



**HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST**  
1617 Palama Street · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300 · URL: [hilecet.org](http://hilecet.org)

TESTIMONY OF HAWAII LECET  
CLYDE T. HAYASHI - DIRECTOR

HOUSE OF REPRESENTATIVES  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair  
Rep. Justin H. Woodson, Vice Chair

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 11, 2015  
TIME: 2:30pm  
PLACE: Conference Room 325  
State Capitol  
415 South Beretania Street

TESTIMONY ON HOUSE BILL NO. 714, RELATING TO THE CONTRACTORS.

TO THE HONORABLE ANGUS MCKELVEY, CHAIR; JUSTIN WOODSON, 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.

Mahalo for the opportunity to testify in strong opposition to House Bill No. 714, which proposes to Prohibit general engineering contractors and general building contractors from performing incidental or supplemental work, and requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work if the aggregate subcontract price is not more than the lesser of 1% of the contract price, or \$100,000.

According to HRS 444-7(b), "... a general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks,



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playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land levelling and earth-moving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works” .

In order to do this work per statute, HAR §16-77-32(a) provided general engineering contractors with seventeen (17) automatic specialty licenses, including the incidental and supplemental work attached thereto...

- |   |   |
|---|---|
| (1) C-3 asphalt paving and surfacing;                             | (9) C-37a sewer and drain line;                           |
| (2) C-9 cesspool;   | (10) C-37b irrigation and lawn sprinkler systems;         |
| (3) C-10 scaffolding;   | (11) C-38 post tensioning;                                |
| (4) C-17 excavating, grading, and trenching;                      | (12) C-43 sewer, sewage disposal, drain, and pipe laying; |
| (5) C-24 building moving and wrecking;                            | (13) C-49 swimming pool;                                  |
| (6) C-31a cement concrete;  | (14) C-56 welding;  |
| (7) C-32 ornamental guardrail, and fencing;                       | (15) C-57a pumps installation;                            |
| (8) C-35 pile driving, pile and caisson drilling, and foundation; | (16) C-57b injection well;                                |
|   | (17) C-61 solar energy systems.                           |

This measure essentially strips the general engineering and general building contractor’s ability to self-perform work they are licensed to do, prohibits the general engineering and general building contractor to act as a specialty contractor should they choose to do so, and forces them to subcontract all work the lesser of not more than 1% of the contract amount, or \$100,000.

For this reason, we **strongly oppose** House Bill No. 714, and humbly ask that it be held.

# Hawai'i Construction Alliance

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

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February 10, 2015

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair  
and members  
House Committee on Consumer Protection & Commerce  
Hawai'i State Legislature  
Honolulu, Hawai'i 96813

Dear Chair McKelvey, Vice Chair Woodson, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

The Hawai'i Construction Alliance **strongly opposes** HB714, relating to contractors, which would prohibit general engineering contractors and general building contractors from performing incidental or supplemental work, require general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work, and define incidental work.

We strongly oppose this bill for the following reasons:

## **I. Opposition to a legislative definition of incidental work**

We have long opposed proposals to have the legislature define "incidental and supplemental work."

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 or percentage of contract amount would delay the progress of much-needed infrastructure projects by complicating the procurement process, increasing the number of bid protests, and driving up costs.

## **II. Opposition to limitations on general contractors' work**

HB714 would fundamentally disrupt standing industry practice, by limiting the work that general contractors are currently licensed to perform.

Currently, general contractors receive "A" or "B" licenses from the CLB after meeting certain requirements such as passing an examination, having at least 4 years in a supervisory position or a contractor in the particular classification being applied to, having satisfactory credit and financial ability, having adequate insurance and bonding requirements, etc. General contractors also qualify for specialty "C" contractor licenses after passing examinations and meeting other criteria granted by the CLB.

The bill proposes to define incidental work in part as, “any work directly related to a larger or major project or operation that requires a specialty contractor license held by a general engineering contractor, general building contractor, or specialty contractor...”

The bill also would require that “a general engineering contractor shall engage subcontractors that hold appropriate specialty licenses to perform incidental work.”

While the proposed definition acknowledges that general engineering or general building contractors can and do hold specialty contractor licenses, the bill would prohibit them from utilizing those licenses. This would effectively prohibit general contractors from performing any work at all that requires a specialty contractor license, even if they have been licensed to perform that work by the CLB.

