

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 14, 2018
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1875, H.D. 1, RELATING TO SPECIALTY
CONTRACTORS.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Peter H.M. Lee, and I am the Chairperson of the Contractors License Board (“Board”) Legislative Commiee. Thank you for the opportunity to testify on H.B. 1875, H.D. 1. The Board takes no position at this time but offers the following comments.

This measure 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 ten percent (10%) of all work in the subcraft contract.

The Board has not had the opportunity to discuss this bill but will be discussing this measure at its next meeting on February 16, 2018. However, the Board has previously testified in strong opposition to similar measures for the following reasons.

The Board respectfully submits 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, 298 P.3d 1045 (2013) (“DC 50”) case. Among other things, the

Court in DC 50 interpreted the term “incidental and supplemental” in Hawaii Revised Statutes 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 percent (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 fifty percent 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 Hawaii 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 consistently applied this standard to numerous scope of work inquiries.

Thank you for the opportunity to testify on H.B. 1875, H.D. 1.

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”).

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

HOUSE OF REPRESENTATIVES
Committee on Consumer Protection & Commerce
Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

Thursday, February 14, 2018
2:00 P.M.
State Capitol – Room 329

Aloha Chair Takumi, Vice Chair Ichiyama and members of the Committee:

We respectfully **oppose** HB 1875 HD1 as it attempts to redefine the term “incidental and supplemental” which has already been clarified by the Contractor’s Licensing Board (CLB) through a Final Order and, more recently, the rulemaking process.

On October 18, 2013, a CLB Final Order was issued pursuant to the Hawaii Supreme Court’s ruling in District Council 50 v. Lopez,¹ which clarified the term “incidental and supplemental” work. The CLB concluded that to qualify as “incidental and supplemental” work, the work must:²

- (1) Represent less than 50% of the project (as measured in relation to the project’s total cost or extent); and
- (2) 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).

This Final Order was subsequently upheld by the Circuit Court on November 6, 2014, and by the Intermediate Court of Appeal’s on December 21, 2015.³ On May 10, 2016, the Hawaii Supreme Court

¹ District Council 50 v. Lopez, 129 Haw. 281 (2013).

² 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., Board’s Final Order Upon Remand, CLB-DR-2006-2 (2013).

³ District Council 50 v. Colon, CAAP-14-0001336 (Haw. App., 2015).



(Continued From Page 1)

denied further challenges to this Final Order when it rejected a March 28, 2016 “Application For Writ of Certiorari” in the District Council 50 v. Colon case.⁴

Furthermore, on November 17, 2017, the CLB held a public rulemaking hearing where it approved an amendment to § 16-77-34, Hawaii Administrative Rules (HAR) which clarified “incidental and supplemental” work. The amendment conforms to the Hawaii Supreme Court’s decision in the District Council 50 v. Lopez case and the CLB’s corresponding Final Order dated October 18, 2013. The approved amendment is now before the Governor for his consideration.

Since the CLB and the courts have clarified what qualifies as “incidental and supplemental” work, amendments in HB 1875 are unnecessary.

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.

⁴ Order Rejecting Application For Writ Of Certiorari, SCWC-14-0001336, May 10, 2016.

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 13, 2018

TO: HONORABLE ROY TAKUMI, CHAIR, HONORABLE LINDA ICHIYAMA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: **STRONG OPPOSITION TO H.B. 1875, HD1 RELATING TO SPECIALTY CONTRACTORS.** Requires the Contractors License Board to adopt rules to define the term "incidental and supplemental to the performance of work". Specifies that the definition shall refer to no more than ten per cent of all work in the subcontract contract. (HB1875 HD1)

HEARING

DATE: February 14, 2018
TIME: 2:00 p.m.
PLACE: Conference Room 329

Dear Chair Takumi, Vice Chair Ichiyama and Committee Members,

The General Contractors Association (GCA) is an organization comprised of over 500 general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. 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.

GCA is in strong opposition to H.B. 1875, HD1, Relating to Specialty Contractors which proposes to mandate the Contractors License Board to define "incidental and supplemental" by setting a percentage of a craft or trade in which a specialty contractor may engage. The current bill includes a percentage of ten percent. The GCA respectfully **requests that the bill be held** because it is unnecessary; the Contractors License Board recently underwent the adoption of administrative rules amending the existing definition of incidental and supplemental in alignment with the 2013 Hawaii State Supreme Court Decision in *District Council 50 vs. Lopez, State of Hawaii*.

