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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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January 28, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita 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 H.B. 1500, which proposes to define "incidental and supplemental" by quantifying it as a percentage by considering total contract price and total time involved. The GCA respectfully **requests that the bill be held** because it is unnecessary and would greatly confuse procurement officials as to what could be considered incidental and supplemental work. The proposed definition would lead to more bid protests and delay in the delivery of necessary infrastructure projects for the State of Hawaii. Furthermore, the appellate courts has confirmed the Contractor's License Board's (CLB) interpretation on this very issue.

Background

The meaning of the term incidental and supplemental has been recently vetted through various channels including the CLB and the appellate courts. 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." H.B. 1500 attempts to curtail the recent decision by the Hawaii Supreme Court in District Council 50 v. Lopez, SCWC-28762, 2012 Haw. LEXIS 384 (December 3, 2012), where Hawaii Supreme Court requested the CLB to provide the quantification of incidental and supplemental. The CLB did so by concluding that "incidental and supplemental" 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..." See page 9 of CLB-DR-2006-

2. The Supreme Court has recently denied a mandamus seeking to challenge this CLB quantification.

H.B. 1500 is flawed and would create more confusion.

H.B. 1500 proposes a flawed definition of incidental and supplemental that is not necessary because Section 444-8(c) references the term and its applicability to the performance of such work. The proposed definition haphazardly attempts to define the term by quantifying “incidental and supplemental” with a percentage that 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.**

To quantify incidental and supplemental would be in direct conflict with its historical interpretation.

For these reasons, GCA is in **strong opposition** to H.B. 1500 and we respectfully request that the bill is deferred.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON
LABOR & PUBLIC EMPLOYMENT

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Tuesday, January 28, 2014
8:45 a.m.

TESTIMONY ON HOUSE BILL NO. 1500, RELATING TO CONTRACTORS.

TO THE HONORABLE MARK M. NAKASHIMA, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Randall B.C. Lau, Chairperson of the Contractors License Board ("Board"). Thank you for the opportunity to testify on House Bill No. 1500, which proposes to redefine the term "incidental and supplemental" in Hawaii Revised Statutes, Chapter 444.

The Board strongly opposes this bill for the following reasons.

First, the Board believes that this bill is unnecessary because pursuant to the recent Hawaii Supreme Court decision in the District Council 50 v. Lopez, 129 Hawai'i 281, 287, 298 P.3d 1045, 1051 (2013), the Board has already determined that to qualify as "incidental and supplemental" work, that work must represent less than 50% of the project (as measured in relation to the project's total cost or extent), and the work must 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 (i.e., the primary work the specialty contractor is

licensed to perform)¹. The Board's determination takes into account the cost and extent of the other specialty contracting work, whether the work constitutes less than a majority of the project; and requires that the other specialty contracting work be subordinate and constitute less than a majority of the project. In this respect, the Board's method of determining "incidental and supplemental" work is more comprehensive and flexible as compared to the method that is proposed in this bill.

The bill prescribes specific dollar, percentage, and time limits on the work that can be "incidental and supplemental". This method is too rigid because work that is "incidental and supplemental" varies from project to project, and is different in every situation. Each project is separate and distinct, and must be evaluated independently. The specific limits proposed in this bill will not apply uniformly or fairly to every project and situation, and will likely cause confusion in the industry because there will be differing opinions among contractors and other parties on how long a particular task takes to complete and the dollar value of that task. Thus, the proposed limits are very arbitrary, may lead to inequitable results, and will be difficult to implement and enforce.

In addition, the bill appears to evaluate each project on a piecemeal or fragmented basis as opposed to considering the entire project, and does not

¹ See, the October 18, 2013 Board's Final Order Upon Remand 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. , CLB-DR-2006-2.

allow other important factors to be considered. Quantifying the dollar amount or the time spent on a project is not feasible because factors such as the various trades involved, the proportion of “incidental and supplemental” work, and the scope of the classifications held by the specialty contractor should be taken into consideration.