In light of the above, we are extremely concerned this bill would produce unnecessary complications for projects both large and small that involve any work that falls within the scope of a specialty license, with detrimental effects on public procurement and private contracting. Therefore, the Hawai‘i Construction Alliance respectfully requests that your committee **hold** this bill.

Mahalo for the opportunity to provide these comments.

Aloha,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

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

# ***SAH - Subcontractors Association of Hawaii***

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

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

February 11, 2015

Testimony To: House Committee on Consumer Protection & Commerce  
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, President

Subject: H.B. 714 - RELATING TO CONTRACTORS

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting associations who have combined their testimony in the interest of saving time and resources.

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

We generally support this bill as well although it would appear to us that general contractors are required to engage subcontractors with the appropriate specialty license. We think that this bill makes an excellent policy statement and clarifies any misinterpretations that perhaps have been rendered by the Contractors License Board, educated observers and others.

To that extent, we generally support this bill.

Thank you.



SHARING YOUR VISION. BUILDING SUCCESS.

Sent Via E-Mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)  
Or via Fax at (808) 586-6161

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR,  
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **OPPOSITION TO H.B. 714, RELATING TO CONTRACTORS.**

Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.

HEARING

DATE: Wednesday, February 11, 2015  
TIME: 2:30 p.m.  
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Nordic PCL Construction, Inc. **opposes** H.B. 714, Relating to Contractors because it is an attack on the standing interpretation by the Contractors License Board (CLB) and the application of incidental and supplemental work between general and specialty contractors. The Board has ruled that if a scope question is set forth before the Board, a determination with regard to incidental and supplemental will reviewed on a case by case basis before the Board in public.

H.B. 714 proposes to redefine incidental and supplemental in 444-1, HRS by attempting to quantify such work by a certain percentage and capping it at a certain amount. Furthermore, this measure would restrict a general contractor from doing incidental work, even within the areas where they are properly licensed.

H.B. 714 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the CLB. 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, Nordic PCL Construction, Inc. strongly opposes H.B. 714 and recommends that the bill be deferred by the committee.**

Yours truly,

Glen Kaneshige  
President

**NORDIC PCL CONSTRUCTION, INC.**

1099 Alakea Street, Suite 1560 Honolulu, HI 96813  
Telephone: 808-541-9101 ♦ Fax: 808-541-9108 ♦ [www.nordicpcl.com](http://www.nordicpcl.com)







# S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Sent Via E-Mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)  
Or via Fax at (808) 586-6161

February 11, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **OPPOSITION TO H.B. 714, RELATING TO CONTRACTORS.**

Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.

#### HEARING

DATE: Wednesday, February 11, 2015  
TIME: 2:30 p.m.  
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

**S & M Sakamoto, Inc. opposes** H.B. 714, Relating to Contractors because it is an attack on the standing interpretation by the Contractors License Board (CLB) and the application of incidental and supplemental work between general and specialty contractors. The Board has ruled that if a scope question is set forth before the Board, a determination with regard to incidental and supplemental will reviewed on a case by case basis before the Board in public.

H.B. 714 proposes to redefine incidental and supplemental in 444-1, HRS by attempting to quantify such work by a certain percentage and capping it at a certain amount. Furthermore, this measure would restrict a general contractor from doing incidental work, even within the areas where they are properly licensed.

H.B. 714 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the CLB. 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 H.B. 714 and recommends that the bill be deferred by the committee.**

Very truly yours,  
S & M Sakamoto, Inc.

Gerard Sakamoto  
President

**LATE**

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Wednesday, February 11, 2015  
2:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 714, RELATING TO CONTRACTORS.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, and I am the Chairperson of the Legislative Committee of the Contractors License Board ("**Board**"). Thank you for the opportunity to testify on House Bill No. 714, which proposes to add and define a new term, "incidental work"; prohibits a general contractor from performing incidental or supplemental work; and requires general contractors to engage an appropriate specialty contractor to perform "incidental work".

The Board **strongly opposes** this bill for the following reasons:

First, the Board believes that this bill is unnecessary because the Hawaii Supreme Court has already interpreted the term "incidental and supplemental" in HRS chapter 444 in the District Council 50 v. Lopez, 129 Hawai'i 281, 287, 298 P.3d 1045, 1051 (2013), case. The Board complied with this decision, and subsequently determined that to qualify as "incidental and supplemental" work, that 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), and that work must represent less than 50% of the project (as measured in relation to the project's total cost or extent)<sup>1</sup>. 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. For your information, the Board is currently in the process of amending its administrative rules to reflect this determination and has invited the interested stakeholders to provide input and comments.

