

HB

81

HD1

A BILL FOR AN ACT

RELATING TO CONTRACTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 444-8, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) This section shall not prohibit a specialty
4 contractor, acting as a subcontractor, from taking and executing
5 a contract involving the use of two or more crafts or trades, if
6 the performance of the work in the crafts or trades, other than
7 in which the specialty contractor is licensed, is incidental and
8 supplemental to the performance of work in the craft for which
9 the specialty contractor is licensed[-]; provided that:

10 (1) Performance by a specialty contractor of incidental
11 and supplemental work outside of the specialty
12 contractor's licensure shall be prohibited on any
13 project requiring the seal or stamp of a professional
14 engineer licensed to perform structural engineering;
15 and



1 (2) The performance of work in the crafts or trades of the
2 following specialty contractor's licensure shall not
3 be incidental and supplemental work:

4 (A) Carpentry framing contractor;

5 (B) Masonry contractor;

6 (C) Pile driving, pile and caisson drilling, and
7 foundation contractor;

8 (D) Post tensioning contractor;

9 (E) Reinforcing steel contractor;

10 (F) Structural steel contractor; and

11 (G) Welding contractor.

12 For the purposes of this subsection, "professional
13 engineer" shall have the same meaning as in section 464-1."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect on January 1, 2050.



Report Title:

Incidental and Supplemental Work; Contractors; Professional Engineer

Description:

Prohibits the performance of incidental and supplemental work outside the scope of licensure by a specialty contractor on any project requiring the seal or stamp of a licensed structural engineer. Specifies that the performance of work in certain crafts or trades shall not be considered incidental and supplemental. (HB81 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Testimony of the Contractors License Board

**Before the
House Committee on Consumer Protection and Commerce
Thursday, February 7, 2019
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 81, H.D. 1, RELATING TO CONTRACTORS**

Chair Takumi 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) prohibit the performance of incidental and supplemental work outside the scope of licensure by a specialty contractor acting as a subcontractor on any project requiring the seal or stamp of a licensed structural engineer; and (2) specify that the performance of work in certain crafts or trades shall not be considered incidental and supplemental. H.D. 1 amends this measure by changing its effective date to January 1, 2050, to encourage further discussion.

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)¹, 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 interpreted the term "incidental and supplemental" in Hawaii Revised Statutes chapter

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 BFO.

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.

Lastly, the bill's restriction of incidental and supplemental work to specialty contractors acting as subcontractors eliminates the ability of specialty contractors acting as prime contractors to perform any incidental and supplemental work.

Thank you for the opportunity to testify on this bill.

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

TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON
FEBRUARY 7, 2019, 2:00 PM
CONFERENCE ROOM 329

H.B. 81 HD1
RELATING TO CONTRACTORS.

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 81 HD1.

The Department of Accounting and General Services (DAGS) has strong 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 on this matter.

IRONWORKERS STABILIZATION FUND

February 7, 2019

Roy Takumi, Chair
Committee on Consumer Protection and Commerce
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Takumi and Members of the Committee on Consumer Protection and Commerce:

Re: Strong Support for HB 81HD1 – Relating to Contractors

We are in strong support of HB 81 HD1, Relating to Contractors.

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. The definition of incidental and supplemental is defined as de minimis or small. How can less than a majority be anything than de minimis. We believe that if you look a logic itself 49% of any set is not considered small or de minimis.

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 49% of the 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. Again, we run into the **overriding public policy of HRS Chapter 444 of “protecting” the general public.**

Our union alone has over 100 “mom and pop” specialty contractors who would be protected from going out of business if HB 81, 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!

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

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

NOTICE OF HEARING

DATE: Thursday, February 07, 2019
TIME: 2:00 p.m.
PLACE: Room 329

**TESTIMONY IN OPPOSITION TO HB81 RELATING TO THE CONTRACTORS
LICENSE BOARD**

ALOHA COMMITTEE CHAIR TAKUMII, VICE-CHAIR ICHiyAMA,

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 HB81** 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.¹

¹ 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 license sub-classifications are qualified to perform the oftentimes complex work on any particular project.

We feel that legislation like this should be studied further in order to make sure that bill like HB81 do not run afoul of the letter and intent of the Hawaii Supreme Court's ruling in **District Council 50 v. Lopez**, and the intent and purpose of the Legislature in creating the Hawaii State Contractors License Board.

Therefore, we **OPPOSE HB81**. Thank you for this opportunity to submit written testimony regarding this matter.

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