

HCR-82

REQUESTING THE
AUDITOR TO CONDUCT
A REVIEW REGARDING
THE PERFORMANCE OF
"INCIDENTAL AND
SUPPLEMENTAL"
CONTRACTING WORK

HOUSE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A REVIEW REGARDING THE
PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING
WORK.

1 WHEREAS, it is of paramount importance to protect public
2 safety and welfare in any sort of construction work; and
3

4 WHEREAS, in construction work, a structural engineer
5 reviews all plans (known as S plans) that deal with the
6 structural integrity of the building, and the structural
7 engineer must approve the plans by stamping and validating these
8 plans; and
9

10 WHEREAS, the C-6, C-31, C-32, C-35, C-38, C-41, C-48, and
11 C-56 specialty subcontractor's license and other similar
12 licenses fall under the purview of a structural engineer and
13 must meet all requirements set forth in national and
14 international standards; and
15

16 WHEREAS, the structural engineer must ensure that
17 subcontractors and workers have sufficient knowledge and
18 experience to work on a construction project; and
19

20 WHEREAS, the case *District Council 50, of the International*
21 *Union of Painters and Allied Trades, et al., v. Lopez*, 298 P.3d
22 1045 (2013), dealt with the issue of whether Allied Pacific, a
23 general contractor performing renovation work at Lanakila
24 Elementary school, could undertake glass work as "incidental and
25 supplemental" to its automatically held C-5 specialty
26 subcontractor license and without a C-22 specialty contractor
27 license; and
28

29 WHEREAS, the Hawaii Supreme Court held that the Contractors
30 License Board of the Department of Commerce and Consumer Affairs



H.C.R. NO. 82

1 erred in its interpretation of what is deemed "incidental and
2 supplemental" in this case; and
3

4 WHEREAS, the Contractors License Board had erroneously
5 decided that any work that constitutes less than a majority of
6 the work can be deemed "incidental and supplemental" work; and
7

8 WHEREAS, the Contractors License Board has attempted to
9 pass an administrative rule to this effect; and
10

11 WHEREAS, although under chapter 444, Hawaii Revised
12 Statutes, the Contractors License Board has the authority to
13 administer, review, and grant contractors and subcontractors
14 licenses, it may be more useful to have an independent agency,
15 like the Auditor's Office, evaluate the need for new
16 construction licensing requirements; now, therefore,
17

18 BE IT RESOLVED by the House of Representatives of the
19 Twenty-ninth Legislature of the State of Hawaii, Regular Session
20 of 2018, the Senate concurring, that the Auditor is requested to
21 conduct a review about allowing no "incidental and supplemental"
22 work under the S plans of a structural engineer's purview,
23 including specialty licenses and C-6, C-31, C-32, C-35, C-38, C-
24 41, C-48, and C-56 licenses; and
25

26 BE IT FURTHER RESOLVED that the Auditor is requested to
27 include in the review:
28

29 (1) An estimate of the number of licenses granted by the
30 Contractors License Board;
31

32 (2) The possible implications if less than a majority of
33 the work performed is deemed "incidental and
34 supplemental";
35

36 (3) An examination of whether there are any public-safety
37 issues involved in the performance of "incidental and
38 supplemental" work;
39

40 (4) A review of best practices in construction projects;



H.C.R. NO. 82

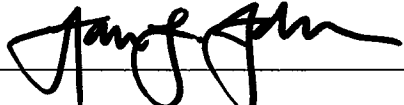
- 1 (5) An examination of whether regulating individuals
- 2 rather than companies would better protect public
- 3 safety and welfare;
- 4
- 5 (6) A review of all construction-project disasters in
- 6 Hawaii related to this issue; and
- 7
- 8 (7) Any proposed legislation; and
- 9

10 BE IT FURTHER RESOLVED that as the Auditor conducts the
 11 review, the Auditor is requested to meet with stakeholders
 12 regarding this issue, including construction unions,
 13 construction companies, structural engineers, steel fabricators
 14 and erectors, and trades councils; and

15
 16 BE IT FURTHER RESOLVED that no later than 20 days prior to
 17 the convening of the Regular Session of 2019, the Auditor is
 18 requested to submit to the Legislature a report of the Auditor's
 19 findings and recommendations, including any proposed
 20 legislation; and

21
 22 BE IT FURTHER RESOLVED that certified copies of this
 23 Concurrent Resolution be transmitted to the Auditor, Governor,
 24 and Director of Commerce and Consumer Affairs.