Finally, the stated purpose of this bill is to define “incidental and supplemental work” for purposes of determining licensing requirements for general engineering and general building contractors. If this is the purpose of this bill, it appears that this bill is unnecessary because general contractors are already restricted to performing work in the specialty classes they hold pursuant to the Supreme Court’s decision in the Okada Trucking Co., Ltd. v. Board of Water Supply, 97 Haw. 450, 40 P.3d 73 (2002), case.

For these reasons, the Board is opposed to House Bill No. 1500 and respectfully requests that it be held. Thank you for the opportunity to testify on this measure.

SAH - Subcontractors Association of Hawaii

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

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

January 28, 2014

Testimony To: House Committee on Labor & Public Employment
Representative Mark M. Nakashima

Presented By: Tim Lyons
President

Subject: H.B. 1500 – RELATING TO CONTRACTORS

Chair Nakashima and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The Subcontractors Association of Hawaii is composed of 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

The purpose of this bill is correct and that is to provide an attempt at defining "incidental and supplemental" work under the Contractors License Law. This is the principal that allows a specialty contractor to do some minor work that is outside of his normal licensed area in order to complete the job. A good example of that might be a roofing contractor who discovers rotten deck wood and replaces it in order that he may finish his roofing work. An example of which this is not, would be that same contractor then fixing the wooden steps which has nothing to do with the roof.

The problem we see with this bill is that we are not sure how and who would enforce it. The amendment is being made to the Contractors License Law. The Contractors License Board, as constituted under DCCA, does not have the investigative staff to check these kinds of things out. While RICO, the Regulated Industries Complaints Office, does exist it is primarily for consumer protection and therefore there is no one in order to ensure that a certain percentage of the total contract price has been adhered to or that a dollar amount is being followed that would allow incidental and supplemental work.

We are not sure what happens when a contractor discovers that if he can increase his \$999,999.00 by \$1.00 then he could do an additional \$15,000.00 worth of incidental and supplemental work. We are also not sure what happens when one contractor may have a crew that can do certain work within 16 hours and the next contractor has a crew that requires 17 hours. In that case they can jump from 4 hours to 8 hours of their total time for incidental and supplemental work. Further, what happens when these time and hour allocations are exceeded? Does the job stop and get re-bid? What about work already performed?

This issue is a complex one and has been "wrestled" with by a variety of people over the years and while we are still not sure what the solution is, we are relatively sure that this is not the solution.

Based on the above, we cannot support this bill.

Thank you.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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simplicityHR by ALTRES

TESTIMONY TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

TUESDAY, JANUARY 28, 2014

8:45 A.M.

HAWAII STATE CAPITOL - ROOM 309

SUBJECT: H.B. 1500 - RELATING TO CONTRACTORS

Dear Chair Nakashima, Vice-Chair Yamashita, 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.B. 1500, which proposes to define "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

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..." H.B. 1500 would further confuse the procurement process and increase costs to taxpayers.

Based on the foregoing reasons, BIA-Hawaii **is in strong opposition** to H.B. 1500.

We appreciate the opportunity to share with you our views.



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6331

January 28, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.** Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

S & M Sakamoto, Inc. strongly opposes H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, S & M Sakamoto, Inc. strongly opposes H.B. 1500 and recommends that the bill be held by the committee.

Very truly yours,
S & M Sakamoto, Inc.

Dale S. Yoneda
Senior Vice President

WARRIOR

CONTRACTING, LLC

Via E-Mail: LABtestimony@capitol.hawaii.gov

January 27, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.** Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014

TIME: 8:45 a.m.

PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

Warrior Contracting, LLC is a service-disabled, veteran-owned small business and **strongly opposes** H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, Warrior Contracting, LLC **strongly opposes** H.B. 1500 and recommends that the bill be held by the committee.

Sincerely,



Denny Watts
Executive Vice President

Las Vegas
3443 Neeham Suite 8
North Las Vegas, NV 89030
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F: (702) 220-7067
NV #0074622, #0075632

Honolulu
735 Bishop St. #401
Honolulu, HI 96813
P: (808) 260-1117
F: (808) 260-1118
HI ABC #33154



Henry's Equipment Rental & Sales, Inc.

