

**CONTRACTORS LICENSE BOARD**  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

**MINUTES OF PUBLIC HEARING**

Date: Friday, November 17, 2017

Time: 8:30 a.m.

Place: King Kalakaua Conference Room  
King Kalakaua Building, 1<sup>st</sup> Floor  
335 Merchant Street  
Honolulu, Hawaii 96813

Present: John Polischeck, Jr., Chairperson  
Tyrus Kagawa, Vice Chairperson  
Anacleto "Joey" Alcantara, Jr., Member  
Leslie Isemoto, Member  
Nathan Konishi, Member  
Peter H. M. Lee, Member  
Leonard K. P. Leong, Member  
Danny T. Matsuoka, Member  
Kent Matsuzaki, Member  
Kenneth T. Shimizu, Member  
Nicholas W. Teves, Jr., Member  
Candace Ito, Executive Officer  
Charlene L. K. Tamanaha, Executive Officer  
Krishna F. Jayaram, Deputy Attorney General  
Faith Nishimura, Secretary

Guests: Joseph O'Donnell, Ironworkers 625  
Arnold Wong, Ironworkers Stabilization Fund  
Kika Bukoski, HiRM  
Gregg S. Serikaku, Executive Director, Plumbing & Mechanical  
Contractors Association of Hawaii ("PAMCA")  
Shannon Alivado, Director of Government Relations, General Contractors  
Association of Hawaii ("GCA")  
Ryan Takahashi  
Doug Ewart, Ironworkers Stabilization Fund 625  
Ron Amemiya, Ironworkers Stabilization Fund  
Jeffrey Masatsugu  
Tim Lyons, SAH  
Mel Kahele  
Susan Fukunaga, HI Building & Construction Trades Council  
Jae Hyun Sohn, RME, Nissi Group Inc.  
Joel Florian, RME, Premier Electric LLC  
David Banks, Asplundh Tree Expert LLC  
Eli Carmona, RME, Caraveli Inc. dba Caraveli Construction

- Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.
- Call to Order: There being a quorum present, the meeting was called to order at 8:30 a.m.
- Introduction of Board Members: Chairperson Polischeck introduced himself, Board members, Executive Officer Ito, Executive Officer Tamanaha, and Deputy Attorney General Jayaram.
- Purpose: Chairperson Polischeck stated that the purpose of this public hearing is to hear any testimony on the Contractors License Board's proposed rule amendments to Chapter 16-77, Hawaii Administrative Rules.
- Notice of Public Hearing: Chairperson Polischeck read the Public Hearing notice which was published in five newspapers of general circulation, the Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today and Hawaii Tribune-Herald on Sunday, October 15, 2017.

The purpose of the proposed amendment is to amend section 16-77-34, Work Incidental and Supplemental, to clarify that to qualify as "incidental and supplemental" work, that work must represent less than a majority 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 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 of the specialty contractor's license to perform). This amendment is intended to conform with the Hawaii Supreme Court's decision in the District Council 50 v. Lopez case, 129 Hawai'i 281, 287, 298 P.3d 1045, 1051 (2013) ("DC 50"), and the Board's corresponding Board's Final Order ("BFO") dated October 18, 2013, 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.

Chairperson Polischeck briefly described the procedure that would be followed at the public hearing, as follows:

1. If any individual wished to present oral testimony, he or she must sign up on the Public Hearing Sign In Sheet, and indicated where the sign in sheet was located. Providing a written transcript of your oral testimony to the Board's Executive Officer before leaving the public hearing would be much appreciated;
2. If any individual had written testimony to submit but did not intend to present oral testimony, that written testimony should be submitted to the Executive Officer;

3. If any individual had already submitted written testimony to the Board for consideration, the Board asks that he or she limit oral comments to additional points that are not included in the written testimony. Providing a written transcript of the oral comments to the Executive Officer before leaving the public hearing would be appreciated;
4. Oral testifiers would be called upon in the order of sign in; each would need to state his/her name and address, and the name of the person, group, or organization that is being represented, if applicable;
5. Oral testifiers are asked to limit their testimony to five (5) minutes length;
6. Since the purpose of the public hearing is to hear the views and arguments of all interested persons, the Board will not be discussing any of the written or oral testimony during the hearing or answering any questions which might be raised by the testimony;
7. Immediately after the public hearing is adjourned, the Board will convene its regular meeting, which is open to the public, at which time the Board will fully consider all testimony, both oral and written;
8. The Board intends to make its decision on the proposed amendment to the administrative rules during the regular meeting.