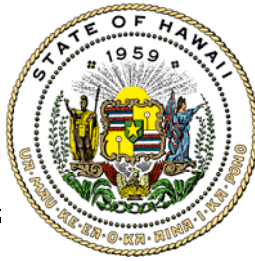
25
 26
 27

OFFERED BY:  _____
 MAR - 7 2018



HCR-82

TESTIMONY



HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair

HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT
The Honorable Bertrand Kobayashi, Chair
The Honorable Mark M. Nakashima, Vice Chair

**H.C.R. NO. 82, REQUESTING THE AUDITOR TO CONDUCT A REVIEW
REGARDING THE PERFORMANCE OF “INCIDENTAL AND
SUPPLEMENTAL” CONTRACTING WORK.**

**H.R. NO. 67, REQUESTING THE AUDITOR TO CONDUCT A REVIEW
REGARDING THE PERFORMANCE OF “INCIDENTAL AND
SUPPLEMENTAL” CONTRACTING WORK.**

Hearing: Wednesday, March 21, 2018, 3:15 p.m.

The Office of the Auditor **has no position** regarding H.C.R. No. 82 and H.R. No. 67, which request our office to “conduct a review about allowing no ‘incidental and supplemental’ work under the S plans of a structural engineer’s purview, including specialty licenses and C-6, C-31, C-32, C-35, C-38, C-41, C-48, and C-56 licenses.” **However, we have concerns about our ability to do the requested work.**

H.C.R. No. 82 and H.R. No. 67 appear to request assessments that are beyond our office’s usual work and staff expertise. Although our office does conduct analyses of proposed regulatory programs, these reviews are for proposed regulation of a previously unregulated profession or vocation. Instead, the review requested in these resolutions appears to seek an analysis of a possible change in the scope of existing regulations. The agency, in consultation with legal counsel, is in a better position to analyze the details as to the implementation of the existing regulatory scheme following the recent court decision. Our office typically does not do this type of work.

In addition, our office does not possess substantive expertise regarding “public-safety issues involved in the performance of ‘incidental and supplemental’ work” or knowledge regarding “best practices in construction projects” as called for in the requested assessment. Given this, we may need to retain the services of a subject matter consultant to assist us on the substantive issues should these resolutions move forward.

Thank you for considering our testimony regarding H.C.R. No. 82 and H.R. No. 67.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEES ON
LABOR AND PUBLIC EMPLOYMENT
AND
LEGISLATIVE MANAGEMENT

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, March 21, 2018
3:15 p.m.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 82/HOUSE
RESOLUTION NO. 67, REQUESTING THE AUDITOR TO CONDUCT A REVIEW
REGARDING THE PERFORMANCE OF “INCIDENTAL AND SUPPLEMENTAL”
CONTRACTING WORK.**

TO THE HONORABLE AARON LING JOHANSON, CHAIR, THE HONORABLE
BERTRAND KOBAYASHI, CHAIR, AND MEMBERS OF THE COMMITTEES:

My name is Peter H.M. Lee, and I am the Chairperson of the Contractors License Board (“Board”) Legislative Committee. Thank you for the opportunity to testify on H.C.R. 82 and H.R. 67, which requests the State Auditor to conduct a review regarding the performance of “incidental and supplemental” contracting work. The Board strongly opposes these proposed resolutions for the following reasons.

