



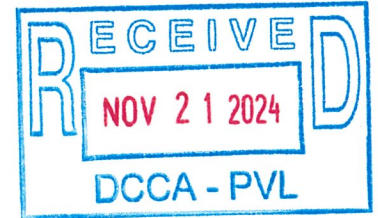
HAWAII REGIONAL COUNCIL OF CARPENTERS

November 22, 2024

TO: Jerry Nishek, Chair
John Polischeck, Vice-Chair
Contractors License Board

FROM: Mitchell Tynanes
Market Development
Hawaii Regional Council of Carpenters

SUBJECT: **Opposition to Proposed Amendment to HAR section 16-77-34**



Dear Chair Nishek, Vice Chair Polischeck and Members of the Committee,

My name is Mitchell Tynanes writing on behalf of the Hawai'i Regional Council of Carpenters, and we are **opposed** to the proposed amendments to HAR section 16-77-34 regarding the definition of “incidental and supplemental” work.

There is no compelling reason to redefine “incidental and supplemental” work. The Hawaii Supreme Court interpreted “incidental and supplemental” to mean *less than a majority* in the case District Council 50 v. Lopez, 129 Hawaii 281, 298 P.3d 1045 (2013) (emphasis added). The Contractors License Board then developed an industry standard that complies with the court’s order. The current definition of “incidental and supplemental” as defined by the Contractors License Board’s (hereinafter “Board”) standard has been subsequently upheld by the circuit court and Intermediate Court of Appeals.

The Board adopted administrative rules to align the definition of “incidental and supplemental” with the District 50 vs Lopez decision and unanimously 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).

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. Furthermore, 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

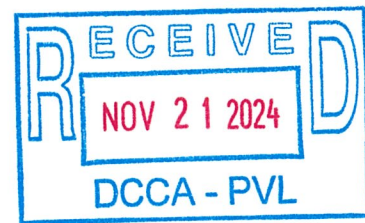
STATE HEADQUARTERS & BUSINESS OFFICES

OAHU: 1311 Houghtailing Street, Honolulu Hawaii 96817-2712 • Ph. (808) 847-5761 Fax (808) 440-9188
HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576
KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376
MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961
KAUAI OFFICE: Kuhio Medical Ctr Bldg., 3-3295 Kuhio Hwy, Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

industry. Since October 2013, the Board has consistently applied this standard to numerous scope of work inquiries.

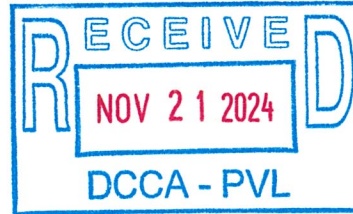
There is no compelling reason to revise the definition of “incidental and supplemental” work.

Mahalo for the opportunity to testify in opposition to the proposed amendments and for your consideration of our testimony.



CONTRACTORS ASSOCIATION OF KAUAI

4231 Ahukini Road • Lihu'e, Kaua'i, Hawai'i 96766
Phone: (808) 246-2662 • Fax: (808) 246-8642



November 21, 2024

Testimony from the Contractors Association of Kaua'i Relating to Proposed Amendment to HAR Section 16-77-34

Chair Jerry Nishek and Members of the Contractors Licensing Board:

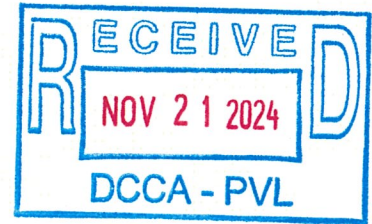
The Contractors Association of Kaua'i (CAK), a hundred member Kaua'i based construction trade association comprised of licensed contractors, suppliers and businesses affiliated with the construction industry is submitting testimony in OPPOSITION of the proposed draft amendment to HAR Section 16-77-34.

The association solicited input from our licensed contractor members and the overwhelming response was to oppose this amendment. They do NOT believe there is a compelling reason to change the HAR language regarding the definition of "incidental and supplemental" work.

Thank you for this opportunity to respond to the draft document and to provide testimony opposing this amendment.



November 22, 2024



TO: JERRY NISHEK, CHAIR, JOHN POLISCHECK, VICE CHAIR,
CONTRACTORS LICENSE BOARD

SUBJECT: **OPPOSITION TO PROPOSED AMENDMENT TO HAR SECTION 16-77-34**

Dear Chair Nishek, Vice Chair Polischek 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 is **opposed** to the proposed amendments to HAR section 16-77-34 regarding the definition of "incidental and supplemental" work.