Second, the bill's new definition of "incidental work" is vague because under HRS section 444-8(c), the term is actually "incidental and supplemental", not just "incidental". In addition, the terms "larger project" or "major project" are vague and ambiguous, and may lead to arbitrary and inconsistent interpretations of these terms.

Third, the limitation of "incidental work" to the lesser of one percent of the total contract or \$100,000 is unrealistic because it is too low; adversely affects all contractors (not only general contractors) and the consuming public because more contractors are going to be required to complete a particular project; and may encourage parceling because of the vague term "total contract" (i.e., instead of having one master contract, contractors may split it up into many smaller contracts to be able to perform the "incidental work").

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<sup>1</sup> 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.

The Board believes that its method of determining “incidental and supplemental” work is more comprehensive and flexible as compared to the proposed limit of “not more than the lesser of one percent of the total contract or \$100,000”. Imposing only a set dollar amount or percentage on the work that can be “incidental and supplement” 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 limitation proposed in this bill will not apply uniformly or fairly to every project and situation. Thus, the Board believes that the proposed “not more than the lesser of one percent of the total contract or \$100,000” is very arbitrary, may lead to inequitable results, and will be difficult to implement and enforce.

Fourth, it is unreasonable to prohibit general contractors from performing “incidental work” and “supplemental work” because all general contractors automatically hold certain specialty contractor licenses under the Board’s administrative rules, which allows them to perform the broad scope of their work. In addition, many general contractors have applied for and obtained additional specialty contractor licenses to allow them to perform work without having to hire a subcontractor. Furthermore, the Hawaii Supreme Court previously determined that general contractors are allowed to perform work in the specialty classes they hold. See, Okada Trucking Co., Ltd. v. Board of Water Supply, 97 Haw. 450, 40 P.3d 73 (2002). Lastly, the requirement that general contractors be required to

engage subcontractors to perform “incidental work” and “supplemental work” may increase the cost of construction projects and thus, increase the costs to consumers.

In conclusion, the bill is unreasonably biased against general contractors, and will ultimately harm the consuming public. The Board respectfully requests that this bill be **held**, and the Board be allowed to continue addressing this jurisdictional dispute in its administrative rules.

Thank you for the opportunity to testify on this measure.

**LATE**

**BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

THE VOICE OF THE CONSTRUCTION INDUSTRY

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**Testimony to the House Committee on Consumer Protection & Commerce**

**Wednesday, February 11, 2015**

**2:30 p.m.**

**State Capitol - Conference Room 325**

**RE: HOUSE BILL NO. 714 RELATING TO CONTRACTORS**

Dear Chair McKelvey, Vice-Chair Woodson, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer 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 **opposes** H.B. 714, which would prohibit general engineering contractors and general building contractors from performing incidental or supplemental work and require general engineering and general building contractors to engage a specialty contractor to perform incidental work.

This bill defines incidental work as the lessor of one percent, or \$100,000, of the aggregate subcontract price. This interpretation goes against the position of the Contractors License Board (CLB) and is not needed as Section 444-8(c) already refers to the term incidental and the scope of work it applies to. 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." These two definitions are in direct conflict with one another and if passed would cause a great deal of confusion and unintended consequence to the industry.

Thank you for the opportunity to express our views on this matter.

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 10, 2015 5:54 PM  
To: CPCtestimony  
Cc: jmas808@gmail.com  
Subject: \*Submitted testimony for HB714 on Feb 11, 2015 14:30PM\*



**HB714**

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Masatsugu	Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**HAWAII OPERATING ENGINEERS  
INDUSTRY STABILIZATION FUND**



*Uniting our strengths and working together  
for a better tomorrow.*

Affiliated AFL-CIO  
OPEIU - 8 - AFL-CIO (8)

**LATE**

February 10, 2015

Honorable Angus L.K. McKelvey, Chair  
Honorable Justin H. Woodson, Vice Chair

And members of the Committee on Consumer Protection & Commerce  
415 South Beretania Street, Room 320  
Honolulu, HI 96813

RE: Opposition of HB 714 – Relating to Contractors

Chair McKelvey and members of the Committee,

My name is Kimberly Ribellia, Government Liaison, of the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 4000 unionized members in heavy engineering site work and 500 general contractors specializing in heavy site and vertical construction.

HOEISF strongly opposes House Bill 714 which prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. The bill also requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work and defines incidental work.