These proposed resolutions are requesting the auditor to conduct a study that would not allow the performance of “incidental and supplemental” work based on one factor: that work is under the purview of a structural engineer. It further requests that the following specific specialty licenses be considered in the exclusion: C-6 carpentry framing; C-31 masonry; C-32 ornamental, guardrail, and fencing; C-35 pile driving, pile and caisson drilling and foundation; C-38 post tensioning; C-41 reinforcing steel; C-48 structural steel; and C-56 welding. Based upon the language in the proposed resolutions, the structural engineer ensures that the subcontractors and workers have sufficient knowledge and experience to work on a construction project. The Board is the licensing authority that grants licenses, and it is unclear why the structural engineer is responsible for determining the knowledge and experience of the subcontractors and workers. The Board believes too many variables exist in construction work to carve out

specialty classifications that cannot be performed as “incidental and supplemental” work. The Board respectfully submits that its Final Order Upon Remand issued October 18, 2013 (“BFO”)¹, should remain as the current standard in the construction industry for “incidental and supplemental” work.

In addition, the Board respectfully submits that these resolutions are unnecessary because the limit of “incidental and supplemental” work that specialty contractors can perform has already been established by the Hawaii Supreme Court in District Council 50 v. Lopez, 129 Hawai‘i 281, 298 P.3d 1045 (2013) (“DC 50”). 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. 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).

Since October 2013, the Board has consistently applied this standard to numerous scope of work inquiries. The Board carefully considers each inquiry pertaining to “incidental and supplemental” work and studies each project’s plans and specifications. The Board considers many factors, including life safety, cost, extent of work, number of man hours, amount of materials involved, proximity of the other specialty contracting work to the primary work, and whether the work is less than a majority of the project. The Board’s current implementation of its BFO is comprehensive, fair, and protects public health and safety.

Lastly, the Board disagrees with some of the representations in the “WHEREAS” paragraphs of the proposed resolutions. The Board would like to point out that its

¹ See 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, for the BFO.

House Concurrent Resolution No. 82 and
House Resolution No. 67
March 21, 2018
Page 3

interpretation of “incidental and supplemental” work in its 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.

Thank you for the opportunity to testify in opposition to H.C.R. 82 and H.R. 67.



INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Affiliated with A.F.L.-C.I.O.

LOCAL UNION NUMBER 625

94-497 UKEE STREET • WAIPAHU, HAWAII 96797

T.G. Paris
President Emeritus

March 21, 2018

Aaron Ling Johanson, Chair
Committee on Labor & Public Employment

Bertrand Kobayashi, Chair
Committee on Legislative Management
House of Representatives
State Capitol
Honolulu, Hawai`i 96813

RE: HCR82/HR67 REQUESTING THE AUDITOR TO CONDUCT A REVIEW REGARDING
THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING
WORK.

Dear Chair Johanson, Chair Kobayashi, and honorable members:

The Iron Workers, Local 625, AFL-CIO is in **STRONG SUPPORT** of these resolutions.

HCR82/HR67 requests that the auditor conduct a review regarding the performance of "incidental and supplemental" contracting work, especially as it relates to improving **public safety** of projects under the purview of a structural engineer.

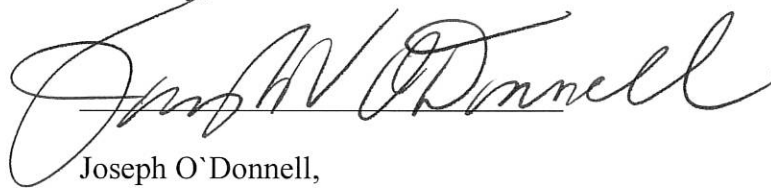
We strongly support this bill because we believe in public safety and the safety of our Hawai`i workers. All the work that Ironworkers do in Hawai`i is covered under the "S stamp" of a structural engineer, including steel erection. Steel erection is undisputedly one of the most dangerous work to do in the United States. Steel erection is a trade that commonly experiences a high rate of fatalities. Last year, we lost seven Ironworker brothers to job related industry while performing steel erection across the country. These men perished on the job that was covered under the purview of a structural engineer, or similar, in their various states.

Ironworkers are rigorously trained and go through apprenticeship and journeyman programs that allows them high levels of safety training for steel erection. Even with all that training the job is still extremely dangerous and fatalities happen. Unqualified workers doing structural steel erection is an extreme danger to the workers. Further, unqualified workers doing structural steel erection can lead to shoddy work resulting in property damage, injury, or even fatalities.