P. O. Box 4070, Waianae, Hawaii 96792 Ph: 696-2879 Fax: 696-7837 License ABC21835 PUC 107-C Operating Since 1983

January 27, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

We are a small (less than 25 employees), women-owned General Contracting firm specializing in civil and utility installation as well as paving and demolition. We are locally owned and have been in business over 20 years counting the State of Hawaii and the C&C of Honolulu as our primary customers.

Henry's Equipment Rental and Sales, Inc. **strongly opposes** H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract. It erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the Contractor's License Board. 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and our company directly as well as create further confusion for those interpreting the law.

Accordingly, Henry's Equipment Rental and Sales, Inc. strongly opposes H.B. 1500 and recommends that the bill be held by the committee.

Sincerely,

Frances Kama-Silva
President
Henry's Equipment Rental and Sales, Inc.

IRON WORKERS STABILIZATION FUND

January 27, 2014

Mark M. Nakashima, Chair
Committee on Labor & Public Employment
House of Representatives
Room 406 – State Capitol
Honolulu, HI 96813

Fax (808) 586-6331

Re: HB 1500, Relating to Contractors

Dear Chair Nakashima & Members

Attached please find an analysis of the District Council 50 case concerning the term “incidental and supplemental” which the Hawaii Supreme Court decided on April 17, 2013. In its decision, our High Court reversed the Contractors License Board (“CLB”) and stated:

We hold that because the Board did not consider the cost and Extent of the work when determining if that work qualified as “incidental and supplemental” to the project, the Board’s interpretation of the “incidental and supplemental” exception is contrary to law and contrary to the primary purpose of the legislation regarding contractor licensing. (emphasis added.)

In this case, the CLB had awarded the contract to Allied Pacific Builders despite the company not listing a C-22, Glazing and Tinting Contractor, when 25% of the project involved glass (glazing) work. The CLB ruled that Allied could use the “incidental and supplemental” exception found in HAR, section 16-77-34, which defines “incidental and supplemental.”

The Supreme Court remanded the case to the CLB with instructions to enter a “Final Order” that would comply with the holding as set forth above. Instead of doing so, the CLB went completely opposite to what the Supreme Court ordered and stated:

In summary, the Board concludes that to qualify as “incidental and supplemental” work that work must represent less than 50% of the project (as measured in relation to the project’s total cost or extent) . . .

Admittedly, arriving at a formula to define “incidental and supplemental” is not the easiest exercise. However, in light of what the CLB has determined, it may require legislative action to remedy the defiance established by the CLB. Therefore, we support HB 1500 which sets forth a formula to define “incidental and supplemental.” We believe the legislature should arrive at a specific formula to remove all doubts as to what “incidental and supplemental” means.

Respectfully,
Ironworkers Stabilization Fund

January 02, 2014

DISTRICT COUNCIL 50 CASE

HOLDING OF THE HAWAII SUPREME COURT

On April 17, 2013, the Hawaii Supreme Court, on page 2 of the decision, clearly set forth the following:

We HOLD that because the Board did not consider the cost and extent of the work when determining if that work qualified as "incidental and supplemental" to the project, the Board's interpretation of the "incidental and supplemental exception is contrary to law and contrary to the primary purpose of the legislation regarding contractor licensing. (emphasis added.)

BACKGROUND

The DOE and DAGS put out a bid for the renovation of the Lanakila Elementary School. Allied Pacific Builders ("Allied Pacific") was awarded the bid. District Council 50, representing the Glaziers Union, filed a protest, stating that Allied Pacific did not possess the necessary C-22, Glazing and Tinting Contractor, specialty license. The window (glazier) work made up 20 to 25% of the total project.