HOIESF respectfully requests that the bill be deferred. HOEISF feels this bill is unnecessary and would confuse procurement agencies and lead to more bid protests and delay in public works projects. Furthermore, the Contractor's License Board's continues to work on this issue.

Thank you for this opportunity to testify in this matter.

Sincerely,

Kimberly Ribellia  
Government Liaison  
HOEISF



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Sent: Tuesday, February 10, 2015 5:54 PM  
To: CPCtestimony  
Cc: jmas808@gmail.com  
Subject: \*Submitted testimony for HB714 on Feb 11, 2015 14:30PM\*



**HB714**

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Masatsugu	Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund	Support	Yes

Comments:

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**LATE**

February 10, 2015

Hon. Angus L.K. McKelvey, Chair  
House Consumer Protection & Commerce Committee  
Room 320 – State Capitol  
Honolulu, HI 96813

(808) 586-6211  
FAX

Re: H.B. 714, Relating to Contractors

Hearing: Wednesday, February 11, 2015, 2:30 p.m.  
House Conference Room 325

Dear Chair McKelvey and Committee Members:

After reviewing the contents of this measure, we are in agreement with the intent of the bill. However, we believe that there is another measure, HB 130 which was introduced this session which would be preferable.

As the preamble of HB 130 states, the Hawaii Supreme Court has held that a general engineering or building contractor is prohibited from doing any work that requires either to act as a specialty contractor, where neither is licensed to operate. *Okada Trucking Co., Ltd. V. Board of Water Supply*, 40 Pacific 3d 73, at page 83 (2002). Despite attempts by the Contractors License Board to nullify what Okada stands for, Okada is the law and must be complied with.

The case of *District Council 50, of the International Union of Painters and Allied Trades and Aloha Glass Sales & Service, Inc. vs. Keali'i Lopez* in her capacity as Director, Department of Commerce and Consumer Affairs, decided by the Hawaii Supreme Court goes further to limit what general contractors are permitted to perform beyond what their general contractor licenses stipulate. This body thoroughly discussed and decided on what is the meaning of "incidental and supplemental" work by passing H.R. No. 63, with a unanimous vote during the 2014 session. Here are several quotes from HR 63:

"Whereas, the Court applied the ordinary meaning of "incidental and Supplemental" and found that in drafting section 444-8(c), HRS, the Legislature meant to provide specialty contractors with only a **limited ability** to perform work outside of their specialty."

"Whereas, the Court ultimately concluded that the Legislature meant for the "incidental and supplemental" exception for specialty contractors to be a **true exception**, and therefore it must be **interpreted narrowly** to preserve the statute's overarching purpose of protecting public safety by insuring that work is completed by fully competent contractors."

Based on the above, we again respectfully request that HB 130 would be preferable.

Respectfully Submitted,  
Ironworkers Stabilization Fund

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 10, 2015 5:53 PM  
To: CPCtestimony  
Cc: jmas808@gmail.com  
Subject: \*Submitted testimony for HB714 on Feb 11, 2015 14:30PM\*



**HB714**

Submitted on: 2/10/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeffrey Masatsugu	Hawaii Tapers Market Recovery Trust Fund	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**RALPH S. INOUE CO LTD**  
**GENERAL CONTRACTOR**

2831 Awaawaloa Street  
Honolulu, Hawaii 96819

T: 808.839.9002  
F: 808.833.5971

License No. ABC-457  
Founded in 1962

**LATE**

Sent Via E-Mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)  
& Via Fax at (808) 586-6161

February 10, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **STRONG OPPOSITION OF H.B. 714, RELATING TO PROCUREMENT.**  
Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.

HEARING

DATE: Wednesday, February 11, 2015  
TIME: 2:30 p.m.  
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Ralph S. Inouye Co., Ltd. (RSI), General Contractor and member of the General Contractors Association of Hawaii (GCA), is **IN STRONG OPPOSITION** to H.B. 714, which proposes to prohibit general contractors from performing incidental and supplemental work even if they are granted specialty licenses pursuant to being qualified and tested under their general contractors license. The GCA respectfully **requests that this bill be deferred indefinitely** because it is contrary to and will disrupt what has been the practice in the industry for years and will cause great confusion on the issue currently being debated in court and clarified by the Contractors License Board ("Board").