H.B. 1875, HD1 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.

Background regarding Incidental and Supplemental

Due to the Okada Trucking ruling in 2002, 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 vs. Lopez, State of Hawaii* and the Supreme Court's decision in 2013 ("DC 50"). This case underwent two requests for certiorari by the Hawaii Supreme Court and was sent back to the Board for clarification and implementation. Since then, there have been legislative proposals at the Hawaii State Legislature attempting to "quantify" what incidental and supplemental is in reference to; many times these proposals present a flawed analysis for an already complicated field of construction. In 2013 the Hawaii Supreme Court ruled in DC 50 case that a C-5 cabinet millwork, and carpentry remodeling and repairs specialty contractor, cannot perform work that is not covered by the C-5 license unless it is incidental and supplemental to the C-5 work. According to the Court, "incidental and supplemental" meant that work could not be the majority of the work, but had to be minor in nature.

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." The Board recently passed its revised administrative rules in November 2017 and is awaiting the Governor's final approval. **Due to the pending approval of the administrative rules it would be prudent for the legislature to allow the process to take its course which intimately involves input from the construction industry and was recommended after unanimous approval by the Contractors License Board.**

These proposed changes to the term incidental and supplemental attempt to haphazardly amend what incidental and supplemental means by quantifying "incidental and supplemental" with a certain percentage. The Board has acknowledged in its Final Order Upon Remand, in subsequent court filings, and scope determinations 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. If a bill were to set a certain percentage for incidental and supplemental work it would result in more bid protests due to a host of additional subcontractors needing to be listed for a job and also increase costs, and greater inefficiency.

GCA Supports the Current Proposed Rule

As the Contractors License Board articulated in October 2013 –its' Final Order Upon Remand "the Court's decision did not expressly invalidate the Board's rule." Contractors License Board-DR 2006-2, District Council 50 Board's Final Order Upon Remand, p. 9. It is important to note that while the existing administrative rule in Section 16-77-34 has not been invalidated, it is laudable that the Board is attempting to further articulate the intent and meaning of incidental and supplemental. It would be hazardous for this legislative proposal to try to abdicate the work of the Contractors License Board and the industry and attempt to arbitrarily assign a percentage of what it thinks should be considered incidental and supplemental.

The GCA urges the committee to hold H.B. 1875, HD1 to allow the current rulemaking process to take its course. The application of the incidental and supplemental test has been ongoing since the 2013 Supreme Court ruling and has not resulted in any catastrophic event mandating legislative action. Thank you for this opportunity to present our strong opposition to H.B. 1875, HD1.

IRONWORKERS STABILIZATION FUND

January 31, 2018

Roy Takumi, Chair
Committee on Consumer Protection and Commerce
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Takumi and Members of the Committee on Consumer Protection and Commerce:

Re: Strong Support for HB 1875 – Relating to Specialty Contractors

We are in strong support of HB 1875, Relating to Specialty Contractors; that establishes an amount for incidental and supplemental work on a construction project.

The purpose of this bill is to ensure that all parties dealing with construction will know that incidental and supplemental work should be done by the subcontractors and that there is a no limit to to safety of the general public.

Additionally we wish to make an amendment to this bill to ensure the language will be clear to all parties. That any construction project under the Structural Engineers seal or stamp cannot have incidental and supplemental work. Since, this is dealing with the structure and integrity of a building we believe that you cannot have incidental/supplemental work.

(d) Notwithstanding section (c) above, any construction project requiring a structural engineer's stamp shall preclude any and all incidental and supplemental work. The specialty licenses falling under the purview of the structural engineer's stamp shall include the following specialty licenses, C-6, C-31, C-35, C-38, C-41, C-48, C-56. Specifically no "C" Specialty License Contractor shall perform the work of the specialty licnese under the incidental and supplemental provision as set forth in HRS 444-8 (c) above.

We believe this bill will ensure that the jobs will be done correctly and by trained individuals. We strongly support this measure for the working men and women of Hawaii. Thank you for your time and consideration.

327

SAH - Subcontractors Association of Hawaii

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

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

February 14, 2018

Testimony To: House Committee on Consumer Protection & Commerce
Representative Roy M. Takumi, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1875, HD 1 – RELATNG TO THE SPECIALTY CONTRACTORS.