The case was referred to the DCCA where a hearings officer decided that Allied Pacific was permitted to do the glazier work despite not possessing the C-22 Glazing and Tinting specialty license. The hearings officer concluded that Allied Pacific could utilize its C-5 Cabinet, millwork, and carpentry remodeling and repairs contractor, specialty license. The hearings officers used the "incidental and supplemental" exception found in HAR, section 16-77-34, as the basis for his ruling, stating that window work (glazier) was "incidental and supplemental" to the C-5 work. The Contractors License Board (CLB") agreed with the hearings officer.

DC 50 appealed the CLB ruling to the Circuit Court which upheld the CLB ruling. Similarly, the Intermediate Court of Appeals upheld the CLB ruling. Traditionally, the courts follow the CLB. But, in this instance, the Hawaii Supreme Court reversed the ruling (Final Order) made by the CLB and entered the above HOLDING.

DISCUSSION OF THE SUPREME COURT DECISION

In any Supreme Court decision, the HOLDING is paramount. No where else in

Page 2

this DC 50 case is another holding found. Our High Court dictated that the CLB enter a proper Final Order to comply with its holding.

To buttress and further elaborate on its holding, the Supreme Court set forth the following:

HRS section 444-8 creates a general exception for specialty contractors to complete work for which they are unlicensed if the work is "incidental and supplemental" to licensed work. (emphasis added.) This HRS provision supersedes HAR, section 16-77-34, which the CLB used to make its October 22, 2013 Final Order.

In interpreting the HRS 444-8(c) exception for specialty contractors to complete unlicensed "incidental and supplemental" work, we must give effect to the plain and obvious meaning of the language. (emphasis added.)

Applying the ordinary meaning of "incidental and supplemental" to HRS 444-8(c), it is apparent that the legislature meant to provide specialty contractors with a limited ability to perform work outside of their specialty area. (emphasis added.)

The Board's refusal to consider cost and extent of work when determining whether that work qualifies as "incidental and supplemental" is plainly erroneous in light of the clear meaning of HRS 444-8(c). (emphasis added.)

In creating the "incidental and supplemental" provision in HRS 444-8(c), the legislature crafted an exception for the completion of unlicensed work. This exception must be interpreted narrowly to preserve the statute's overarching purpose of protecting the public safety by insuring that work is completed by fully competent contractors. In order to comply with this statutory provision and the overall purpose of HRS chapter 444, the "incidental and supplemental" exception to the C-5 license must be similarly limited. By allowing C-5 specialty contractors to complete all work related to and necessary for the completion of the renovation project, regardless of cost and extent, the Board is contravening the express purpose of HRS chapter 444. (emphasis added.)

FINAL ORDER ENTERED BY THE CLB ON OCTOBER 22, 2013

The Supreme Court remanded the case to the CLB to enter a proper Final Order to comply with its holding. On October 22, 2013, the CLB entered a Final Order that was drafted by Deputy Attorney General Rodney Tam which went totally against the High Court's holding and instructions. Instead of following the mandate of the Supreme Court, DAG Tam went out of his way to *defy* the court. The most telling statement made by DAG Tam reads:

In summary, the Board concludes that to qualify as "incidental and supplemental" work, that work must represent less than 50% of the project (as measured in relation to the project's total cost or extent) . . .

In light of the Supreme Court's clear mandate, it defies logic for DAG Tam to reach the conclusion that "incidental and supplemental" work could comprise up to 49% of the total project. If 20 to 25% of the total project (as in this DC 50 case) did not qualify to be "incidental and supplemental", it would be pure folly for DAG Tam to argue that double this amount, or 49%, could be "incidental and supplemental."

In its holding the Supreme Court stated that the CLB did **not** consider the cost and extent of the work in determining whether that work was "incidental and supplemental." The court made its determination based on what the DCCA hearings officer stated in his findings which were adopted by the CLB. Yet, DAG Tam tries to argue that the Board **did** take cost and extent into consideration. How can DAG Tam even attempt to argue that the Board **did** take cost and extent into consideration when the Supreme Court, in its HOLDING, clearly enunciated that the Board did **not**? It appears that DAG Tam believes he is higher than our High Court.

