

Testimony of the Contractors License Board

Before the
Senate Committee on Commerce & Consumer Protection
Thursday, March 25, 2021
9:30 a.m.
Via Videoconference

S.R. 159, REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF “INCIDENTAL AND SUPPLEMENTAL” CONTRACTING WORK.

Chair Baker and Members of the Committee:

My name is Candace Ito, and I am the Executive Officer of the Contractors License Board (Board). The Board opposes 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) how other state jurisdictions define and handle "incidental and supplemental" contracting work; and (3) factors, other than cost, that other state contractor licensing boards or similar entities apply when determining "incidental and supplemental" with respect to contracting work.

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

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.

Since October 2013, the Board has consistently applied this standard to numerous scopes 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 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.