The GCA **opposes** the proposed amendment because "incidental and supplemental" work has already been defined by the Contractors License Board and there is no compelling reason that the definition needs to be altered. "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 attempts to clarify "incidental and supplemental" work, but it is already understood that "incidental and supplemental" applies to specialty work. This definition has been thoroughly debated and adopted after years of discussion. However, these proposed amendments received different interpretations by industry professionals within the GCA. This could lead to unintended consequences that would ultimately raise the cost of construction and lead to protests.

Thank you for the opportunity to testify in opposition to the proposed amendments.

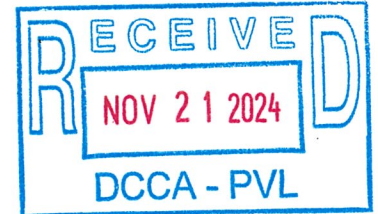
QUALITY PEOPLE. QUALITY PROJECTS

SAH - Subcontractors Association of Hawaii

Century Square – 1188 Bishop St., Ste.1003 Honolulu, HI 96813-3304

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

November 22, 2024



TESTIMONY TO: Contractors License Board
Jerry Nishek, Chair
Department of Commerce and Consumer Affairs

PRESENTED BY: Tim Lyons, CAE
President

SUBJECT: Proposed Hawaii Administrative Rule Change
Section 16-77-34

Chair Nishek and Members of the Contractors License Board:

I am Tim Lyons, President of the Subcontractors Association of Hawaii, an organization that represents the following ten (10) specialty trade Associations. They include:

HAWAII ARCHITECTURAL GLASS AND METAL ASSOCIATION

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

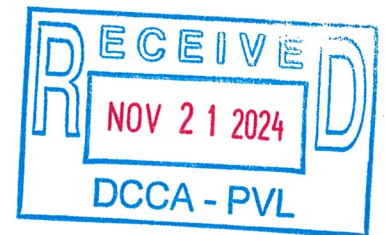
We partially support this amendment.

We have reviewed the amendment as notified on the agenda and at the very outset, we would like to congratulate the Board for tackling this "thorny" issue. We realize that it has been under a long time discussion frame and we appreciate the many hours of thought that have gone into it by both Board Members and industry.

We do believe however that the Board, contractors and the consuming public would be far better off in adopting your Section 16-77-34, Subsection (a) as a single item. In other words, we would prefer to see Subsections (b) and (c) deleted.

We are of the opinion that Subsection (a) correctly surmises the situation and allows for the best interpretation of the law. Further, we believe Subsection (b) and (c) only serve to confuse the issue further and we think your adoption will be ill-advised. Again, we realize that this is a very confusing area of the law which has a hard time being compatible with the actual practices in the industry.

Thank you.



Candace MY. Ito

From: Dean Nagatoshi <dean@pdcahawaii.org>
Sent: Thursday, November 21, 2024 2:37 PM
To: DCCA Contractor
Subject: [EXTERNAL] Proposed Amendment to HAR section 16-77-34
Attachments: HAR 16-77-34 DRAFT_10.25.24.pdf

CAUTION: This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Hi Candace,

Please find the attached draft of the above subject Amendment for reference.

The following amended language is acceptable.

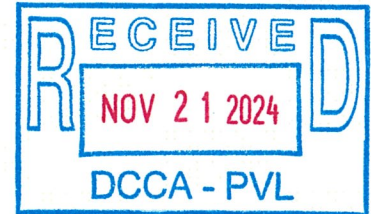
16-77-34 Work Incidental and supplemental. (a) "incidental and supplemental work" is defined as work in any specialty classification that a contractor is not licensed to perform and that is subordinate to, directly related to, and necessary for the completion of specialty work that the contractor is licensed to perform.

The additional language in (b) and (c) is not acceptable.

Thank you.

Dean M. Nagatoshi
Executive Director

PDCA of Hawaii
PO Box 22597
Honolulu, Hawaii 96823-2597
Ph. 808-479-6825
dean@pdcahawaii.org | pdcahawaii.org



NOVEMBER 22, 2024

TO: JERRY NISHEK, CHAIR, JOHN POLISCHEK, VICE CHAIR,
CONTRACTORS LICENSE BOARD

SUBJECT: **OPPOSITION TO PROPOSED AMENDMENT TO HAR SECTION 16-77-34**

Dear Chair Nishek, Vice Chair Polischek and Members of the Committee,

The Hawaii Island Contractors' Association (HICA) is an organization comprised of approximately one hundred (100) general contractors, subcontractors, and construction related firms. The HICA was established in 1958 and was formed to serve the needs of the building and construction industry of the entire Island of Hawaii.