**This Measure is not about Public Safety - Rather about Protecting Turf**

Proponents of this bill may claim that allowing general contractors to perform specialty work poses a risk to public safety. It is necessary to examine this claim with great scrutiny because reality reflects that particular trades, in an effort to preserve particular scopes of work exclusively for themselves, have disguised such efforts in the name of public safety. While public safety is touted as the reasons, no symptomatic examples have surfaced indicating such. In fact, this bill appears to be a flagrant attempt at trying to limit all general contractors, including small "mom and pop" generals, to be simply construction managers of specialties, when many small general contractors self-perform much of the work to be more cost effective for consumers.

**Current Debate on the Incidental and Supplemental Language**

The term incidental and supplemental has been a topic of much debate in disputes regarding jurisdiction and the performance of work by a general contractor or a specialty contractor. Most recently this issue has been highlighted in the District Council 50 case which is undergoing its second round of judicial appeals, currently before the Intermediate Court of Appeals again. 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. 714 attempts to curtail a recent Board’s Final Order in response to the remand request by the Hawaii Supreme Court in *District Council 50 v. Lopez*, SCWC-28762, 2012 Haw. LEXIS 384 (December 3, 2012). The Supreme Court let stand the Board’s Final Order that states “[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 affirms that general contractors are able to properly perform incidental and supplemental work under specialties they are automatically provided just as any other specialty contractor. This has consistently been the case that for years. We would suggest that any disruption to this practice may cause seriously harmful and unintended consequences throughout our industry.

For these reasons, RSI is in **strong opposition** to H.B. 714 and we respectfully request that bill is deferred indefinitely.

**LATE**

Sent Via E-Mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)  
Or via Fax at (808) 586-6161

February 11, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **OPPOSITION TO H.B. 714, RELATING TO CONTRACTORS.**  
Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.



HEARING

DATE: Wednesday, February 11, 2015  
TIME: 2:30 p.m.  
PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

Royal Contracting Co., Ltd. has been a licensed contractor for over 50 years and finds no merit with this bill.

Royal Contracting Co., Ltd. opposes H.B. 714, Relating to Contractors because it is an attack on the standing interpretation by the Contractors License Board (CLB) and the application of incidental and supplemental work between general and specialty contractors. The Board has ruled that if a scope question is set forth before the Board, a determination with regard to incidental and supplemental will reviewed on a case by case basis before the Board in public.

H.B. 714 proposes to redefine incidental and supplemental in 444-1, HRS by attempting to quantify such work by a certain percentage and capping it at a certain amount. Furthermore, this measure would restrict a general contractor from doing incidental work, even within the areas where they are properly licensed.

H.B. 714 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the CLB. 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 H.B. 714 and recommends that the bill be deferred by the committee.**

Sincerely,

David C. Hulihee  
President

**TOMCO CORP.**  
*General Contractors*

**LATE**

February 11, 2015

**TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

**SUBJECT: OPPOSITION TO H.B. 714, RELATING TO CONTRACTORS.**  
Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.

**HEARING**

**DATE:** Wednesday, February 11, 2015  
**TIME:** 2:30 p.m.  
**PLACE:** Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

**TOMCO CORP. H.B. 714, Relating to Contractors because it is an attack on the standing interpretation by the Contractors License Board (CLB) and the application of incidental and supplemental work between general and specialty contractors. The Board has ruled that if a scope question is set forth before the Board, a determination with regard to incidental and supplemental will reviewed on a case by case basis before the Board in public.**

**H.B. 714 proposes to redefine incidental and supplemental in 444-1, HRS by attempting to quantify such work by a certain percentage and capping it at a certain amount. Furthermore, this measure would restrict a general contractor from doing incidental work, even within the areas where they are properly licensed.**

**H.B. 714 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the CLB. 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 H.B. 714 and recommends that the bill be deferred by the committee.**

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

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 11, 2015

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **STRONG OPPOSITION OF H.B. 714, RELATING TO PROCUREMENT.**  
Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.

HEARING

DATE: Wednesday, February 11, 2015  
TIME: 2:30 p.m.  
PLACE: Capitol Room 325

Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred eighty 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. 714, which proposes to define "incidental and supplemental" by quantifying it as a percentage or by a capped-off price. The GCA respectfully **requests that this bill be deferred indefinitely** because it is unnecessary, will cause unintended consequences and will greatly confuse parties as to what is considered incidental and supplemental work. Furthermore, this issue is still being litigated in court and proposed rulemaking has been initiated by the Contractors License Board ("Board").