Chair Takumi 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 subcontracting associations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIAETION 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

The Contractors License Board has already concurred with the opinion of the Court that incidental and supplemental is 49% or less by issuing administrative rule changes to that extent. The stipulations in this bill would override that and reduce it to 10%. We think that is too restrictive.

When it comes down to it, contractors would prefer the maximum flexibility and therefore tend to prefer the higher percentage (such as 49%) as the number to declare for less than a majority of the work. Apparently some would prefer to see that number be some other arbitrary number and a restrictive one at that. We would suggest that this Committee encourage the parties to get together in order to come up with a mutually agreeable number and then move this bill forward

Thank you.



LATE

HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300 · URL: hilecet.org

February 1, 2018

**HOUSE OF REPRESENTATIVES
COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

DATE: Wednesday, February 14, 2018
TIME: 2:00 P.M.
PLACE: Conference Room 329

RE: STRONG OPPOSITION TO HB1875 HD1 - RELATING TO SPECIALTY CONTRACTORS

Aloha Chair Roy Takumi, Vice Chair Linda Ichiyama, and members of the Committee on Consumer Protection & Commerce,

The Hawaii Laborers-Employers Cooperation and Education Trust (LECET) is a labor-management partnership between the 5000+ members of the Hawaii Laborers Union and its 250+ unionized contractors.

Hawaii LECET STRONGLY OPPOSES HB1875 HD1 which requires the Contractors License Board (board) to adopt rules to define the term "incidental and supplemental to the performance of work" and specifies that the definition shall refer to no more than ten per cent of all work in the subcraft contract.

The board already held a public hearing on Friday, November 17, 2017. The purpose of the public hearing was to amend Administrative Rules section 16-77-34, Work Incidental and Supplemental, to clarify that to qualify as "incidental and supplemental" work, that work must represent less than a majority (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 of the specialty contractor's license to perform). The amendment was intended to conform to the Hawaii Supreme Court's decision in the District Council 50 v. Lopez case, and the Board's corresponding Board's Final Order ("BFO") dated October 18, 2013, 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.

This bill attempts to provide a new percentage of 10% for all work in a subcraft's contract. This means that any work within a subcontractor's contract that is considered incidental and supplemental, and more than 10% must subbed out to a 2nd tier subcontractor. In other word, this bill encourages brokering construction work which will drive up the cost of construction.

For these reasons, we ask for your consideration to **defer HB1875 HD1 indefinitely.**

With respect,

Joy Kimura
Hawaii Laborers-Employers Cooperation
and Education Trust



LIUNA!

LATE

**TESTIMONY OF RYAN K. KOBAYASHI
GOVERNMENT AND COMMUNITY RELATIONS DIRECTOR
HAWAII LABORERS UNION LOCAL 368**

PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

JAMES DRUMGOLD JR.
Executive Board

ORLANDO PAESTE
Executive Board

JOSEPH YAW
Executive Board

MARTIN ARANAYDO
Auditor

RUSSELL NAPIHA'A
Auditor

MARK TRAVALINO
Auditor

ALFRED HUFANA JR.
Sergeant-At-Arms

COMMITTEE CONSUMER PROTECTION & COMMERCE

NOTICE OF HEARING

DATE: Wednesday, February 14, 2018

TIME: 2:00 p.m.

PLACE: Room 329

TESTIMONY IN OPPOSITION TO HB 1875 RELATING TO SPECIALTY CONTRACTORS

ALOHA COMMITTEE CHAIR TAKUMI, VICE-CHAIR ICHIYAMA, AND COMMITTEE MEMBERS,

My name is Ryan K. Kobayashi, Government and Community Relations Director for the Hawaii Laborers Union, Local 368. The Hawaii Laborers Union is made up of over 5000 working and retired members across the State of Hawaii. We are **OPPOSED to HB 1875 AS WRITTEN.**

On November 17, 2017 the State of Hawaii's Contractors License Board (Board) conducted a public hearing to amend Hawaii Administrative Rules Section 16-77-34 (Work Incidental and Supplemental) to conform to a Hawaii State Supreme Court ruling in the case of District Council 50 v. Lopez. At this hearing, the Board adopted the number of **less than 50%** as the qualifying number to qualify as "Incidental and Supplemental" work.¹

Pursuant to the adoption of the "less than 50%" standard adopted on November 17, 2017 a proposed change to the HAR 16-77-34 is currently being worked on by the Board. In addition, the "less than 50%" standard for Incidental and Supplemental work has been the Board's unofficial standard since 2013 when the initial Hawaii State Supreme Court decision was made.

