

REPORT OF THE CONTRACTORS LICENSE BOARD

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in Response to
Senate Concurrent Resolution No. 84, Senate Draft 1
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I. INTRODUCTION

Senate Concurrent Resolution No. 84, Senate Draft 1 (2013) ("Resolution")¹ requested the Contractors License Board ("Board") to conduct an assessment of each of the contractor licensing classifications under chapter 444, Hawaii Revised Statutes ("HRS"), and chapter 77, Hawaii Administrative Rules ("HAR"), and to prepare a report that evaluates each classification.

Section 444-8, HRS, generally establishes the Board's powers to classify and limit contractors' operations by authorizing the Board to "adopt rules and regulations necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business." The Board may limit the field and scope of a contractor's operations to those in which the contractor is classified and qualified to engage. Accordingly, subchapter 6 of chapter 77, HAR, generally establishes the scope of operations for contractors who hold the "A" general engineering, "B" general building, and "C" specialty classifications.² Exhibit A of chapter 77, HAR, further establishes subclassifications for specialty contractors.

Specifically, the Resolution requested the Board to include the following in the report:

- (1) A comprehensive assessment and review of all licenses issued pursuant to chapter 444, HRS, including the criteria, requirements, and procedures needed for the "A" general engineering, "B" general building, and "C" specialty contractor licenses, including all "C" specialty licenses that are automatically granted;
- (2) An assessment of whether the state licensing requirements are in line with similar licensing requirements in other jurisdictions and meet general construction industry standards and practices;
- (3) A specific evaluation of the definition of a C-5 (cabinet, millwork, and carpentry remodeling and repairs) contractor, including whether this definition is too broad, whether this definition includes an appropriate balance between the work that is performed and the experience necessary for a license, and a determination of whether this definition should be modified;
- (4) A determination of whether chapter 77, HAR, appropriately reflects the intent of the Legislature, with a specific focus on the scope of work that corresponds to each contractor classification;
- (5) Suggested amendments or modifications to the practice of issuing licenses for each license classification, as appropriate; and

¹ See Appendix A.

² This report appears to use the terms "license" and "classification" interchangeably when referring to general engineering, general building, and specialty contractors. As Senate Concurrent Resolution No. 84, S.D. 1, also uses these terms interchangeably, the Legislative Reference Bureau did not amend these references.

- (6) A brief description of the process the Board used in making its findings and recommendations in the report.

The Board was also requested to engage other interested industry stakeholders and union representatives when reviewing the classifications and preparing its report and to transmit a draft report to the Legislative Reference Bureau ("Bureau") no later than November 1, 2013.

The Bureau was requested to submit a final report, including any recommendations for amendments to chapter 444, HRS, and chapter 77, HAR, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2014.

To comply with the Resolution's request, the Board established a Rules Committee to initiate and moderate the discussion on these topics, and subsequently formed an Investigative Committee to review the comments received from the stakeholders and the current contractor classifications. The Board comprises the following members, and all Board members were appointed to the Rules Committee: Randall B. C. Lau, Chairperson; Guy M. Akasaki, Vice Chairperson; Anacleto "Joey" Alcantara, Jr.; Leslie A. Botelho; Tyrus Kagawa; William A. Kamai; Nathan T. Konishi; Peter Lee; Kent Matsuzaki; Aldon K. Mochida; John Polischeck, Jr.; Daryl Suehiro; and Gerald Yamada.

The Investigative Committee consisted of the following Board members: Randall B.C. Lau, Chairperson; Guy Akasaki, Vice Chairperson; William A. Kamai; Peter Lee; Kent Matsuzaki; and Gerald Yamada.

On May 30, 2013, the Board sent a letter to more than forty industry stakeholders, contractor associations, and union representatives, soliciting comments on the various contractor classifications and the Resolution.

The Board received written comments from at least fifteen interested parties.³ As expected, comments from the industry stakeholders offered different and often opposing perspectives. For example, there were comments recommending that new automatic specialty classifications be added to the general contractor license, and there were comments recommending that the automatic specialty classifications be eliminated or decreased. There were comments suggesting amendments to certain classifications, and there were comments against making such amendments. The following is a brief summary of a number of the comments received by the Board:

- Separate the general engineering and general building licenses into residential and commercial classifications;
- General contractors should demonstrate experience in each automatic specialty classification they are awarded;
- Eliminate the awarding of automatic specialty classifications to general contractors;

³ See Appendix B.