HICA is **opposed** to the proposed amendments to HAR section 16-77-34 regarding the definition of "incidental and supplemental" work.

The HICA **opposes** the proposed amendment because "incidental and supplemental" work has already been defined by the Contractors License Board and there is no compelling reason that the definition needs to be altered. "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.

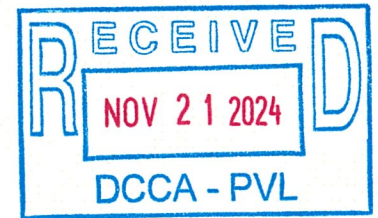
The Contractors License Board underwent the adoption of administrative rules to align the definition of "incidental and supplemental" with the District 50 vs Lopez decision. These rules intimately involved input from the construction industry and was recommended after unanimous approval by the Contractors License Board.

The proposed measure attempts to clarify "incidental and supplemental" work, but it is already understood that "incidental and supplemental" applies to specialty work. This definition has been thoroughly debated and adopted after years of discussion. However, these proposed amendments received different interpretations by industry professionals within the GCA. This could lead to unintended consequences that would ultimately raise the cost of construction and lead to protests.

Thank you for the opportunity to testify in opposition to the proposed amendments.

Testimony of
Pacific Resource Partnership

Contractors License Board
State of Hawai'i
Jerry Nishek, Chair
John Policheck Jr., Vice Chair



Proposed Amendments to HAR Section 16-77-34 – Redefining “Incidental and Supplemental work”
Friday, November 22, 2024

Aloha Chair Nishek, Vice Chair Policheck Jr., and Members of the Board,

Pacific Resource Partnership (PRP) represents the Hawai'i Regional Council of Carpenters, comprising over 6,000 union members and more than 250 general contractors. Our mission is to strengthen Hawai'i's construction industry and promote fair and effective policies that benefit our workforce and community.

PRP strongly opposes the proposed amendments to HAR Section 16-77-34, which seek to redefine the term “incidental and supplemental” work.

This definition has already been well-established by the Hawai'i Supreme Court in *District Council 50 v. Lopez* (2013) and reinforced by the Contractors License Board through a transparent process involving industry input. The current standard, based on these rulings, provides clear guidance that maintains industry stability and ensures consistency.

The proposed changes introduce ambiguity and differing interpretations, which could lead to unintended consequences such as increased construction costs, project delays, and potential disputes. These outcomes would undermine one of Hawai'i's main economic drivers – the construction sector and, more importantly, hamper the building of affordable and workforce housing – initiatives that are crucial for addressing our state's housing crisis.

We respectfully urge the Board to reject the proposed amendments and maintain the current, well-defined standard for “incidental and supplemental” work.

Mahalo for the opportunity to submit written testimony.

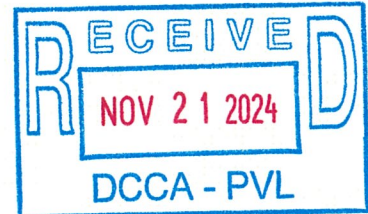
Andrew Pereira
Director of Public Affairs





1935 HAU STREET, SUITE 475 • HONOLULU, HAWAII 96819 • PHONE (808) 846-2374 • FAX (808) 847-4596

November 21, 2024



State of Hawaii Contractors License Board
Jerry Nishek, Chairperson
John Policheck, Jr., Vice Chairperson
Members of the Board

RE: Meeting on November 22, 2024, Agenda Item – Hawaii Administrative Rules

Dear Chair Nishek, Vice Chair Policheck, Jr., and Members of the Board:

Hawaii Electricians Market Enhancement Program (HEMEP) appreciates the work the Contractor's License Board (CLB) is doing to help clarify "incidental and supplemental" work in light of the court's decision in DC50 v. Lopez (2013).