**This Measure is not about Public Safety - Rather about Protecting Turf**

This measure purports to claim that "allowing general contractors to perform specialty work . . . poses a risk to public safety." It is necessary to examine this statement with great scrutiny because reality reflects that particular trades, in an effort to preserve particular scopes of work exclusively for themselves, have disguised such efforts in the name of public safety.

**Background regarding Incidental and Supplemental**

The term incidental and supplemental has been a topic of much debate in disputes regarding jurisdiction and the performance of work by a general contractor or a specialty contractor. Most recently this issue has been highlighted in the *District Council 50* case which is undergoing its second round of judicial appeals, currently before the Intermediate Court of Appeals again. 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.” As mentioned, it is important to note that the Rules Committee of the Contractors License Board is also going through the rulemaking process and is considering an amendment to the definition of incidental and supplemental along the lines of its position in the Board’s Final Order in the case *District Council 50 v. Lopez* SCWC-28762, 2012 Haw. LEXIS 384 (December 3, 2012).

H.B. 714 attempts to abrogate the decision by the *Board’s Final Order Upon Remand* (October 18, 2013) in response to the Hawaii Supreme Court in *District Council 50 v. Lopez*, in which the Board held that,

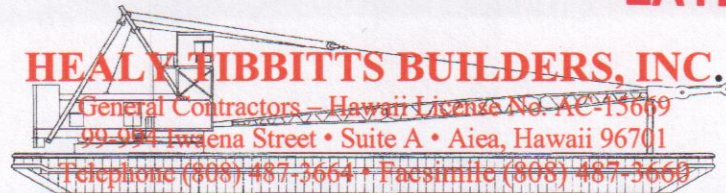
[b]ased on the Court’s explanation, the Board reaffirms its longstanding interpretation that “A” general engineering and “B” general building contractors who hold specialty contractor’s licenses that were automatically provided under HAR chapter 16-77 (such as a C-5 specialty contractor license), or 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. *Board’s Final Order Upon Remand* at 6.

This holding affirms that general contractors are able to properly perform incidental and supplemental work.

**H.B. 714 is flawed and would create more confusion.**

H.B. 714 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.. The Board has acknowledged in its Final Order Upon Remand in the *District Council 50* case and in subsequent court filings that the Board will review inquiries **on a case by case basis** and apply a test that will consider whether such work is less than a majority of the project and is subordinate and in addition to licensed work of greater importance.

For these reasons, GCA is in **strong opposition** to H.B. 714 and we respectfully request that bill is deferred.



February 11, 2015

Sent Via E-Mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

TO: HONORABLE ANGUS MCKELVEY, CHAIR, HONORABLE JUSTIN WOODSON, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **OPPOSITION TO H.B. 714, RELATING TO CONTRACTORS.**  
Prohibits general engineering contractors and general building contractors from performing incidental or supplemental work. Requires general engineering contractors and general building contractors to engage an appropriate specialty contractor to perform incidental work. Defines incidental work.

HEARING

DATE: Wednesday, February 11, 2015

TIME: 2:30 p.m.

PLACE: Capitol Room 309

Dear Chair McKelvey, Vice Chair Woodson 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. **opposes** H.B. 714, Relating to Contractors because it is an attack on the standing interpretation by the Contractors License Board (CLB) and the application of incidental and supplemental work between general and specialty contractors. The Board has ruled that if a scope question is set forth before the Board, a determination with regard to incidental and supplemental will reviewed on a case by case basis before the Board in public.

H.B. 714 proposes to redefine incidental and supplemental in 444-1, HRS by attempting to quantify such work by a certain percentage and capping it at a certain amount. Furthermore, this measure would restrict a general contractor from doing incidental work, even within the areas where they are properly licensed.

H.B. 714 erroneously proposes to quantify "incidental and supplemental" by haphazardly assigning it a percentage which goes directly against the sustained interpretation by the CLB. 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.

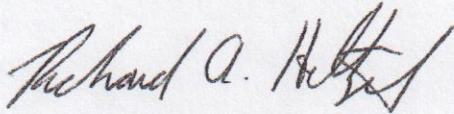
LATE TESTIMONY

**Healy Tibbitts Builders, Inc.**

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Accordingly, Healy Tibbitts Builders, Inc. strongly opposes H.B. 714 and recommends that the bill be deferred by the committee.

Very truly yours,  
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, appearing to read "Richard A. Heltzel". The signature is written in a cursive style with a large, stylized initial "R".

Richard A. Heltzel  
President