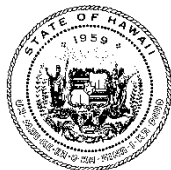


DAVID Y. IGE  
GOVERNOR



CURT T. OTAGURO  
Comptroller

AUDREY HIDANO  
Deputy Comptroller

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES  
P.O. BOX 119  
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
CURT T. OTAGURO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEE  
ON  
LABOR, CULTURE AND THE ARTS  
ON  
FEBRUARY 5, 2019, 2:45 PM

S.B. 423  
RELATING TO THE CONTRACTORS LICENSE BOARD

Chair Taniguchi, Vice-Chair Ihara and Members of the Committee, thank you for the opportunity to submit written testimony on S.B. 423.

The Department of Accounting and General Services (DAGS) has concerns that the proposed legislation changes the intent of Section 444-8(c), Hawaii Revised Statutes. The proposed revision to Section 444-8(c) only applies when a specialty contractor is functioning as a subcontractor. This creates ambiguity and leaves the specialty contractor's ability to function as a prime contractor on a project unaddressed.

Thank you for the opportunity to submit testimony.

## **Testimony of the Contractors License Board**

**Before the  
Senate Committee on Labor, Culture and the Arts  
Tuesday, February 5, 2019  
2:45 p.m.  
State Capitol, Conference Room 224**

**On the following measure:  
S.B. 423, RELATING TO THE CONTRACTORS LICENSE BOARD**

Chair Taniguchi 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 bill, as it has not had an opportunity to review and discuss this bill at a publicly noticed Board meeting. However, the Board has strongly opposed similar measures in the past.

The purposes of this bill are to: (1) clarify that a specialty contractor, acting as a subcontractor, is not prohibited from taking and executing a construction contract involving two or more crafts or trades if the performance of the work is incidental and supplemental; (2) prohibit the performance of incidental and supplemental work on any project requiring the seal or stamp of professional engineer licensed to perform structural engineering; and (3) specify that the performance of work in certain specialty contractor subclassifications shall not be considered incidental and supplemental.

The Board believes too many variables exist in construction work to carve out specialty classifications that cannot be performed as incidental and supplemental work. The Board respectfully submits that its Final Order Upon Remand issued October 18, 2013 (BFO)<sup>1</sup>, 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 Hawai'i 281, 298 P.3d 1045 (2013) (DC 50). Among other things, the Court in DC 50

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<sup>1</sup> 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.

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 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.

Further, the bill’s restriction of incidental and supplemental work to specialty contractors acting as subcontractors appears to eliminate the ability of specialty contractors acting as prime contractors to perform any incidental and supplemental work.

Lastly, the Board respectfully requests deleting the scope of work for specialty contractor classifications in proposed subsection (f), as that is already set forth in Exhibit A of Hawaii Administrative Rules chapter 16-77. The Board is currently updating the descriptions of the specialty contractor classifications, and once the relevant rules are promulgated, it will be confusing to have two different descriptions for certain specialty contractor classifications.

Thank you for the opportunity to testify on this bill.

# IRONWORKERS STABILIZATION FUND

February 5, 2019

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



Dear Honorable Chair Taniguchi and Members of the Committee on Labor, Culture and the Arts:

Re: Strong Support for SB 423 – Relating to Contractors License Board

We are in strong support of SB 423, Relating to Contractors License Board.

First, 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 OkadaTrucking ruling which was established by the Hawaii Supreme Court in 2002, 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 policy being used by the Contractors License Boars that states anything less than a majority is incidental and supplemental. By common logic, this is not “incidental and supplemental” to any construction work. It would make a mockery out of the English language if less than 50% 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 licensed for. Again, we run into the **overriding public policy of HRS Chapter 444 of “protecting” the general public.**

Additionally, it takes 4 years of on the job work and written test for those working in the field to be licensed. If this policy continues, this will mean that unlicensed and untrained individuals can do these jobs. A correlation to this means that you will allow a foot doctor to do heart surgery. This is unheard of and completely against the norm of public protection and safety.

Our union alone has over 100 “mom and pop” specialty contractors who would be protected from going out of business if SB 423, as presently drafted, would be made into law. This does not take into account the other 68 plus specialty license out there that have been trained to do this work.

The overriding public policy of protecting the general public should not be compromised if the proposed policy is continued to be used.



# LIUNA!

## LATE

**TESTIMONY OF RYAN K. KOBAYASHI  
GOVERNMENT AND COMMUNITY RELATIONS DIRECTOR  
HAWAII LABORERS UNION LOCAL 368**

COMMITTEE LABOR CULTURE AND THE ARTS

NOTICE OF HEARING

DATE: Tuesday, February 05, 2019  
TIME: 2:45 p.m.  
PLACE: Room 224

**TESTIMONY IN OPPOSITION TO SB423 RELATING TO THE CONTRACTORS  
LICENSE BOARD**

ALOHA COMMITTEE CHAIR TANIGUCHI, VICE-CHAIR IHARA

My name is Ryan K. Kobayashi, Government and Community Relations Director for the Hawaii Laborers Union, Local 368. The Hawaii Laborers Union is made up of over 5000 working and retired members across the State of Hawaii. We are **OPPOSED to SB423** as the gist of this bill is an attempt to alter the Hawaii State Supreme Court's decision and usurp the authority and expertise of the State Contractors License Board.

On November 17, 2017 the State of Hawaii's Contractors License Board (Board) conducted a public hearing to amend Hawaii Administrative Rules Section 16-77-34 (Work Incidental and Supplemental) to conform to a **Hawaii State Supreme Court ruling in the case of District Council 50 v. Lopez, 298 P. 3d 1045 – 2013** in which the Hawaii State Supreme Court said that:

"Applying the ordinary meaning of "incidental and supplemental" to HRS Section 444-8(c), it is apparent that the legislature meant to provide specialty contractors with a **limited ability** to perform work outside of their licensed specialty area. However, the "incidental and supplemental" **work must not make up the majority of the project, and must instead be "subordinate" and in addition to licensed work of "greater importance"**

At this hearing, the Board adopted the number of **less than 50%** as the qualifying number to qualify as "Incidental and Supplemental" work, in order to comply with the Hawaii Supreme Court's decision on the matter.<sup>1</sup>

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<sup>1</sup> Incidental and Supplemental work must represent less than a majority (50% or less) of the project (as measured in relation to the project's total cost or extent) and the work must be subordinate to, directly related to, and

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**Feel the Power**

We feel that the standards proposed by this bill could run afoul of the letter and spirit of the Hawaii State Supreme Court's decision in **District Council 50 v. Lopez** regarding the rules as to incidental and supplemental work as mentioned above, and would **usurp the authority and expertise** of the Hawaii State Contractors License Board to determine which General Classifications and which sub-classifications are qualified to perform the oftentimes complex work on any particular project.

Therefore, we **OPPOSE SB 423**

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necessary for the completion of the work of greater importance that is within the scope of the licensee's license.