- More automatic specialty classifications should be awarded to general contractors;
- The administrative rules should be amended to allow general contractors to self-perform more work on their projects;
- The process of awarding automatic specialty classifications should not be changed;
- Examinations should be administered for all classifications, including automatic specialty classifications;
- Examinations adequately cover the automatic specialty classifications;
- The licensing examinations adequately test for general contractors' scope of work;
- Change the definition of "incidental and supplemental" work;
- Do not amend the definition of "incidental and supplemental" work;
- Amend various specialty classifications, including the C-5 classification;
- Delete "incidental and supplemental" from the definition of the C-5 classification;
- Do not amend the definition of the C-5 classification;
- Establish an educational requirement for general contractors;
- More information on applicants should be available to the public; and
- Experience certificates should be mailed directly to the Board.

In addition, the Rules Committee meetings were held on July 8 and 19, and August 23, 2013. The Investigative Committee also met on September 9 and 13, 2013, and reported its findings to the Board on September 20, 2013. The Board adopted the draft report at its meeting on October 18, 2013, and submitted the draft report to the Bureau on October 30, 2013.

II. REPORT

A. Comprehensive Assessment and Review of All Contractor Classifications

The Board evaluated each contractor classification and agreed to amend the "A" general engineering, "B" general building, and thirty-six "C" specialty and sub-specialty classifications. Although the Board discussed amendments to other contractor classifications, due to the deadline to submit this report, the Board decided to defer decision-making on these amendments to a future date so that they may be more thoroughly discussed.

Based upon the Board's review and assessment of the scope of work of each contractor classification and consideration of the comments received from industry stakeholders, the Board agreed to the following amendments to the contractor classifications established by chapter 77, HAR. Where applicable, new language is underscored, language to be deleted is bracketed and stricken through, and the justification for each proposed amendment is in italics.

1. "A" General Engineering

Regarding the "C" licenses that are automatically granted to "A" licensees under section 16-77-32(a), HAR:

Delete:

C-38 Post tensioning;
C-57a Pumps installation; and
C-57b Injection well.

Add:

C-14 Sign;
C-34 Soil stabilization; and
C-57 Well.

The C-38 Post tensioning license was deleted based in part on assertions made by the Hawaii Iron Workers Stabilization Fund that this is a very specialized trade dealing with large forces. The Board was also unaware of any "A" general engineering contractor that performs this work in-house. Although some general contractors felt that they should have the option to self-perform post tensioning work, the Board believed that it would be reasonable to require the contractor to have more specialized qualifying experience given the nature of the work involved.

The C-57a Pumps installation and C-57b Injection well classifications were recommended for deletion because the Board felt that the "A" general engineering contractor should be able to self-perform well drilling work, as it had prior to Okada Trucking Co. v. Board of Water Supply, 97 Haw. 450, 40 P.3d 73 (2002). Therefore,

instead of limiting the "A" general engineering contractor to pumps installation and injection wells, the Board decided to add the C-57 Well classification as an automatic classification under the "A" license.

The Board also recommended adding the C-14 Sign classification to the "A" license because it felt that a general contractor should be able to erect its own signs and because the "A" contractor already holds the C-32 Ornamental, guardrail, and fencing classification, which includes non-electrical signs.

The Board also recommended that the "A" general engineering contractor be allowed to perform soil stabilization work as, historically, that type of work was performed by the "A" contractor and involves concrete and guniting work, which the "A" contractor is already allowed to perform under other classifications.

2. "B" General Building and C-5

- (a) Separate the "B" license under section 16-77-32(c), HAR, into the following residential and commercial subclassifications:

"B" Residential ("BR")

- (1) The BR is limited to one-to-two family homes up to three stories, and does not include tract homes or subdivisions. To prevent parceling, the owner or developer of the tract home or subdivision project may not enter into a separate contract for each home with a BR contractor.
- (2) The BR would be able to do all of the work on a BR project, except for electrical, plumbing, boiler, elevator, and asbestos abatement work. Roofing work would be limited to asphalt shingles and metal roofing.
- (3) The BR would only have one automatic "C" classification: the C-5 Residential ("C-5R").

"B" Commercial ("BC")

- (1) The BC would only be able to do work that falls under its automatic "C" classifications. These classifications will be amended as follows:⁴

Delete:

C-5 Cabinet, millwork, and carpentry remodeling and repairs;

⁴ See section 16-77-32(c), HAR.

C-42a Aluminum and other metal shingles; and
C-42b Wood shingles and wood shakes.

Add:

C-5C Cabinet, millwork, and carpentry remodeling and repairs
(commercial);
C-14 Sign; and
C-21a Engineered wood and laminate flooring.

- (2) The BC can perform work that is incidental and supplemental to its automatic "C" classifications, except for the C-5C.
- (3) The BC automatically receives the BR license.

