

IRON WORKERS STABILIZATION FUND

February 9, 2024

Chair Henry Aquino
Committee on Labor and Technology
Hawaii State Senate
State Capitol

Dear Chair Aquino & Members of the Committee:

Re: SB 371 – Incidental & Supplemental

The Ironworkers Stabilization Fund strongly supports SB 371 which defines "incidental and supplemental work" for purposes of specialty contractors under the contractors' law. SB 371 will have a positive impact on the construction industry in Hawaii and will help reduce costs and streamline projects. Most importantly, this bill will ensure those who are trained in their specific field will be the ones performing the work. This guarantees construction projects are constructed safely and properly.

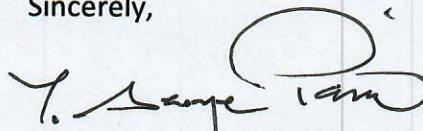
The fact is the current ruling by the Hawaii Contractors Licensing Board of 49% for incidental and supplemental work is unfair and is harmful to the subcontractors and the workers who work for them. This bill will level the playing field and ensure workers can remain employed in their specialty trade.

Without this change, workers employed in the subcontracting trades will have fewer working hours and ultimately struggle to survive in Hawaii. Hawaii is not affordable to anyone and especially to our workers who are working less than 40 hours a week. I urge the committee to pass this bill, so everyone gets a fair share of the construction projects.

I appreciate speaking to Senator Henry Aquino and explaining to him the importance of this bill and appreciate SB 371 scheduled for an important hearing.

Thank you for the opportunity to testify.

Sincerely,



T. George Paris
Managing Director

Testimony of the Contractors License Board

**Before the
Senate Committee on Labor and Technology
Friday, February 9, 2024
3:15 p.m.
Conference Room 224 and Videoconference**

**On the following measure:
S.B. 371, RELATING TO CONTRACTORS**

Chair Aquino and Members of the Committee:

My name is Neal Arita, and I am the Chairperson of the Contractors License Board (Board). The Board offers comments on this bill.

The purpose of this bill is to define "incidental and supplemental work" for purposes of specialty contractors under the contractors law.

The Board will review this bill at its next publicly noticed meeting on February 23, 2024. In the past, the Board has testified in strong opposition of similar measures that propose to define "incidental and supplemental" work.

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 percent¹. The Board 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).

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").

The Board's interpretation of "incidental and supplemental" work in its Board's Final Order (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.



February 9, 2024

TO: HONORABLE HENRY AQUINO, CHAIR, HONORABLE SHARON MORIWAKI, VICE CHAIR, COMMITTEE ON LABOR AND TECHNOLOGY

SUBJECT: **OPPOSITION TO S.B. 371, RELATING TO CONTRACTORS.** Defines "incidental and supplemental work" for purposes of specialty contractors under the contractors law.

HEARING

DATE: Friday, February 9, 2024
TIME: 3:15 p.m.
PLACE: Capitol Room 224

Dear Chair Aquino, Vice Chair Moriwaki and Members of the Committee,

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.

GCA **OPPOSES** S.B. 371, which defines "incidental and supplemental work" for purposes of specialty contractors under the contractors law.

GCA is in opposition to this measure 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 intimately involved input from the construction industry and was recommended after unanimous approval by the Contractors License Board. The proposed measure haphazardly attempts to define the term by quantifying "incidental and supplemental" with a percentage that goes directly against the sustained interpretation by the Contractors License Board in its Final Order.

We are concerned that changes to the definition of "incidental and supplemental work" would delay the progress of much-needed infrastructure projects by complicating the procurement process, increasing the number of bid protests, and driving up costs.

Thank you for the opportunity to provide testimony in opposition to this measure.

