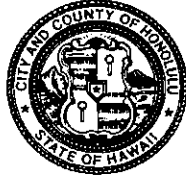


DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



MARK YONAMINE, P.E.
DIRECTOR

HAKU MILLES, P.E.
DEPUTY DIRECTOR

March 9, 2020

The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara Jr., Vice-Chair
and Members of the Committee on Labor, Culture and the Arts
The House
State Capitol, Room 224
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Taniguchi, Vice-Chair Ihara, and Members:

SUBJECT: House Bill No. 1799 HD1
Relating to Contractors

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 1799 HD1, which specifies that, "any new work under a C-48 specialty license (structural steel contractor) or any sublicense shall not be deemed to be incidental and supplemental work." DDC administers a large number of construction contracts every year, many of which include some structural steel content.

The proposed legislation would make an exception regarding structural steel subcontractors that sets a very undesirable precedent. It would create a situation that is likely to generate more protests, because if there is one piece of structural steel in a project, the general contractor must list that subcontractor or have their bid thrown out.

Based on the above consideration, DDC respectfully **opposes** House Bill No. 1799 HD1.

Thank you for the opportunity to express our opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Yonamine".

Mark Yonamine, P.E.
Director

Testimony of the Contractors License Board

**Before the
Senate Committee on Labor, Culture and the Arts
Tuesday, March 10, 2020
2:45 p.m.
State Capitol, Conference Room 224**

**On the following measure:
H.B. 1799, H.D. 1, RELATING TO CONTRACTORS**

Chair Taniguchi and Members of the Committee:

My name is Neal Arita, and I am the Legislative Committee Chairperson of the Contractors License Board (Board). The Board opposes this bill.

The purpose of this bill is to prohibit the performance of incidental and supplemental work by a specialty contractor on any new work in the C-48 structural steel classification.

The Board discussed this bill at its meeting on February 14, 2020. The Board believes too many variables exist in construction work, including, but not limited to, new construction work, to carve out a specialty classification 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 the current standard in the construction industry for incidental and supplemental work.

In addition, the Board respectfully submits that the limit of incidental and supplemental work that all specialty contractors can perform has already been established by the Hawaii Supreme Court in District Council 50 v. Lopez, 129 Haw. 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 50 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

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.

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 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 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 the public's health and safety.

Thank you for the opportunity to testify on this bill.

HB-1799-HD-1

Submitted on: 3/7/2020 10:01:03 AM

Testimony for LCA on 3/10/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

Testimony of
Pacific Resource Partnership

Senate Committee on Labor, Culture and the Arts
The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair

HB 1799 HD1

Tuesday, March 10, 2020
2:45 P.M.
Conference Room 224

Aloha Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

Pacific Resource Partnership (PRP) respectfully **opposes** HB 1799 HD1, which prohibits the performance of incidental and supplemental work by a specialty contractor on any new work in the C-48 structural steel classification.

PRP opposes a special carve out for the C-48 specialty license provided for in HB 1799 HD1, which would prohibit the performance of “incidental and supplemental” work by a specialty contractor on any work that could potentially fall under the C-48 classification, for two reasons: 1) the Hawaii Supreme Court and the Contractor License Board (CLB) have already clarified what qualifies as “incidental and supplemental” work; and 2) this type of exception would set an undesirable precedent for the entire construction industry.

On October 22, 2013, the CLB’s Final Order Upon Remand 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 complied with Supreme Court’s directive and determined that to qualify as “incidental and supplemental,” the work must:²

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

This Final Order Upon Remand was challenged and 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

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)

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

Since the Court and CLB have clarified what qualifies as “incidental and supplemental” work, PRP does not see a compelling reason why legislative action is needed in order to change the law to benefit contractors who hold a specific specialty classification.

Moreover, if HB 1799 HD1 is enacted into law, it would likely impact the entire construction industry by encouraging more bid protests and jurisdictional challenges against a licensed contractor if limited structural steel is used to build a project on public works or private projects respectively.

Given the above, PRP respectfully requests that this Committee defer HB 1799 HD1. Thank you for this opportunity to submit written testimony.

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