CONCLUSION

If the Contractors License Board's October 22, 2013 Final Order is permitted to stand, general contractors may be able to perform major projects ***without utilizing specialty contractors. There would be a real danger that hundreds of specialty contractors would be put out of business. At the same time, thousands upon thousands of union tradesmen could similarly be put out of work.***

The CLB reached an "improvident" Final Order on October 22, 2013 which must be reversed to comply with the Supreme Court decision rendered on April 17, 2013. At a minimum, it was a carelessly crafted Final Order that clearly did not comport with the Supreme Court decision. The CLB must enter a proper Final Order that comports with the Supreme Court HOLDING and decision.



general contractor license #ABC 21576

Via E-mail: LABTestimony@capitol.hawaii.gov

Via Fax: (808) 586-6331

January 27, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014

TIME: 8:45 a.m.

PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

LYZ, Inc. strongly opposes H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, LYZ, Inc. strongly opposes H.B. 1500 and recommends that the bill be held by the committee.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular stamp or seal.

James N. Kurita
Vice President/ Chief Operating Officer



LED COR CONSTRUCTION HAWAII LLC
1003 Bishop Street, Suite 2150
Honolulu, HI 96813
Tel: 808.540.0777
Fax: 808.524.6803
Contractor License No: ABC-25954

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6331

January 28, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.** Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

Ledcor Construction Hawaii LLC strongly opposes H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, Ledcor Construction Hawaii LLC strongly opposes H.B. 1500 and recommends that the bill be held by the committee.

Sincerely,
Ledcor Construction Hawaii LLC


Christopher G. Thorpe
Regional Manager

Chris.thorpe@ledcor.com
Ph. 808.540.0777 ext. 1267



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

TESTIMONY OF HAWAII LECET CLYDE T. HAYASHI - DIRECTOR

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

DATE: Tuesday, January 28, 2014
TIME: 8:45 AM
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

TESTIMONY ON HOUSE BILL NO. 1500, RELATING TO CONTRACTORS.

TO THE HONORABLE MARK M. NAKASHIMA, CHAIR, KYLE T. YAMASHITA, VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Clyde T. Hayashi, and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors. Thank you for the opportunity to testify in **strong opposition** to House Bill No. 1500, Relating to Contractors, which defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

This legislation attempts to redefine "incidental and supplemental work" which the Contractors License Board (CLB) had already affirmed on October 18, 2013, after being remanded back to the CLB by the State Supreme Court. The CLB 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 CLB 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 CLB were present at its October 18, 2013 meeting and all agreed to the CLB's final order.

Mahalo for the opportunity to comment in **strong opposition** to House Bill No. 1500.



Testimony of Cindy McMillan
The Pacific Resource Partnership

House Committee on Labor and Public Employment
Representative Mark Nakashima, Chair
Representative Kyle Yamashita, Vice Chair

HB 1500 – RELATING TO CONTRACTORS
Tuesday, January 28, 2014
8:45 AM
Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP opposes HB 1500, Relating to Contractors, which proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work with contract price and hours involved to perform the work.

This issue has recently been reviewed and interpreted by the Contractors License Board (CLB) and the Appellate courts. The long standing interpretation of the CLB remains, recognizing 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.

This bill would lead to further confusion by the procurement officers of public works contracts and delay the progress of much needed infrastructure projects. This bill will also increase the number of bid protests on this issue.

Furthermore, the proposed legislation would negatively impact the industry, delay delivery of important infrastructure projects and create further confusion for those interpreting the law.

Thank you for allowing us to voice our opinion and we respectfully request that this bill be held by the committee.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

January 27, 2014

The Honorable Mark Nakashima, Chair
The Honorable Kyle Yamashita, Vice Chair
and members
House Committee on Labor and Public Employment
Hawai'i State House of Representatives
Honolulu, Hawai'i 96813

Dear Chair Nakashima, Vice Chair Yamashita, and members:

The Hawai'i Construction Alliance **is strongly opposed to HB1500**, relating to contractors.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local 3. Together, the four member unions of the Hawai'i Construction Alliance represent over 15,000 working men and women in the four basic crafts of Hawai'i's construction industry.

