

HB-81

Submitted on: 1/24/2019 6:21:55 PM

Testimony for LAB on 1/29/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

I hope this bill will pass making it harder for people to bypass regulations under the so called "incidentals" or "supplemental" work classifications.

Testimony of the Contractors License Board

**Before the
House Committee on Labor and Public Employment
Tuesday, January 29, 2019
9:00 a.m.
State Capitol, Conference Room 309**

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

Chair Johanson 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.

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 444 to be less than a majority. The Board complied with this directive and interpreted

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.

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.

HB-81

Submitted on: 1/28/2019 8:52:59 AM

Testimony for LAB on 1/29/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Oahu County Committee on Legislative Priorities, Democratic Party of Hawai'i	Support	No

Comments:

LATE

IRONWORKERS STABILIZATION FUND

January 29, 2019

Aaron Johanson, Chair
Committee on Labor and Public Employment
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Johanson and Members of the Committee on Labor and Public Employment:

Re: Strong Support for HB 81 – Relating to Contractors

We are in strong support of HB 81, 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. 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 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.

DAVID Y. IGE
GOVERNOR



LATE

CURT T. OTAGURO
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
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WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
LABOR & PUBLIC EMPLOYMENT
ON
JANUARY 29, 2019

H.B. 81

RELATING TO CONSTRUCTION WASTE

Chair Johanson and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 81

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.