

SB 2613

Measure Title: RELATING TO CONTRACTORS.

Report Title: Contractors; Incidental and Supplemental Work

Description: Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

Companion: HB1500

Package: None

Current Referral: CPN

Introducer(s): KIDANI, DELA CRUZ

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014**

Thursday, February 20, 2014
10:00 a.m.

TESTIMONY ON SENATE BILL NO. 2613, RELATING TO CONTRACTORS.

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Peter H.M. Lee, Chairperson of the Contractors License Board ("Board") Legislative Committee. Thank you for the opportunity to testify on Senate Bill No. 2613, 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 following 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 determined that to qualify as "incidental and supplemental" work, 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

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.

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. In addition, the Board is in the process of amending its administrative rules to reflect this interpretation.

This 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 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 strongly opposed to Senate Bill No. 2613 and respectfully requests that it be held. Thank you for the opportunity to testify on this measure.

Hawai'i Construction Alliance

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

February 14, 2014

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
and members
Committee on Commerce and Consumer Protection
Hawai'i State Senate
Honolulu, Hawai'i 96813

Dear Chair Baker, Vice Chair Taniguchi, and members:

The Hawai'i Construction Alliance is **strongly opposed to SB2613**, relating to contractors.

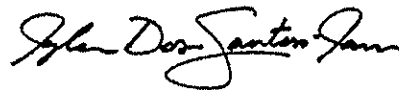
The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local 3. Together, the four member unions of the Hawai'i Construction 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 SB2613**.

Aloha,



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

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Stephen Hanson

simplicityHR by ALTRES

TESTIMONY TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THURSDAY, FEBRUARY 20, 2014

10:00 A.M.

HAWAII STATE CAPITOL - ROOM 329

SUBJECT: S.B. 2613 - RELATING TO CONTRACTORS

Dear Chair Baker, Vice-Chair Taniguchi, and members of the Committee:

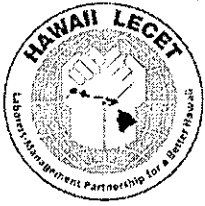
My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of 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** S.B. 2613, 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. S.B. 2613 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..." S.B. 2613 would further confuse the procurement process and increase costs to taxpayers.

We appreciate the opportunity to express our **strong opposition** to S.B. 2613.



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

TESTIMONY OF HAWAII LECET CLYDE T. HAYASHI - DIRECTOR

THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

NOTICE OF HEARING

DATE: Thursday, February 20, 2014
TIME: 10:00am
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

TESTIMONY ON SENATE BILL NO. 2613, RELATING TO CONTRACTORS.

TO THE HONORABLE ROSALYN BAKER, CHAIR; BRIAN TANIGUCHI, VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Clyde T. Hayashi, and I am the Director of 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. Thank you for the opportunity to testify in **strong opposition** to Senate Bill No. 2613, 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 Contractor's 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 (12) members of the CLB were present at its October 18, 2013 meeting and those present voted unanimously to the CLB's final order.

Mahalo for the opportunity to provide testimony in **strong opposition** to Senate Bill No. 2613.

IRON WORKERS STABILIZATION FUND

February 18, 2014

FAX - 586 - 6071

Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
Hawaii Senate
Room 230 – State Capitol
Honolulu, HI 96813

Re: SB 2613, S.D. 1, Relating to Contractors

Hearing Date – February 20, 2014, Thursday, 10:00 a.m., Conference Room 229

Dear Chair Baker and Members:

On April 17, 2013, the Hawaii Supreme Court rendered its opinion in the case of District Council 50, of the International Union of Painters and Allied Trades and ALOHA GLASS SALES & SERVICE, INC. VS. KEALI'I S. LOPEZ, in her capacity as Director, Department of Commerce and Consumer Affairs.

As way of background, the Contractors License Board ("CLB"), rendered its initial Final Order, re: the dispute between DC 50 and Aloha Glass, on January 19, 2007, deciding that 20 to 25% of the project consisting of glass work, was "incidental and supplemental" and did not require any specialty license for Aloha Glass to perform the glass work.

In its decision, our High Court vacated the initial Final Order of the CLB entered on January 19, 2007, and remanded it to the CLB to reconsider whether the jalousie window work qualified as "incidental and supplemental" to the Project in light of the cost and extent of work involved. The Supreme Court held:

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.)

On October 22, 2013, the CLB entered its Final Order pursuant to the instructions from the Supreme Court 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), 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).