Currently, "incidental and supplemental work" is defined in HAR §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." Imposing a legislative definition of "incidental and supplemental work" would frustrate the efforts of the Contractors License Board ("CLB"), which has long held that the term is not a matter of size or percentages and should not be thought of as such.

We are concerned that a legislative definition of "incidental and supplemental work" which relies on price and hours would delay the progress of much-needed infrastructure projects by complicating the procurement process, increasing the number of bid protests, and driving up costs.

Mahalo for the opportunity to testify in **strong opposition to HB1500**.

Aloha,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



January 27, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining
licensing requirements for general engineering and general building
contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

TOMCO CORP. strongly opposes H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, TOMCO CORP. strongly opposes H.B. 1500 and recommends that the bill be held by the committee.

500 Ala Kawa St., Suite #100A Honolulu, Hawaii 96817
Telephone #: (808) 845-0755 Fax #: (808) 845-1021
Lic# ABC 16941

Lindemann Construction Inc.
500 Ala Kawa St. #216-J
Honolulu, HI 96817

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6331

January 28, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE
YAMASHITA, VICE CHAIR AND MEMBERS OF THE HOUSE
COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining
licensing requirements for general engineering and general building
contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee,

Lindemann Construction Inc. strongly opposes H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, Lindemann Construction Inc. strongly opposes H.B. 1500 and recommends that the bill be held by the committee.



SENT VIA E-MAIL: LABTestimony@capitol.hawaii.gov

January 28, 2014

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE KYLE YAMASHITA,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND
PUBLIC EMPLOYMENT

SUBJECT: **STRONG OPPOSITION TO H.B. 1500. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing
requirements for general engineering and general building contractors.

HEARING

DATE: Tuesday, January 28, 2014
TIME: 8:45 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Yamashita and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's.

Healy Tibbitts Builders, Inc. strongly opposes H.B. 1500, Relating to Contractors because it is an attack on the interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

H.B. 1500 proposes to redefine incidental and supplemental in 444-1, HRS by quantifying such work by correlating it with contract price and time involved to perform the work on the contract.

H.B. 1500 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the 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. This bill would lead to further confusion by the procurement officers that execute contracts for public works contracts and delay progress of infrastructure projects because of the potential increase in bid protests that would result if this legislation was to become law.

The proposed legislation would negatively impact the industry and create further confusion for those interpreting the law.

Accordingly, Healy Tibbitts Builders, Inc. strongly opposes H.B. 1500 and recommends that the bill be held by the committee.

Sincerely,

Richard A. Heltzel
President

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

LEIMOMI JOHNSON
Executive Board

MARK MAGUSARA
Auditor

MARK TRAVALINO
Auditor

JOSEPH YAW
Auditor

NELSON S. TERRADO
Sergeant-At-Arms

January 24, 2014

LATE

Testimony by Peter Ganaban, Business Manager Secretary/Treasurer
Hawaii Laborers' Union
In
STRONG OPPOSITION
To
To H.B. 1500 RELATING TO CONTRACTORS

Honorable Mark Nakashima, Chairman, Honorable Kyle Yamashita, Vice Chairman and members of the Committee:

This is a recurring issue which we believe has been properly adjudicated recently. The Contractors' License Board (CLB) and the Appellate Court support the historical position of the CLB in interpreting the term, "incidental and supplemental" as work in other trades directly related to and necessary to complete the project.

The General Contractors are a major financial risk taker for public projects; they need to be efficient and want to deliver the project on time and within budget. Any delay in completing a minor part of a project due to confusion in "incidental and supplemental" can be costly.

The Hawaii Laborers' Union is STRONGLY OPPOSED to H.B. 1500

Thank you for the opportunity to submit this testimony.

Sincerely,

Peter Ganaban
Business Manager, Secretary/Treasurer
Hawaii Laborers' Union