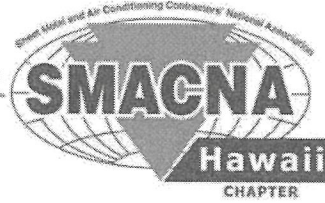
At times, inaccurate interpretations *in the field* have resulted in "less than the majority" being construed as less than 50% of the total project. We support the CLB in clarifying that it is only intended to be "less than the majority" of the specialty work that a specialty contractor is performing; provided that it first be determined as "subordinate to", "directly related to", and "necessary for the completion", and specifically of the work of that specialty contractor.

HEMEP has concerns about Paragraph (a), and the use of the words "any specialty classification that the contractor is not licensed...", because this could have unintended consequences *in the field* by being interpreted too broadly, and having specialty contractors stretch the limits of "subordinate to, directly related to, and necessary", being applied to "any" other specialty licenses. HEMEP recommends keeping the language "other trades" or amending as "limited other specialty work...". Placing a defined limit allows the contractor industry to recognize initial limitations and allows the CLB to continue to have discretion in what work meets all the elements of incidental and supplemental.

We look forward to this continuing process and offer any assistance the CLB requests. Thank you for accepting this testimony.

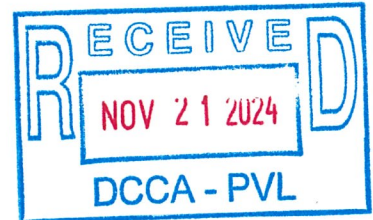
Respectfully Submitted,

Ryan Takahashi
Director of Compliance



November 21, 2024

Contractors License Board
P.O. Box 3469
Honolulu, HI 96801
Via contractor@dcca.hawaii.gov



Re: Definition of "Incidental and Supplemental" Work – HAR section 16-77-34

Aloha Contractors License Board members,

My name is Kevin Hirayama, Executive Director of the Sheet Metal Contractors Association (SMCA). SMCA represents more than 30 union contractors in the State of Hawaii on all islands.

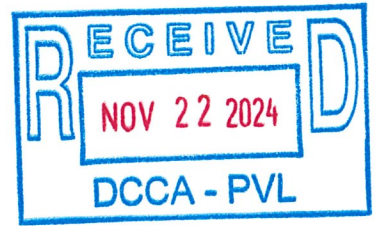
SMCA have some major concerns about the new language proposed to the Contractors Licensing Board for Incidental and Supplemental work (HAR section 16-77-34) as proposed.

We would propose that that Contractors License Board remove "B and C" for the proposed amendment to HAR Section 16-77-34.

Mahalo,

A handwritten signature in black ink, appearing to be "Kevin Hirayama".

Kevin Hirayama, Executive Director
Sheet Metal Contractors Association (SMCA)
Sheet Metal Air Conditioning National Association Hawaii Chapter (SMACNA Hawaii)
1088 Bishop St #609 Honolulu, HI 96813



STATE CONTRACTORS LICENSE BOARD
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
Friday, November 22, 2024
9:00 A.M.

RE: Opposition to Proposed Amendment to HAR Section 16-77-34

Chair Nisek, Vice Chair Polischek, and Members of the Board:

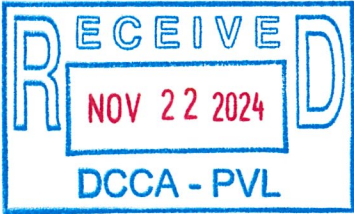
My name is Roseann Freitas, Chief Executive Officer of the Building Industry Association of Hawaii (BIA Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA Hawaii is **opposed** to the proposed amendments to HAR section 16-77-34 regarding the definition of "incidental and supplemental" work.

BIA Hawaii echoes the comments and concerns expressed by the General Contractors Association of Hawaii (GCA). "Incidental and supplemental" work has already been defined by the Contractors License Board and there is no compelling reason that the definition needs to be altered. "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.

Further, BIA Hawaii fears that the proposed amendments could be interpreted differently than intended by the Board and thus have the unintended consequence of making residential home construction more costly and putting home ownership out of the reach of more local families. The Board has not been presented with any compelling data-supported reason to change the current language of HAR section 16-77-34 that has been thoroughly vetted over time by both the CLB and the Courts. For these reasons, BIA Hawaii asks the Board to refrain from moving forward with the proposed measure.

Thank you for the opportunity to testify in opposition to the proposed amendments.



tel. 808-629-7501
fax. 808-629-7701

94-487 Akoki St., Ste 213
Waipahu, HI 96797

www.biahawaii.org
info@biahawaii.org