IATSE LOCAL 665

FILM, TELEVISION, STAGE, PROJECTION AND TRADESHOWS
Since 1937

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND CANADA, AFL-CIO, CLC

Thirty-Second Legislature, State of Hawai'i
Regular Session of 2024
Senate Committee on Labor and Technology

Testimony by IATSE 665
February 9th, 2024

S.B. 371 - RELATING TO CONTRACTORS

Aloha Chair Aquino, Vice Chair Moriwaki, and members of the Senate Committee,

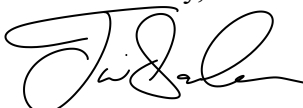
My name is Tuia'ana Scanlan, International Trustee and president of IATSE Local 665, the union representing technicians and behind the scenes workers in the entertainment industry in Hawai'i. **Local 665 supports SB 371**, relating to contractors

SB 371 defines "incidental and supplemental work" for the purposes of specialty contractors under the contractor's law. SB 371 will have a positive impact on the construction industry in Hawai'i and will help reduce costs and streamline projects. Most importantly, this bill will ensure those who are trained in their specific field will be the ones performing the work. This guarantees construction projects are constructed safe and properly.

The ruling by the Hawai'i Contractors Licensing Board of 49% for incidental and supplemental work is unfair and is harmful to the subcontractors and the workers who work for them. This bill will level the playing field and ensure workers can remain employed in their specialty trade. Without this change, workers employed in the subcontracting trades will have fewer working hours and ultimately struggle to survive in Hawai'i.

Local 665 stands in solidarity with the working families of Hawai'i. If we are to prevent the mass exodus of residents to the continent, it is imperative that the state creates opportunities for the working families of Hawai'i to live, work, and thrive in their homeland. **IATSE 665 asks for your committee's support of SB 371.** Thank you for the opportunity to testify.

In Solidarity,



Tuia'ana Scanlan
International Trustee
President, IATSE 665
(he/him/his)

SB-371

Submitted on: 2/7/2024 2:53:46 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
kevin holu	Testifying for Hawaii Teamsters 996	Support	Written Testimony Only

Comments:

Hawaii teamsters & Allied Workers Locals 996 **Strongly Support SB371**



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

SENATE COMMITTEE ON LABOR AND TECHNOLOGY

FEBRUARY 9, 2024

SB 371, RELATING TO CONTRACTORS

POSITION: SUPPORT

The Democratic Party of Hawai'i **supports** SB 371, relating to contractors. Pursuant to the "Economic Justice and Labor" section of the Democratic Party of Hawai'i platform, the party believes "all workers have the right to form a union to collectively bargain with employers on their behalf. We support the efforts of unions to protect and advocate for workers."

In the construction and trade labor fields, it is important to ensure that the individuals performing work are well trained and highly qualified, so that the public can be confident that construction projects are completed in a safe and competent manner. This bill will rectify a glaring error made by the Hawai'i Contractor Licensing Board in ruling that incidental and supplemental work amounts to up to 49 percent of total project work, ensuring that unionized workers can remain in their trade, be fairly compensated, and practice their profession in a manner that guarantees their financial well-being and public safety.

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee
(808) 679-7454
kriscoffield@gmail.com

Abby Simmons

Co-Chair, Legislative Committee
(808) 352-6818
abbyalana808@gmail.com



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAI'I LABOR CAUCUS

SENATE COMMITTEE ON LABOR AND TECHNOLOGY · FEBRUARY 9, 2024

SB 371, RELATING TO CONTRACTORS

POSITION: SUPPORT

The Democratic Party of Hawai'i Labor Caucus **supports** SB 371, which defines "incidental and supplemental work" for purposes of specialty contractors under the contractors law.

In the construction and trade labor fields, it is important to ensure that the individuals performing work are well trained and highly qualified, so that the public can be confident that construction projects are completed in a safe and competent manner. This bill will rectify a glaring error made by the Hawai'i Contractor Licensing Board in ruling that incidental and supplemental work amounts to up to 49 percent of total project work, ensuring that unionized workers can remain in their trade, be fairly compensated, and practice their profession in a manner that guarantees their financial well-being and public safety.