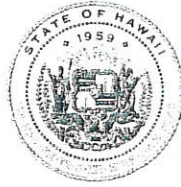
Unqualified workers are doing steel erection right now in our state. As an example, in I filed a complaint with the Regulated Industries Complaints Office (RICO) regarding the unlicensed steel erection on a construction project behind Kaiser Waipio Medical Office (Case No. CLB2015-181-L). In April 29, 2016, RICO informed me that there was "...no licensing violations. The structural steel portion was *incidental and supplemental* to the projects." (emphasis added; *See attached record*). We believe that the Contractors License Board erroneous interpretation of incidental and supplemental will lead towards unwarranted risk, injury, property damage, and even death.

We do not wish to lose anyone at home. Please help us make Hawai`i safer for our people.

Sincerely,

A handwritten signature in black ink, reading "Joseph O'Donnell". The signature is written in a cursive style with a large, sweeping initial "J" and "O".

Joseph O'Donnell,
Business Manager, Financial Secretary-Treasurer
Iron Workers Union, Local 625



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS

DARIA A. LOY-GOTO
COMPLAINTS AND
ENFORCEMENT OFFICER

STATE OF HAWAII
REGULATED INDUSTRIES COMPLAINTS OFFICE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
LEIOPAPA A KAMEHAMEHA BUILDING
235 SOUTH BERETANIA STREET, NINTH FLOOR
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HUALALAI CENTER
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KAILUA-KONA, HAWAII 96740

MAUI OFFICE
1063 LOWER MAIN STREET, SUITE C-216
WAILUKU, HAWAII 96793

KAUAI OFFICE
3060 EIVA STREET, SUITE 204
LIHUE, HAWAII 96766

April 29, 2016

Mr. Joseph V. O'Donnell
Iron Workers Union Local 625
94-497 Uke'e Street
Waipahu, HI 96797

Dear: Mr. O'Donnell:

RE: Your Complaint Against
RESOLUTE PERFORMANCE
CONTRACTING LLC
Case No. CLB 2015-181-L

B
L-48, 10/2/15
EFF.

The Regulated Industries Complaints Office has completed its investigation of the above complaint. Upon careful review of all available evidence, there appears to be no licensing violations. The structural steel portion was incidental and supplemental to the projects. This case will be closed the case with no further action.

