

MAR 07 2014

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## SENATE RESOLUTION

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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  
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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  
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  
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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  
29

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

4  
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

11  
12 WHEREAS, on January 22, 2007, the Board adopted the  
13 hearings officer's recommended decision as the Board's final  
14 order; and

15  
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

19  
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

24  
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

32  
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

40  
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

3  
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

7  
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

13  
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

19  
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

27  
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

32  
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

38  
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



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  
9

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  
14

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,  
20

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

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  
37  
38



# S.R. NO. 42

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:

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*AMN. J.*  
*Clarence & Michelle*  
*[Handwritten signature]*  
*And y lg*  
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*Michelle Sidani*

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