Mahalo,

Jason Bradshaw

Chairperson, Democratic Party of Hawai'i Labor Caucus



**International Association of
Heat & Frost Insulators
& Allied Workers Local 132**

1019 Lauia Street Bay 4
Kapolei, HI 96707
Phone: (808) 521-6405
Fax: (808) 523-9861
Email: aw1132@insulators.org
Website: insulatorslocal132.org

February 8, 2021

Chair Henry Aquino
Committee on Labor and Technology
Hawaii State Senate
State Capital

Dear Chair Aquino & Members of the Committee:

Re: SB 371 – Incidental & Supplemental.

The International Association of Heat & Frost Insulators & Allied Workers firmly supports in solidarity SB 371, which defines “incidental and supplemental work” for purposes of specialty workers under contractors’ law.

We hope that the committee will pass this bill. We feel this will have a significant impact on the specialty trade.

Sincerely,

Douglas Fulp
Business Manager
International Association of Heat & Frost
Insulators & Allied Workers Local 132
1019 Lauia Street Bay #4
Kapolei, Hawaii 96707

Testimony of
Pacific Resource Partnership

Senate Committee On Labor And Technology
Senator Henry J.C. Aquino, Chair
Senator Sharon Y. Moriwaki, Vice Chair

SB 371—Relating To Contractors
Friday, February 9, 2024
3:15 P.M.

Aloha Chair Aquino, Vice Chair Moriwaki, and Members of the Committee:

Pacific Resource Partnership (PRP) is a nonprofit organization that represents the Hawai'i Regional Council of Carpenters, the largest construction union in the state with approximately 6,000 members, in addition to more than 250 diverse contractors ranging from mom-and-pop owned businesses to national companies.

PRP writes in **opposition** to SB 371, because the Hawaii Supreme Court and the Contractor License Board (CLB) have already clarified what qualifies as “incidental and supplemental” work.

On October 18, 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 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

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).

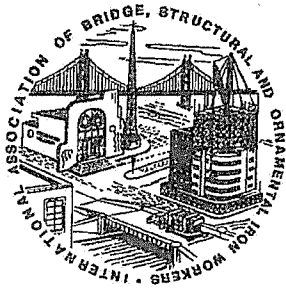
⁴ Order Rejecting Application For Writ Of Certiorari, SCWC-14-0001336, May 10, 2016.



(Continued From Page 1)

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 to change the law.

Given the above, PRP respectfully requests that this Committee defer SB 371. Thank you for this opportunity to submit written testimony.



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

February 9, 2024

Chair Henry Aquino
Committee on Labor and Technology
Hawaii State Senate
State Capitol

Dear Chair Aquino & Members of the Committee:

Re: SB 371 – Incidental & Supplemental

The Ironworkers Local 625 strongly supports SB 371 which defines "incidental and supplemental work" for purposes of specialty contractors under the contractors' law.

As the Financial Secretary-Treasurer & Business Manager of the Ironworkers Local 625, I am strongly opposed to the Contractors Licensing Board's decision of 49% for incidental and supplemental work and strongly encourage the Senate Committee on Labor and Technology to pass SB 371 to help ensure our members and members of other subcontractors are employed in their specialty trade.

The current decision of 49% is harmful to our industry resulting in fewer working hours for a lot of construction workers, including our members. Lowering the incidental and supplemental amount below 49% will help our members and other workers, allowing them to work closer to full-time. In addition, this will ensure projects are completed safely and properly by specialty trained workers.

Thank you for the opportunity to testify.

Sincerely,

Joseph O'Donnell
Financial Secretary-Treasurer
& Business Manager

February 9, 2024
3:15 pm

Senate Committee on Labor and Technology

Conference Room 224 & Videoconference
State Capitol
415 South Beretania Street

Re: SB371 - Specialty Contractor; Incidental and Supplemental Work

Aloha Chair Henry Aquino, Vice Chair Sharon Moriwaki, and Members of the Committee:

My name is Clyde Hayashi and I work for the Hawaii Iron Workers Stabilization Fund. I am a member of the Contractor License Board but I am not testifying on behalf of the Contractor License Board.

I **SUPPORT** SB 371 Specialty Contractor; Incidental and Supplemental Work,

Hawaii Administrative Rules, Chapter 77, 16-77-34, incidental and supplemental work “is defined 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.”