We respectfully argue that the Supreme Court mandated the CLB to arrive at language on the meaning "incidental and supplemental" reflecting that the unlicensed specialty contractor is to be permitted to perform limited work only. Attached please find a summary of the DC50 case, dated January 2, 2014 which more fully explains the Supreme Court holding.



94-497 UKEE STREET ■ WAIPAHU, HAWAII 96797 ■ (808) 671-4344

Page 2

In conclusion, the CLB's October 22, 2013 Final Order defies the legislature because the legislative intent of HRS Chapter 444 is to "protect the public", and it would be pure to argue that an unlicensed specialty contractor performing 49% of the project is protecting the public.

Under these circumstances, we offer S.D. 1 that is enclosed, which we believe is clearly more in line with the Supreme Court decision.

Respectfully submitted,
Ironworkers Stabilization Fund

S.B. 2613
S.D. 1

A BILL FOR AN ACT

RELATING TO CONTRACTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 444-8, Hawaii Revised Statutes, is amended to read
as follows:

(c) This section shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which the specialty contractor is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed. Incidental and supplemental is an exception that allows a specialty contractor to perform minor or very limited amount of specialty work for which it is not licensed. The performance of this unlicensed specialty work must be essential to complete the project. The cost of said unlicensed work shall not exceed one-tenth of one percent (.1%) of the total project, or, one percent (1%) of said unlicensed specialty work, whichever is less.

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

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.

SAH - Subcontractors Association of Hawaii

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

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

February 20, 2014

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: S.B. 2613 – RELATING TO CONTRACTORS

Chair Baker 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 admirable 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 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.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 20, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20, 2014
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi 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 S.B. 2613, 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 the determinations by procurement officials as to what would be considered incidental and supplemental work, which would lead to further bid protests and delay in important and necessary infrastructure projects for the State of Hawaii.

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." S.B. 2613 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.

S.B. 2613 is flawed and would create more confusion.

S.B. 2613 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 S.B. 2613 and we respectfully request that bill is deferred.



general contractor license #ABC 21576

Via E-mail: CPNTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6071

February 18, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

LYZ, Inc. strongly opposes S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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 S.B. 2613 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 large, stylized circular flourish.

James N. Kurita
Vice President/ Chief Operating Officer



S & M SAKAMOTO, INC.
GENERAL CONTRACTORS

Via E-mail: CPNTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6071

February 20, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI, VICE
CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND
CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.** Defines
"incidental and supplemental work" for purposes of determining licensing requirements for
general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

S & M Sakamoto, Inc. strongly opposes S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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** S.B. 2613 and recommends that the bill be held by the committee.

Very truly yours,
S & M Sakamoto, Inc.

Gerard Sakamoto, President



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

**(CPN) Senate Committee on Commerce and Consumer Protection. ThursFeb 20,
2014. Room 329. 10:00 am RE: SB 2613 RELATING TO CONTRACTORS**

Chair Baker, Vice Chair Taniguchi, 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.**

Most of your testimony is from commercial contractors. We do work for residential homeowners. Over 2000 projects in two decades.

This special interest, ridiculous 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



February 19, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing
requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

TOMCO CORP. strongly opposes S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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 S.B. 2613 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



1099 ALAKEA STREET, SUITE 1560
HONOLULU, HI 96813
TELEPHONE: (808) 541-9101
FAX: (808) 541-9108

Via E-mail: CPNTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6071

February 19, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing
requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

NORDIC PCL CONSTRUCTION, INC. strongly opposes S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

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

Accordingly, **NORDIC PCL CONSTRUCTION, INC. strongly opposes S.B. 2613 and recommends that the bill be held by the committee.**

Yours truly,

NORDIC PCL CONSTRUCTION, INC.

A handwritten signature in black ink, appearing to read "Glen Kaneshige". The signature is written in a cursive, flowing style.

Glen Kaneshige
President

Via E-mail: CPNTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6071

February 20, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN
TANIGUCHI, VICE CHAIR AND MEMBERS OF THE SENATE
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing
requirements for general engineering and general building contractors.



HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

Royal Contracting Co., Ltd. **strongly opposes** S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

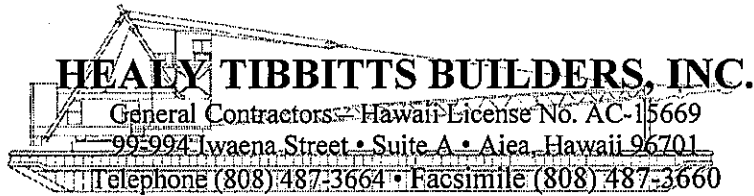
S.B. 2613 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the CLB. The CLB has consistently held that the term "incidental and supplemental" is not a matter of size or percentages, but as work in other trades directly related to and necessary for the completion of the project undertaken. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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, Royal Contracting Co., Ltd. **strongly opposes** S.B. 2613 and recommends that the bill be held by the committee.