Therefore, we would only support a change in the HRS only as far as it would specifically state the "less than 50%" standard (which the Board is presently drafting as a change to

¹ Incidental and Supplemental work must represent less than a majority (50% or less) 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.

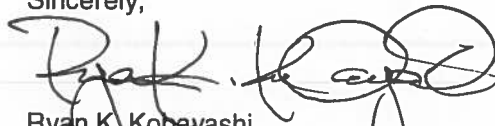
LIUNA Local 368
1617 Palama Street
Honolulu, HI 96817
Phone: (808) 841-5877
Fax: (808) 847-7829
www.local368.org

Feel the Power

HAR, and which has been putting into practice since 2013) to reflect consistency between the HRS and proposed change in the HAR.

Therefore, aside from the "less than 50%" language mentioned above we **OPPOSE HB 1875 AS WRITTEN.**

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan K. Kobayashi". The signature is stylized with large, sweeping loops and a prominent initial "R".

Ryan K. Kobayashi
Government and Community Relations Director
Hawaii Laborers' Union, Local 368



2018 OFFICERS

- PRESIDENT**
DEAN Y. UCHIDA
SSFM INTERNATIONAL, INC.
- PRESIDENT-ELECT**
MARSHALL HICKOX
HOMEWORKS CONSTRUCTION, INC.
- VICE PRESIDENT**
DWIGHT MITSUNAGA
DM PACIFIC, INC.
- SECRETARY**
CHRIS CHEUNG
CC ENGINEERING & CONSTRUCTION, INC.
- TREASURER**
BRIAN MOORE
CENTRAL PACIFIC BANK
- SPECIAL APPOINTEE-BUILDER**
GREG THIELEN
COMPLETE CONSTRUCTION SERVICES CORP.
- SPECIAL APPOINTEE-BUILDER**
MARK KENNEDY
HASEKO CONSTRUCTION MANAGEMENT
GROUP, INC.
- SPECIAL APPOINTEE-ASSOCIATE**
CRAIG WASHOFSKY
SERVCO HOME & APPLIANCE DISTRIBUTION
- IMMEDIATE PAST PRESIDENT**
EVAN FUJIMOTO
GRAHAM BUILDERS, INC.
- CHIEF EXECUTIVE OFFICER**
GLADYS MARRONE
BIA-HAWAII

2018 DIRECTORS

- KAREN BERRY**
TRADE PUBLISHING COMPANY
- DARCY ENDO-OMOTO**
HAWAIIAN ELECTRIC COMPANIES
- MARK HERTEL**
INTER-ISLAND SOLAR SUPPLY,
OAHU-MAUI-HAWAII-KAUAI
- BRENTON LIU**
DESIGN TRENDS CONSTRUCTION, INC.
- SARAH LOVE**
BAYS LUNG ROSE & HOLMA
- BEAU NOBMANN**
HPM BUILDING SUPPLY
- GARY T. OKIMOTO**
HONOLULU WOOD TREATING
- JORDAN OKIMURA**
BROOKFIELD HOMES HAWAII, LTD
- JACKSON PARKER**
D.R. HORTON, SCHULER DIVISION
- ALAN TWU**
HK CONSTRUCTION CORP.
- DARYL TAKAMIYA**
CASTLE & COOKE HOMES
- PAUL D. SILEN**
HAWAIIAN DREDGING
CONSTRUCTION CO. INC.

ADDRESS:
94-487 AKOKI STREET, SUITE 213
WAIPAHO, HAWAII 96797
P 808.847.4666

LATE

**Testimony to the House Committee on Consumer
Commerce
Wednesday, February 14, 2018
2:00 pm
State Capitol, Room 329**

RE: HB 1875 HD1 – Relating to Specialty Contractors

Chair Takumi, Vice-Chair Ichiyama, & members of the Committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is in opposition to HB 1875 HD1, which would require the Contractors' License Board to adopt rules defining "incidental and supplemental to the performance of work", specifying that the definition shall refer to no more than 10% of all contracted work.

We feel this bill is unnecessary because the limit is already established by the Hawaii Supreme Court, as noted by the Contractor's License Board.

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