After the Supreme Court Decision District Council 50 v. Lopez, 129 Hawaii 281, 298 P.3d 1045 (2013) decision, the Contractor License Board set the limit on incidental and supplemental work at not more than 49 percent. 49% means that it is hypothetically possible that incidental and supplemental work on a \$100,000 project could be up to \$49,000. This is not what the HAR intended.

SB 371 establishes the incidental and supplemental amount to a reasonable “...not exceed five percent of the specialty contractor licensee’s total work on the project.”

Mahalo for the opportunity to testify.

February 8, 2024

Chair Henry Aquino, Committee on Labor, and Technology

Hawaii State Senate

State Capital

Dear Honorable Chair Aquino and Members of the Committee on Labor and Technology

Re: Support Bill SB 371 - Incidental and Supplemental

My name is Mel Kahele, I am employed at Ironworker Local 625 Stabilization Fund. We are in strong support of SB 371, Relating to Contractors. First, it should be recognized that this is not a union issue, but a public safety issue. The proposed bill will codify the language in Hawaii Administrative Rule and the Supreme Court Decision District Council 50 v. Lopez, 129 Hawaii 281, 298 P.3d 1045 (2013).

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 OkadaTrucking 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. This bill will deal with the cost and extent and only allow incidental work that is related to the subcontractor’s work.

Bill 371 adds a section to limit the incidental and supplemental work to 5% of the subcontractor’s work. This will ensure that it is by the subcontractor’s work and not the entire project. This will ensure the overriding public policy of HRS Chapter 444 of “protecting” the safety of the public.

We ask that you pass Bill SB371

Thank you for your time and consideration.

HAWAII SHEET METAL WORKER'S LOCAL UNION 293

February 9, 2024

LATE

Chair Henry Aquino
Committee on Labor and Technology
Hawaii State Senate
State Capitol

Dear Chair Aquino & Members of the Committee:

Re: SB 371 – Incidental & Supplemental

The Hawaii Sheet Metal Worker's Local Union 293 firmly supports SB 371 which defines "incidental and supplemental work" for purposes of specialty under the contractor's law.

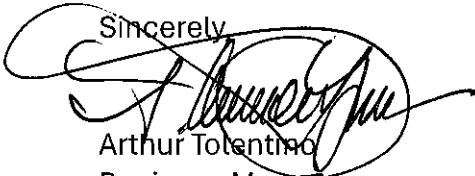
Do we want our workers who are specifically trained in their field to be the ones performing the actual work and receive a full 40 hours per week's pay? Do we want to even out the playing field and ensure our workers can remain employed in their specialty trade?

Yes, we, wholeheartedly and absolutely do! We want this for our workers in the subcontracting trades so that they are not faced with fewer working hours, and to ensure that everyone receives a fair share of the construction projects.

SB 371 ensures that our construction workers who are specifically trained in their field will be the ones performing the actual work. The current bill is unfair and detrimental to the subcontractors and the workers who work for them. We need the committee to pass this bill so everyone receives a fair share of the construction projects.

Mahalo for your consideration and time in reviewing Sheetmetal's affirmative support in SB 371.

Sincerely,



Arthur Totentino
Business Manager
Financial Secretary/Treasurer
SMART – Local 293

SAH - Subcontractors Association of Hawaii

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

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

February 9, 2024

LATE

Testimony To: Senate Committee on Labor and Technology
Senator Henry J.C. Aquino, Chair

Presented By: Tim Lyons, President

Subject: S.B. 371 – RELATNG TO THE CONTRACTORS.

Chair Aquino 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 ASSOCIAETION 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

The Contractors License Board has already concurred with the opinion of the Court that incidental and supplemental is 49% or less by issuing administrative rule changes to that extent. The stipulations in this bill would override that and reduce it to five (5) percent and, second, confine that percentage to the work in the subcraft. We think that this draft is difficult to apply to the many and multiple situations that exist in the construction industry.

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. We would suggest that this Committee encourage the parties to get together in order to come up with a mutually agreeable number and then move this bill forward.

Thank you.