Sincerely,

Loke Leong
Secretary



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

February 20, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing
requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi 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** S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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** S.B. 2613 and recommends that the bill be held by the committee.

Sincerely,

Rick
Heltzel

Digitally signed by Rick Heltzel
DN: cn=Rick Heltzel, o=Healy
Tibbitts Builders, Inc., ou,
email=rick.heltzel@healytibbitts.com
c=US
Date: 2014.02.19 13:23:43 -1000

Richard A. Heltzel
President

The Pacific Resource
PARTNERSHIP



Testimony of Cindy McMillan
The Pacific Resource Partnership

Senate Committee on Commerce & Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

SB 2613 – RELATING TO CONTRACTORS
Thursday, February 20, 2014
10:00 AM
Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi 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.

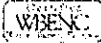
PRP opposes SB 2613, Relating to Contractors, which defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

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.



500 ALAKAWA STREET, BLDG 119 • HONOLULU, HAWAII 96817 • PH: (808) 842-7955 • FAX: (808) 842-3985 • LIC #BC-14014
 Via E-mail: CPNTestimony@capitol.hawaii.gov
 Via Fax: (808) 586-6071

February 20, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.** Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
 TIME: 10:00 a.m.
 PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

WALTZ ENGINEERING, INC. strongly opposes S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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, WALTZ ENGINEERING, INC. strongly opposes S.B. 2613 and recommends that the bill be held by the committee.



STEELTECH

99-1324 Koaha Place Aiea, HI. 96701 (808) 487-1445 phone (808) 487-5307 fax oli@steeltechinc.biz

Via E-mail: CPNTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6071

February 19, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.**
Defines "incidental and supplemental work" for purposes of determining licensing requirements for general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

SteelTech, Inc. **strongly opposes** S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 proposes to re define 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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, SteelTech, Inc. **strongly opposes** S.B. 2613 and recommends that the bill be held by the committee.

Respectfully,

Oli Woolsey

Oli Woolsey
SteelTech, Inc.

Digitally signed by Oli Woolsey
DN: cn=Oli Woolsey, o=SteelTech, Inc., ou,
email=oli@steeltechinc.biz, c=US
Date: 2014.02.19 07:57:24 -10'00'

WARRIOR

CONTRACTING, LLC

Via E-mail: CPNTestimony@capitol.hawaii.gov
Via Fax: (808) 586-6071

FEBRUARY 20, 2014

TO: HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRIAN TANIGUCHI, VICE
CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND
CONSUMER PROTECTION

SUBJECT: **STRONG OPPOSITION TO S.B. 2613. RELATING TO CONTRACTORS.** Defines
"incidental and supplemental work" for purposes of determining licensing requirements for
general engineering and general building contractors.

HEARING

DATE: Thursday, February 20
TIME: 10:00 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee,

Warrior Contracting, LLC is a service-disabled, veteran-owned small business and is opposed S.B. 2613, Relating to Contractors because it is an attack on the long standing interpretation by the Contractors License Board and the application of incidental and supplemental work between general and specialty contractors.

S.B. 2613 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.

S.B. 2613 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. To quantify incidental and supplemental would go against industry standard and its historical interpretation. 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 S.B. 2613 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
P: (702) 283-1859
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

To: Committee on Commerce and Consumer Protection

Thursday, Feb 20, 2014; 10:00am, Room 229

Testimony on Senate Bill 2613 Relating to Contractors

Senator Baker, Chair, Senator Taniguchi, vice-Chair, members of the committee

My name is Scotty Anderson and from July 2003 to July 2011 I served as a Public Member of the State Contractors License Board, the last two years as its Chair.

I strongly opposed Senate Bill 2613 which attempts to define "incidental and supplemental" by using a percentage to make a determination of who can and cannot do certain work.

While on the CLB we looked a dozens and dozens of possibilities on how to define incidental and supplemental and found that each case can be so different, that trying to put a "number" on it was just not a fair way to make an evaluation.

When cases came before the Board, it usually came down to the individuals company and their expertise as to who should do a certain type of work.

There is no magic wand here. All of us in the industry wish we could make this an easier determination, but one blanket number would be wholly unfair to the industry and the consumer.

Thank you for this opportunity to testify in opposition. I am available for questions.