecting public safety by
28 insuring that work is completed by fully competent contractors;
29 and

30
31 WHEREAS, the Court found that allowing C-5 specialty
32 contractors to complete all work related to and necessary for
33 the completion of the project, irrespective of cost and extent,
34 contravenes the express purpose of chapter 444, HRS; and

35
36 WHEREAS, section 444-9, HRS, broadly prohibits unlicensed
37 contracting work, and the Legislature established chapter 444,
38 HRS, in part to ensure the health and safety of the general
39 public by requiring that contractors possess a minimum level of
40 expertise, experience, and training; and

41
42 WHEREAS, the Hawaii Supreme Court did not rule, and the
43 Legislature did not intend, that any work less than forty-nine



1 percent of a project fall within the narrow "incidental and
2 supplemental" exception; and
3

4 WHEREAS, despite the holding of the Hawaii Supreme Court in
5 District Council 50 and Aloha Glass Sales & Service, Inc., and
6 the stated purpose of chapter 444, HRS, to protect the general
7 public, on October 18, 2013, the Contractors License Board
8 concluded that for work to qualify as "incidental and
9 supplemental", the work must represent less than fifty percent
10 of the project as measured in relation to the project's total
11 cost or extent; and
12

13 WHEREAS, the Board's interpretation expands the definition
14 of "incidental and supplemental" and allows unlicensed work far
15 beyond what the Legislature intended and could pose a grave risk
16 to public health and safety; and
17

18 WHEREAS, the Board's definition also would allow general
19 contractors with automatic "C" licenses to perform unlicensed
20 work, thereby depriving licensed specialty contractors from
21 performing work in the fields for which they are trained and
22 licensed; now, therefore,
23

24 BE IT RESOLVED by the Senate of the Twenty-seventh
25 Legislature of the State of Hawaii, Regular Session of 2014, the
26 House of Representatives concurring, that the Contractors
27 License Board is encouraged to reconsider its October 18, 2013,
28 final order and follow legislative intent and the Hawaii Supreme
29 Court's ruling that the "incidental and supplemental" exception
30 is very limited in scope, allowing a specialty contractor a
31 narrow exception to perform very minor work outside its license
32 only when necessary to complete licensed work; and
33

34 BE IT FURTHER RESOLVED that the Contractors License Board
35 is requested to report to the Legislature no later than twenty
36 days prior to the convening of the Regular Session of 2015,
37 whether it has amended its October 18, 2013, final order to
38 comply with legislative intent and the Hawaii Supreme Court's
39 ruling; and
40

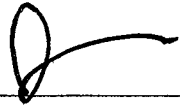
41 BE IT FURTHER RESOLVED that certified copies of this
42 Concurrent Resolution be transmitted to the Chief Justice of the
43 Hawaii Supreme Court, Director of Commerce and Consumer Affairs,
44 Chairperson of the Contractors License Board, Manager of



S.C.R. NO. 89

1 District Council 50, President of the Glaziers Union, and Aloha
2 Glass Sales & Service, Inc.
3
4
5

OFFERED BY:



M. M.

Clarence K. ...

M. R.

Andy J.

P. R.

Michelle ...

Ann Hill