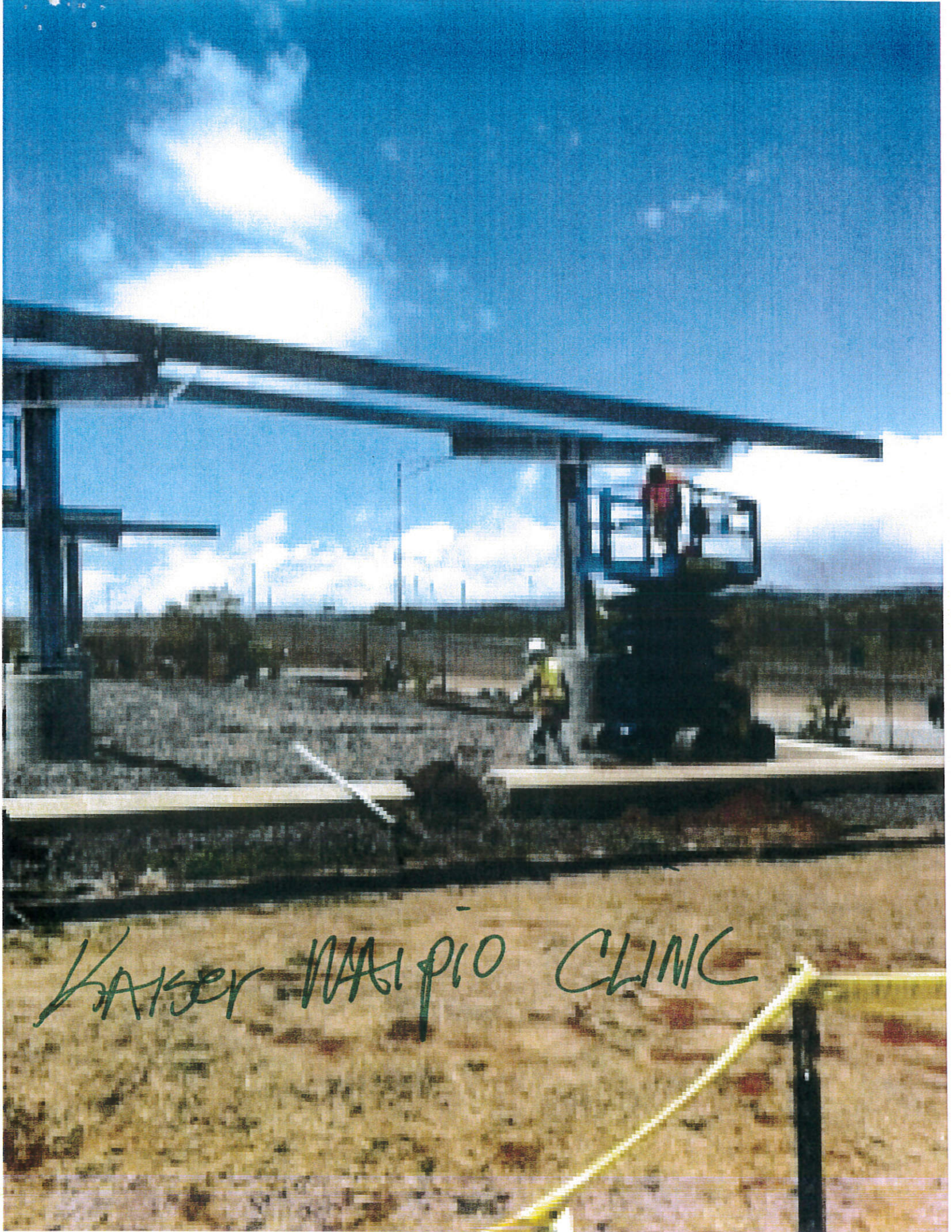
Thank you for sharing your concern with us. If you have any questions, please call me at 586-2678.

Very truly yours,


Bertram Apo
Investigator



HAUSER WAIPIO-CLINIC



KAISER MANI PIO CLINIC

11/15/51 Wagon Hill



NANA KULI KAUSER CLINIC





WANA KULI Kaiser Clinic

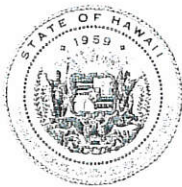




Kaiser Kooka Clinic

KAREN KODAN CLINK





DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

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KAUAI OFFICE
3060 EWA STREET, SUITE 204
LIHUE, HAWAII 96765

May 11, 2017

Joseph V. O'Donnell
94-497 Uke'e Street
Waipahu, Hawaii 96797

Re: RICO Case No. CLB 2015-181-L
Resolute Performance Contracting, LLC; Robert D. Olson

Dear Mr. O'Donnell:

This letter is to update you on the status of your complaint filed with our office. This office entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order (the "Settlement Agreement"), with Resolute Performance Contracting, LLC, and Robert D. Olson (collectively, "Respondents"). Pursuant to the Settlement Agreement, which was approved by the Contractors License Board on April 13, 2017, Respondents agreed to pay a fine of \$500.00, which has been paid in full. A copy of the Settlement Agreement is enclosed for your files.

We will be placing our file on inactive status at this time. I would like to thank you for referring this matter to our office for handling.

Very truly yours,

WENDY J. UTSUMI
Staff Attorney

WJU:ps

Enclosure (1)

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. CLB 2015-181-L.

8. Respondents understand this Settlement Agreement is public record pursuant to Hawaii Revised Statutes chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents collectively agree to pay a fine in the amount of FIVE HUNDRED AND NO/100 U.S. DOLLARS (\$500.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn.: Wendy J. Utsumi, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this Settlement Agreement is returned to RICO.

2. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph C.1 above, Respondents' licenses shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondents shall turn in all indicia of the license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondents understand Respondents cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondents understand that if Respondents desire to become licensed again, Respondents must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondents violate any provision of the statutes or rules governing the conduct of contractors in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondents agree that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondents in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree that neither Respondents nor any attorney that Respondents may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondents on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.


Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed in this Settlement Agreement is to be read in the manner that most completely protects of the consuming public.

No Reliance on Representations by RICO. Other than the matters specifically in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondents to induce entry into this Settlement Agreement, and Respondents are not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

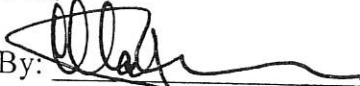
IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Honolulu, HI, 3-28-17.
(CITY) (STATE) (DATE)

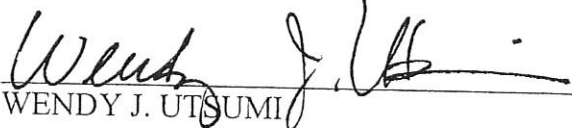

ROBERT D. OLSON
Respondent

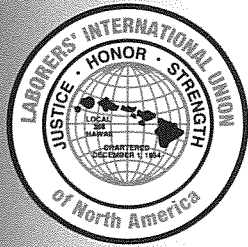
DATED: Tempe, Arizona, 3/23/17.
(CITY) (STATE) (DATE)

RESOLUTE PERFORMANCE CONTRACTING,
INC.

By: 
Its MALCOLM PERSEN, PRESIDENT
Respondent

DATED: Honolulu, Hawaii, MAR 29 2017.


WENDY J. UTSUMI
Attorney for Department of Commerce and
Consumer Affairs



LIUNA!

**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

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

COMMITTEE ON LABOR

NOTICE OF HEARING

DATE: Wednesday, March 21, 2018

TIME: 3:15 p.m.

PLACE: Room 423

**TESTIMONY IN OPPOSITION TO HCR 82/HR67 REQUESTING THE
AUDITOR TO CONDUCT A REVIEW REGARDING THE
PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL "
CONTRACTING WORK.**

**ALOHA COMMITTEE CHAIR JOHANSON, VICE-CHAIR HOLT, 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, and we **OPPOSE HCR82/HR67.**

First, we disagree with the fact that the Contractors License Board (CLB) erroneously decided that any work that constitutes less than a majority of the work can be deemed "incidental and supplemental" work. When in fact, it was the Hawaii State Supreme Court who in DC50 v. Lopez, interpreted the term "incidental and supplemental" in Chapter 444 as "less than a majority". This was a decision made by the Hawaii State Supreme Court and not the CLB. The CLB merely complied with the court's orders.

Secondly, we disagree that the State Auditor's Office is the appropriate governmental agency to perform any perceived study with regard which trades or license classifications should require a "stamp" from the structural engineer. Construction and/or license classifications are highly

Feel the Power

technical and specialized areas of knowledge, to ask an agency or office who does not regularly deal in those areas of specific knowledge to deliver an opinion or study not in their specific area of expertise is risky at best not only for the industry as a whole, but to the proponents of such a study as well.

Therefore for the above reasons, we **OPPOSE HCR82/HR67**.

IRONWORKERS STABILIZATION FUND

March 20, 2018

Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
Bertrand Kobayashi, Chair
Committee on Legislative Management
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Johanson & Chair Kobayashi and Members of the Committee on Labor and Public Employment and Legislative Management:

Re: Strong Support for HCR 82/HR67 – Requesting the Auditor to Conduct a Review of the Performance of “Incidental and Supplemental” Work

We are in strong support of HR67/HCR82, Requesting the Auditor to Conduct a Review of the Performance of “Incidental and Supplemental” Work.

The purpose of this resolution 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 limit to the work that can be done as incidental/supplemental. Additionally, we have seen that incidental/supplemental construction work **should not be done on any** part dealing with the structure or structural integrity of the building. It has been shown on numerous occasions nationally and locally that if the construction job is done by an untrained individual or company it can result in a catastrophic event. This includes the most recent example of the FIU Bridge collapse in Florida. Locally we have seen construction jobs stopped due to insufficient training that created structurally unsound buildings.