Testimony:

The Board received written testimony from the following: Alan Lee, Managing Member, Alwin J. Eder, Kala Koki, and Kekoa Lavatai of United Steel, LLC; Gregg S. Serikaku, Executive Director, Plumbing & Mechanical Contractors Association of Hawaii ("PAMCA"); Scott Lee, CFO & In-House Council, Jayco Hawaii, Inc.; Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers Stabilization Trust Fund, Carpet, Linoleum and Soft Tile Market Recovery Trust Fund; T. George Paris, Managing Director, Iron Workers Stabilization Fund; Randy Perreira, Executive Director, Hawaii Government Employees Association; Stanley George, President, K&S Welding, Inc.; Shannon Alivado, Director of Government Relations, General Contractors Association of Hawaii ("GCA"); and Douglas R. Fulp, Business Manager/Financial Secretary, International Association of Heat and Frost Insulators, Local 132.

The following individuals provided oral testimony at the hearing:

Mr. Arnold Wong, Iron Workers Stabilization Fund, strongly opposed the proposed administrative rule amendments. He stated that the proposed

amendment will allow unlicensed contracting work and public safety and welfare for both the general public and workers will be in jeopardy. He also stated that this proposed amendment will cause small businesses to close because it takes work away from small businesses. Mr. Wong also questioned how C-19 Asbestos contractor and C-20 Fire protection contractor work could be performed as “incidental and supplemental” work.

Mr. Kika Bukoski, International Association of Heat & Frost Insulators & Allied Workers Local 132, thanked the Board for the opportunity to testify on this matter. He stated that he spent a considerable amount of time reading the Board minutes regarding DC 50. Local 132 strongly opposes the proposed administrative rule amendments. He stated that the amendments do not address the concerns raised in the DC 50 case and this will have an adverse impact on specialty contractors; the limited exception for “incidental and supplemental” work should be in relation to the work being performed by the specialty contractor. Mr. Bukoski also stated that the Supreme Court opinion only deals with the C-5 Cabinet, millwork, and carpentry classification and not all specialty classifications. The use of the term “project” in the proposed amendment is not in accordance with HRS 444-8(c) which is specific to specialty contractor’s work. Local 132 offers the following comments for the Board’s review and consideration: remove the reference to work incidental and supplemental to the remodeling and repair in the description of the C-5 classification; and remove the reference to “project” in the proposed subsection (b).

Mr. Gregg S. Serikaku, Executive Director, Plumbing & Mechanical Contractors Association of Hawaii (“PAMCA”), thanked the Board for the opportunity to provide comments regarding the proposed incidental and supplemental language changes to HAR 16-77-34. He stated that PAMCA understands the proposed amendments were based on select language taken from the DC 50 case, and they feel that there are several other very important aspects of the DC 50 case that the Board should consider in order to fully comply with the DC 50 decision and also to satisfy the intent of HRS 444. PAMCA submitted proposed HAR language to explain the intent of “incidental and supplemental work”, replace “project” with “crafts or trades” in the proposed subsection (a) to be consistent with the language in section 444-8(c); replace “qualify” with “be eligible for consideration” in the propose subsection(b); and add a new subsection to clarify that the “incidental and supplemental” exception must be narrowly interpreted. Mr. Serikaku stated that PAMCA proposed the above amendments in January 2015 and the Board did not consider the addition of a new subsection which would be a fourth step or “test” which PAMCA believes would insure that work is completed by competent contractors.

Ms. Shannon Alivado, Director of Government Relations, General Contractors Association of Hawaii (“GCA”), thanked the Board for the

opportunity to express comments in support of the proposed amendments which further clarifies and formalizes the DC 50 case and how the Board will interpret what it will consider "incidental and supplemental" work when inquiries are made. She also stated that GCA provided comments on the proposed rules in January 2015 and their position remains the same. GCA requests that the word "specialty" in subsection (a) be deleted. She stated that there have been several legislative proposals introduced that attempted to amend the definition of "incidental and supplemental" with a specific percentage. The Board has never only looked at fifty per cent when determining incidental and supplemental and has not broadly applied incidental and supplemental. The Board's position has always been that it will review inquiries on a case by case basis; it reviews the plans and specifications on each inquiry. Ms. Alivado stated that construction work is not black and white and it is necessary for each inquiry to be considered on a case by case basis. Evidence of harm to the public or workers were not presented to the Court. She also stated that since 2013 the Board has been using the Board's Final Order ("BFO") dated October 19, 2013 to determine "incidental and supplemental" work. GCA commends the Board for amending its administrative rules to clarify the intent and meaning of "incidental and supplemental" work which provides agencies with the information to make their own decisions.

