

SB1102

Measure Title: RELATING TO SPECIALTY CONTRACTORS.

Report Title: Specialty Contractors; Incidental and Supplemental Work; Definition

Description: Requires the Contractors License Board to adopt rules to define "incidental and supplemental to the performance of work" to clarify the percentage of a craft or trade in which a specialty contractor may engage without a license while performing work in a craft and trade for which contractor is licensed.

Companion: [HB996](#)

Package: None

Current Referral: CPH

Introducer(s): KIDANI, Espero

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Friday, February 24, 2017
9:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1102, RELATING TO SPECIALTY
CONTRACTORS.**

TO THE HONORABLE ROSALYN H. BAKER, 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 Senate Bill No. 1102, which proposes to require the Board to adopt rules to define the phrase “incidental and supplemental to the performance of work” to be no more than twenty-five percent (25%) of all work in any craft or trade.

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

The Board believes that this bill is unnecessary because the limit of “incidental and supplemental” work that can be performed by specialty contractors has already been established by the Hawaii Supreme Court in the District Council 50 v. Lopez, 129 Hawai'i 281, 287, 298 P.3d 1045, 1051 (2013) (“DC 50”) case. Among other things, the Court in DC 50 interpreted the term “incidental and supplemental” in HRS chapter 444 to be less than a majority. The Board complied with this directive, and interpreted less

than a majority to mean less than fifty per cent (50%).¹ The Board also 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).

The Board’s interpretation of “incidental and supplemental” work in its Board’s Final Order (“BFO”) has subsequently been upheld by the Circuit Court and Intermediate Court of Appeals. In addition, in May 2016, the Hawaii Supreme Court rejected a petition for writ of certiorari that challenged the BFO. Thus, the BFO is the current standard in the construction industry.

Since October 2013, the Board has been consistently applying this standard to numerous scope of work inquiries, and is not aware of any situation in which this standard has harmed the public.

For your information, the Board is currently in the process of amending its administrative rules to reflect the BFO’s interpretation of “incidental and supplemental”, and make its rules consistent with DC 50 and the BFO.

For these reasons, the Board respectfully requests that this bill be **held**, and the Board be allowed to continue addressing this matter in its administrative rules.

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 (“BFO”).

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Friday, February 24, 2017
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Thank you for the opportunity to testify in strong opposition of Senate Bill
No. 1102.

SAH - Subcontractors Association of Hawaii

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

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February 24, 2017

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

Presented By: Tim Lyons, President

Subject: S.B. 1102 - RELATING TO SPECIALTY CONTRACTORS

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we have mixed feelings about this bill. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

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

This bill attempts to address what some see as an incorrect interpretation of the Okada Trucking decision by the Contractors License Board in utilizing a less than 50 percent number in order to determine "incidental and supplemental". We have to agree with that because the court really did not provide any rationale for that number other than it was less than a majority.

We have an equally difficult time with 25 percent. We believe that both are arbitrary numbers that someone has reached out and grabbed and we don't find any particular rationale for either number. We do know that there needs to be some percentage established for incidental and supplemental otherwise it gets to be ridiculous for not only the contractors, but also the consumers who will have to employ multiple specialty contractors to perform even the most minor work. We are happy to discuss further what that "magic" percentage should be however at this point we are reluctant to agree that either 50 percent or 25 percent is that magic number.

Thank you.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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February 24, 2017

TO: HONORABLE ROSALYN BAKER, CHAIR HONORABLE CLARENCE NISHIHARA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1102, RELATING TO SPECIALTY CONTRACTORS.** Requires the Contractors License Board to adopt rules to define "incidental and supplemental to the performance of work" to clarify the percentage of a craft or trade in which a specialty contractor may engage without a license while performing work in a craft and trade for which contractor is licensed.

HEARING

DATE: February 24, 2017
TIME: 9:30 a.m.
PLACE: Conference Room 229

Dear Chair Baker, Vice Chair Nishihara and Committee Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five 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. 1102, which proposes to require the Contractors License Board to define "incidental and supplemental" to clarify the percentage of a craft or trade in which a specialty contractor may engage. The GCA respectfully **requests that the bill be held** because it is unnecessary as the Board is currently going through the rulemaking process to address this very issue and recently had a hearing before the Small Business Regulatory Board where no objections were raised by stakeholders.

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. S.B. 1102 attempts to curtail the decision by the Contractors License Board (CLB) Final Order 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.

S.B. 1102 is flawed and would create more confusion.

This measure directs the Board to adopt rules and suggests 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 Board in its Final Order.

For these reasons, GCA is in **strong opposition** to S.B. 1102 and we respectfully request that bill is deferred.

Testimony of
Christopher Delaunay
Pacific Resource Partnership

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Clarence K. Nishihara, Vice Chair

Friday, February 24, 2017
9:30 A.M.
State Capitol – Room 229

Aloha Chair Baker, Vice Chair Nishihara, and members of the Committee:

We respectfully oppose SB 1102 which requires the Contractors License Board (CLB) to adopt rules to define "incidental and supplemental to the performance of work" to clarify the percentage of a craft or trade in which a specialty contractor may engage without a license while performing work in a craft and trade for which contractor is licensed.

This issue has been reviewed and interpreted by the 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 just size or percentages, but as work in other trades directly related to and necessary for the completion of the project undertaken.

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.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.



Hawai'i Construction Alliance

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

February 18, 2017

The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair
and members
Senate Committee on Commerce, Consumer Protection, and Health
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Opposition to SB1102, Relating to Specialty Contractors

Dear Chair Baker, Vice Chair Nishihara, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; 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.

We **oppose SB1102**, which would require the Contractors License Board to adopt rules to define "incidental and supplemental to the performance of work" to clarify the percentage of a craft or trade in which a specialty contractor may engage without a license while performing work in a craft and trade for which contractor is licensed.

This issue has been extensively examined and debated over the past several years, and there continue to be attempts to relitigate the issue at the legislature each and every session.

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." This bill would frustrate the intent and 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 changes to the definition of "incidental and supplemental work" 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,



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

IRON WORKERS STABILIZATION FUND

February 22, 2017

Rosalyn H. Baker, Chair
Commerce, Consumer Protection and Health Committee
Room 230 - State Capitol
Honolulu, Hawaii 96813

Re: SB1102, Relating to Specialty Contractors
Hearing Date - February 24, 2017, 9:30am
Conference Room 229

Dear Chair Baker and Committee Members:

First, it should be recognized that the term “incidental and supplemental” is to apply ***only*** when there are two specialty contractors involved. Under the well established OkadaTrucking ruling which was established by the Hawaii Supreme Court in 2002, general contractors are prohibited from using this “incidental and supplemental” to take on work in a specialty for which they are not licensed.

We are clearly against the proposed amendment as set forth in section (d) of this bill, SB1102, because 25% of all work in the project, by common logic, is not “incidental and supplemental”. It would make a mockery out of the English language if 25% of the total job is considered to be “incidental and supplemental.” While examining this proposal, it should be kept in mind that the specialty contractor who would be able to avail himself or herself of the term “incidental and supplemental”, would be performing work that he or she is ***not*** licensed for. Again, we run into the ***overriding public policy of HRS Chapter 444 of “protecting” the general public.***

We would agree to the proposed bill if the term “incidental and supplemental” is limited to half a percent (1/2%) of all work in the project. Reason - if we take a big construction project like the rail, a 1% incidental rate would be equal to \$10 million dollars, which would equate to more than most construction projects. The overriding public policy of protecting the general public will not be compromised if such a limit is established.