We believe a thorough review of what cannot be allowed under the term “incidental and supplemental” construction work is needed. Especially when dealing with the structural integrity of a building. To ensure that public safety is kept.

We believe this resolution 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.

HCR-82

**LATE
TESTIMONY**



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

March 21, 2018

**HOUSE OF REPRESENTATIVES
REGULAR SESSION OF 2018**

LATE

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

COMMITTEE ON LEGISLATIVE MANAGEMENT

NOTICE OF HEARING

DATE: Wednesday, March 21, 2018
TIME: 3:15 PM
PLACE: Conference Room 423

RE: STRONG OPPOSITION TO HCR 82 and HR 67 - REQUESTING THE AUDITOR TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK.

Aloha Chair Aaron Johanson, Vice Chair Daniel Holt, and members of the Committee on Labor & Public Employment,

Aloha Chair Bertrand Kobayashi, Vice Chair Mark Nakashima, and members of the Committee on Legislative Mgt,

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 HCR 82 and HR 67** which proposes to request the auditor to conduct a review regarding the performance of "incidental and supplemental" contracting work. We feel these resolutions are unnecessary.

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).

These resolutions also propose that the auditor conduct a study that would not allow the performance of "incidental and supplemental" work under the purview of a structural engineer for the following specific specialty licenses: C-6 Carpentry framing, C-31 Masonry, C-32 Ornamental, guardrail, and fencing, C-35 Pile driving, pile and caisson drilling and foundation, C-38 Post tensioning, C-41 Reinforcing steel, C-48 Structural steel, and C-56 Welding. These resolution continues to say that the structural engineer must ensure that subcontractors and workers have sufficient knowledge and experience to work on a construction project. I find it hard to believe that any structural engineer would agree to the additional liability and responsibility of doing what the board already does. Is the Structural Engineers Association of Hawaii (SEAOH) aware of this?

For these reasons, we ask for your consideration to **defer both HCR 82 and HR 67 indefinitely.**

With respect,

Joy Kimura
Hawaii Laborers-Employers Cooperation
and Education Trust

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 21, 2018

TO: HONORABLE AARON JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

HONORABLE BERT KOBAYASHI, CHAIR, HONORABLE MARK NAKASHIMA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT

SUBJECT: **OPPOSITION TO HCR 82/HR 67.** REQUESTING THE AUDITOR TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF INCIDENTAL AND SUPPLEMENTAL CONTRACTING WORK

HEARING

LATE

DATE: March 21, 2018
TIME: 3:15 PM
PLACE: Conference Room 423

Dear Chair Johanson, Chair Kobayashi, Vice Chair Holt, Vice Chair Nakashima and Members of the Committees,

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 opposition to HCR 82 and HR 67 because it is proposing that the Auditor, who may have little to no construction background to do a study on the performance of incidental and supplemental work as it relates to the construction industry. The GCA was strongly against H.B. 1875 which proposed 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. This Resolution is directly related to the proposed legislation. The GCA respectfully **requests these Resolutions 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*.

The Resolutions are flawed and an Auditor's assessment could create confusion.

This measure alleges false statements as to the Contractors License Board's Action and the decision of the Supreme Court. Further, the Resolution calls out eight C speciality licenses without any justification as to why those six should be precluded from doing incidental and supplemental work.

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.**

Any proposed changes to the term incidental and supplemental may haphazardly amend what incidental and supplemental means by quantifying "incidental and supplemental" with a certain percentage or carving it out for specific C specialty licenses. 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.

The GCA urges the committee to defer these Resolutions as 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.



**Testimony to the House Committee on Labor & Public Employment;
and Legislative Management
Wednesday, March 21, 2018
3:15 pm
State Capitol, Room 423**

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**RE: HCR 82 / HR 67 – Requesting the Auditor to Conduct a Review
Regarding the Performance of “Incidental & Supplemental”
Contracting Work**

Chairs Johanson & Kobayashi, Vice-Chairs Holt & Nakashima & 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 HCR 82 / HR 67, which requests the Auditor to conduct a review on “incidental and supplemental” contracting work. This is specifically regarding the definition and interpretation of “incidental and supplemental” 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. Therefore, this review is unnecessary.

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