Mr. Ryan Takahashi stated that he opposes the proposed administrative rule amendments until a comprehensive compromise can be made with all stakeholders. The proposed amendments would lead to a delay in projects.

Mr. Doug Ewert, Ironworkers Stabilization Fund 625 stated that he opposes the proposed administrative rule amendments because the general contractors will try to do the project with workers who have no experience. He considers "incidental and supplemental" work to be unlicensed contracting and is an overall public safety issue. For example, if the rebar or post tensioning is not installed correctly, there is a huge potential for harm to the public.

Mr. Ron Amemiya, Ironworkers Stabilization Fund stated that the ordinary meaning of "incidental and supplemental" is the limited ability to perform work outside of a contractor's scope of work. The Supreme Court opinion does not state forty nine percent. It defies common sense and is preposterous for "incidental and supplemental" work to go up to forty nine percent. The proposed rule amendments would allow the contractors to do work they are not capable of doing. Mr. Amemiya believes that the Board is not protecting the general public; clearly forty nine percent is not "incidental and supplemental".

Mr. Jeffrey Masatsugu, Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund,

Hawaii Glaziers Stabilization Trust Fund and Carpet Linoleum and Soft Tile Market Recovery Trust Fund, stated that they oppose the proposed amendments to the Hawaii Administrative Rules. He stated that there are so many aspects to consider in determining what is “incidental and supplemental” work and believes that there is potential for harm because workers will be performing work they are not qualified to do and the proposed amendments therefore, does not protect the public. He went on to say that one meeting where testifiers only have five minutes to present their case is not enough and requested that the Board table its rule amendments and form a task force to conduct more fact finding. The Board should consider the impact on public safety and not rush forward to amend its rules; it should take a step back and try to get consensus from all stakeholders on an appropriate limit for “incidental and supplemental” work.

Mr. Mel Kahele, Iron Workers, stated the he strongly opposes the proposed amendments. He is concerned about what will happen to their jobs. He stated that the Board composition is eighty percent general contractors. He is concerned that the proposed amendments are putting the small mom and pop operations out of business because the proposed amendments will bring more work to the general contractors. He stated that the “incidental and supplemental” issue came about because a general contractor was not qualified to do the work. He believes that the Board represents general contractors and their associated unions.

Mr. Joseph O’Donnell, Iron Workers Union Local 625, provided the Board with copies of an April 29, 2016 correspondence he received from the Regulated Industries Complaints Office (“RICO”) regarding his complaint against Resolute Performance Contracting LLC Case No. CLB-2015-181-L. He stated that he disagreed with RICO’s findings and determination of “incidental and supplemental” work. He added that this issue is very confusing because he also received a May 11, 2017 letter from RICO (which he provided to the Board) indicating that the Board approved the Settlement Agreement at its April 13, 2017 meeting. Mr. O’Donnell stated that he is opposed to the proposed rule amendments because it will harm small business. He also stated that forty nine percent is not “incidental and supplemental” and felt that the Board should look at the intent of “incidental and supplemental” work.

Procedures After  
Hearing:

Chairperson Polischek asked if there was anyone else who wished to present testimony at this time. Hearing no response, Chairperson Polischek announced that discussion of and final decision on the proposed amendments to the rules would be made by the Board at its regularly scheduled meeting to be convened immediately after the conclusion of this public hearing. Chairperson Polischek thanked everyone for attending and participating in the public hearing.

Executive Officer Ito requested that all testifiers who did not provide written testimony to do so by November 28, 2017.

Adjournment: There being no further business to discuss, the public hearing was adjourned at 9:12 a.m. by Chairperson Polischeck.

Taken and recorded by:

/s/ Faith Nishimura  
Faith Nishimura  
Secretary

Reviewed and approved by:

/s/ Candace Ito  
Candace Ito  
Executive Officer

CI:fn

12/17/17