

Testimony of the Contractors License Board

Before the
House Committee on Consumer Protection & Commerce
Friday, March 19, 2021
2:00 p.m.
Via Videoconference

H.R. 120, REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF “INCIDENTAL AND SUPPLEMENTAL” CONTRACTING WORK

Chair Johanson and Members of the Committee:

My name is Candace Ito, and I am the Executive Officer of the Contractors License Board (Board). The Board offers comments on this resolution.

The purposes of this resolution are to request that the Legislative Reference Bureau (LRB) conduct a study of: (1) best practices regarding "incidental and supplemental" contracting work; (2) examine how other state jurisdictions define and handle “incidental and supplemental” contracting work; and (3) include factors, other than cost, that other state contractor licensing boards or similar entities apply when determining “incidental and supplemental” with respect to contracting work.

The Board will be reviewing this resolution at its meeting on March 19, 2021. In the meantime, the Board offers comments based on its prior position on similar resolutions.

Pursuant to the Hawaii Supreme Court decision in the District Council 50 v. Lopez, 129 Haw. 281, 287, 298 P.3d 1045, 1051 (2013), the Board has determined that to qualify as “incidental and supplemental” work, 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 the specialty contractor is licensed to perform)¹.

The Board’s determination takes into account the cost and extent of the other specialty contracting work and whether the work constitutes less than a majority of the

¹ See, the October 18, 2013, Board’s Final Order Upon Remand (Final Order) 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.

project; the Board also requires that the other specialty contracting work be subordinate and constitute less than a majority of the project.

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 Final Order is comprehensive, fair, and protects the public's health and safety.

In addition, page 1, line 27 through line 35, and page 3, lines 11 through 15 indicate that these resolutions pertain to "incidental and supplemental" work of certain specialty classifications. If a study is to be conducted, it should include all the contractor specialty classifications and afford representatives from the various specialty contractor classifications an opportunity to provide input. In addition, if the LRB will be required to solicit input from entities that are not contractors, such as construction unions, it should likewise solicit input from contractor associations.

Thank you for the opportunity to testify on this resolution.



LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

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

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

LOCAL UNION NUMBER 625

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T.G. Paris
President Emeritus

March 19, 2021 - 2 pm
House - Consumer Protection and Commerce Committee
Via Videoconference
State Capitol -415 South Beretania Street

Re: HR120/HCR141 - REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK

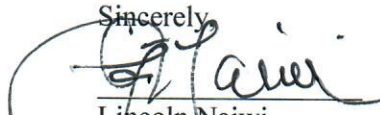
Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the committee:

We **SUPPORT** resolutions HR120/HCR141. These resolutions request the Legislative Reference Bureau (LRB) to conduct a review regarding the performance of "incidental and supplemental" contracting work. The current Contractors License Board (CLB) interpretation of "incidental and supplemental" causes confusion in the industry and will ultimately lead to injury and even deaths.

We believe in **public safety** and the **safety of our Hawaii workers**. All the work that Ironworkers do in Hawaii 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. According to Occupational Safety and Health Administration (OSHA), steel erectors continue to suffer 35 fatal accidents per year. Many of them ironworker brothers and sisters. These men and women 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 as fatal accidents still occur. Unqualified workers doing structural steel erection is an extreme danger to the worker and to the public.

In 2019, two ironworkers became permanently disabled after being injured on the job with a qualified licensed contractor and cannot return to the trade. We can only imagine the number of injuries that occur to unqualified workers that do ironworker work while on projects under unscrupulous contractors that are not properly licensed but use "incidental and supplemental." Further, the Regulated Industries Complaints Office (RICO) has difficulty doing enforcement given the current board interpretation. Thus, unqualified workers are doing structural steel erection in Hawaii. Such work is shoddy resulting in property damage, structural defects, and ultimately puts the public at risk of injury or fatalities when those structures fail. Let's protect our workers and the public from harm by ensuring the legislature and the CLB have access to the best practices regarding "incidental and supplemental" contracting work.

Sincerely,



Lincoln Naiwi
President

IRON WORKERS STABILIZATION FUND

March 19, 2021 - 2 pm
House - Consumer Protection and Commerce Committee
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State Capitol -415 South Beretania Street

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Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the committee:

The Hawaii Iron Workers Stabilization Fund stands in solidarity with Iron Workers Local 625, AFL-CIO in support of these resolutions. We wish to continue the conversation on how best to address “incidental and supplemental” contracting work. Mahalo.