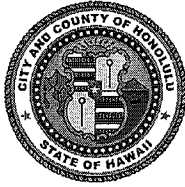


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 9, 2022

The Honorable Brian T. Taniguchi, Chair
and Members of the Committee on Labor,
Culture and the Arts
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Committee Members:

**Subject: Senate Bill No. 2709
Relating to Contractors**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2709, which seeks to clarify that a licensed specialty contractor may perform incidental and supplemental work in crafts or trades other than in which the specialty contractor is licensed.

This Bill defines "incidental and supplemental work" as work done in other trades "directly related to and necessary for the completion of the project undertaken by a specialty contractor licensee pursuant to the scope of the licensee's license; provided that the work shall not exceed more than five per cent of the specialty contractor licensee's total work on the project."

This differs from the current definition, which states that "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." By including the five percent limit, the Bill would require a general contractor for many smaller projects, such as air-conditioning installation, solar water-heating residential installation, and bathroom renovation where new cabinetry or flooring is installed to accommodate new plumbing fixtures. This new requirement will add unwanted costs and possibly delays for the homeowner at a time when budgets are tight and owners are trying to save where they can.

For the reasons stated above, we ask that Senate Bill No. 2709 be held in Committee. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean Uchida", is written over a faint, larger version of the same signature.

Dean Uchida
Director

SAH - Subcontractors Association of Hawaii

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

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

February 9, 2022

Testimony To: Senate Committee on Labor, Culture and the Arts
Senator Brian T. Taniguchi, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2709 – RELATNG TO CONTRACTORS.

Chair Taniguchi 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 ASSOCIATION 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

We are opposed to this bill.

The Contractors License Board has already concurred with the opinion of the Court that incidental and supplemental is 49% or less by issuing administrative proposed rule changes to that extent.

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.

The five (5%) percent limitation may work on large commercial contracts but, to take as an example, a \$20,000.00 re-roof job where termite damage is discovered at tear-off. A five (5%) percent limit would only accommodate \$1000.00 of plywood removal and installation. The roofing contractor would need to stop work and tell the homeowners to go find a general contractor/carpenter to do the work. In the meantime the re-roof project stops.

We think this bill will harm homeowners/consumers and cannot support it.

Thank you.

Testimony of the Contractors License Board

**Before the
Senate Committee on Labor, Culture and the Arts
Wednesday February 9, 2022
3:00 p.m.
Via Videoconference**

**On the following measure:
S.B. 2709, 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 purpose of this bill is to clarify that a licensed specialty contractor may perform incidental and supplement work in crafts or trades other than in which the specialty contractor is licensed, provided that the incidental and supplemental work involves other trades directly related to and necessary for the completion of the project undertaken by the licensed specialty contractor pursuant to the scope of the specialty contractor's license and shall not exceed more than five per cent of the licensed specialty contractor's total work on the project.

The Board will review this bill at its next publicly noticed meeting on February 25, 2022. In the meantime, the Board offers comments. In the past, the Board has testified in strong opposition to similar measures that propose to define “incidental and supplemental” work for the following reasons.

The limit of “incidental and supplemental” work that can be performed by specialty contractors 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 (HRS) 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.¹ The Board also determined that to qualify as “incidental and supplemental”

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 Board's Final Order Upon Remand issued October 18, 2013 (“BFO”).

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 BFO has subsequently been upheld by the circuit court and the 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 this bill.

IRONWORKERS STABILIZATION FUND

February 7, 2022

Brian Taniguchi, Chair
Committee on Labor, Culture and Arts
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Taniguchi and Members of the Committees:

Re: Strong Support for SB 2709 – Relating to Contractors

We are in strong support of SB 2709, Relating to Contractors.

First, it should be recognized that this is not a union issue, but a public safety issue. The bill as proposed states that anything dealing with the structural integrity of a building should not have any unlicensed work. This is truly an issue as such, right now the policy of the Contractors License Board will allow anything less than a majority can be done by a person or company that does not hold a license for that particular field.

Second, it should be recognized that the term “incidental and supplemental” is to apply only when there are two specialty contractors involved. Under the well-established 2002 *Okada Trucking vs Board of Water Supply* #22956, 40 P.3d 73 (2002), 97 Hawai`i 450, ruling which was established by the Hawaii Supreme Court, general contractors are prohibited from using this “incidental and supplemental” to take on work in a specialty for which they are not licensed.

We are clearly against the proposed amendment as set forth in section (d) of this bill, SB2709, because 49.99% of all work in the project, by common logic, is not “incidental and supplemental”. It would make a mockery out of the English language if 49.99% of the total job is considered to be “incidental and supplemental.” While examining this proposal, it should be kept in mind that the specialty contractor who would be able to avail himself or herself of the term “incidental and supplemental”, would be performing work that he or she is not licensed for. Again, we run into the overriding public policy of HRS Chapter 444 of “protecting” the general public.

n

Our union alone has over 100 “mom and pop” specialty contractors who would be in jeopardy of going out of business if SB2709 is not made into law. We would agree to the proposed bill if the term “incidental and supplemental” is limited to five percent (5%) of the work done by the subcontractor.

Thank you for your time and consideration.

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 9, 2022

TO: HONORABLE BRIAN TANIGUCHI, CHAIR HONORABLE LES IHARA, JR.,
VICE CHAIR AND MEMBERS OF THE COMMITTEE ON LABOR,
CULTURE AND THE ARTS

SUBJECT: **STRONG OPPOSITION TO S.B. 2709, RELATING TO CONTRACTORS.**
Clarifies that a licensed specialty contractor may perform incidental and supplement work in crafts or trades other than in which the specialty contractor is licensed, provided that the incidental and supplemental work involves other trades directly related to and necessary for the completion of the project undertaken by the licensed specialty contractor pursuant to the scope of the specialty contractor's license and shall not exceed more than five per cent of the licensed specialty contractor's total work on the project.

HEARING

DATE: February 9, 2022
TIME: 3:00 p.m.
PLACE: Conference Room 225

Dear Chair Taniguchi, Vice Chair Ihara and Committee Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (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. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

The GCA is **in strong opposition** to S.B. 2709, which proposes clarify that a licensed specialty contractor may perform incidental and supplement work in crafts or trades other than in which the specialty contractor is licensed, provided that the incidental and supplemental work involves other trades directly related to and necessary for the completion of the project undertaken by the licensed specialty contractor pursuant to the scope of the specialty contractor's license and shall not exceed more than five per cent of the licensed specialty contractor's total work on the project.

The GCA respectfully **requests that the bill be held** because "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 Hawaii 281, 298 P.3d 1045 (2013). The court interpreted "incidental and supplemental" to mean less than a majority. The Contractors License Board then developed an industry standard that complies with the court's order. The Contractors License Board standard has been subsequently upheld by the Circuit Court and ICA.

The Contractors License Board underwent the adoption of administrative rules to align the definition of “incidental and supplemental” with the District 50 vs Lopez decision. These rules are pending the Governor’s approval. The proper arena to discuss concerns was during the administrative rulemaking process, which intimately involved input from the construction industry and was recommended after unanimous approval by the Contractors License Board.

The proposed measure is an attack on a contractor’s ability to perform their work and haphazardly attempts to quantify “incidental and supplemental” with a percentage that goes directly against the sustained interpretation by the Contractors License Board in its Final Order, judicial rulings, and approved administrative rules by the Board.

For these reasons, GCA is in **strong opposition** to S.B. 2709 and we respectfully request that the bill is deferred.