Current "B" contractors will receive both the BR and BC licenses (i.e., current "B" licensees would be "grandfathered" in).

The "B" general building license was separated into residential and commercial classifications, in part, to address concerns raised due to the restrictions imposed by the Hawaii Supreme Court's decision in Okada Trucking. The Board's recommendation to separate the "B" classification would allow the BR contractor to perform most of the work on a single-to-two family residence, as it was allowed to do in the past. However, on larger scale or commercial projects, the BC contractor would be limited to performing only work that falls under its "C" specialty classifications, pursuant to Okada Trucking. For example, prior to this decision, a "B" general building contractor could build a new home and paint it. Subsequent to the decision, the "B" general building contractor is not allowed to paint the home unless it obtains a C-33 Painting and decorating license. Under these proposed amendments, a BR contractor constructing a single-to-two family residence may paint the structure or subcontract the painting work to a C-33 Painting and decorating contractor. However, a BC contractor constructing a commercial building must subcontract the painting work to a C-33 Painting and decorating contractor.

Separating the license into residential and commercial classifications allows the Board to more narrowly tailor the license to an applicant's specific work experience. Also, because the BC contractor may construct projects on a larger scale (i.e., tract homes vs. a single family home), the Board found it appropriate to allow the contractor who qualifies for the BC license to also qualify for the BR license.

- (b) Separate the C-5 license into the following residential and commercial subclassifications:⁵

C-5 Residential ("C-5R")

⁵ See chapter 77, HAR, Exhibit A, A-4 to A-5.

- (1) The C-5R would be able to do all of the work on a residential remodeling or repairs project, except electrical, plumbing, boiler, elevator, and asbestos abatement work. The C-5R may not perform work on new tract home construction. However, it may perform work in a multi-family or multi-unit structure; provided that the work is limited to a single residence or unit.
- (2) Because the C-5R can do all of the work on a residential remodeling or repairs project, except electrical, plumbing, boiler, elevator, and asbestos abatement work, the term "incidental and supplemental" is inapplicable.

C-5 Commercial ("C-5C")

- (1) The C-5C would be amended to read as follows:

"To install cabinets, cases, sashes, doors, trims, [ø] window shutters, garage doors, bifold and shutter doors, nail-on or screw-attached prefabricated flanged window and door systems, manufactured siding and nonbearing partitions [that become a permanent part of the structure, and to remodel or to make]; and to perform carpentry remodeling and repairs [to existing buildings or structures, or both; and to do any other work which would be incidental and supplemental to the remodeling or repairing. The repairs, carpentry work, or remodeling shall include the installation of window shutters, garage doors, bifold, and shutter doors; and the installation of manufactured sidings and any other work that would not involve]. Work shall not include changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections."

- (2) The C-5C cannot perform work that is incidental and supplemental to the work in paragraph (1).
- (3) The C-5C may also perform the work in paragraph (1) in a residential setting.
- (4) The C-5C automatically receives the C-5R license.

Current C-5 contractors will receive both the C-5R and C-5C licenses (i.e., current C-5 licensees would be "grandfathered" in).

The C-5 license was separated into residential and commercial classifications to address concerns that the C-5 license is overly broad and to allow the Board to more narrowly tailor the license to the contractor's specific work experience. By limiting the work that

may be performed in a non-residential setting, this recommended change addresses concerns regarding a remodeling or renovation contractor performing major work in a specialized trade for which it does not hold the "C" license.

The Board also felt that because the C-5C license would allow the contractor to perform work on a larger scale (i.e., renovation of multiple units vs. a single family home), it is appropriate to allow the contractor who qualifies for the C-5C license to also qualify for the C-5R license.

3. Other Specialty Classifications⁶

"C-1 Acoustical and insulation contractor. To install interior or exterior acoustic tile systems, spray systems, fire safing, fire stopping, and insulation in buildings and structures for ~~[the purpose of]~~ sound control~~[-]~~ and other purposes. These systems or materials may be installed independently of or in conjunction with acoustic tile and/or drywall systems as multipurpose (acoustic, insulation, fire retardant) systems;"

To clarify that insulation is installed for purposes other than sound control. This classification also performs fire safing and fire stopping work.

"C-3b ~~[Play court]~~ Recreational surfacing contractor. To prepare or install existing or new surfaces~~[-]~~, including play court, playground fall zone, and track surfaces; to install materials or apply top or seal coating so that a level, suitable play court surface is obtained; and to paint ~~[playcourt]~~ play court lines;"

To recognize that these types of surfaces are used for more than just play courts.

"C-5b Siding application contractor. To prepare surfaces and install aluminum, vinyl or other manufactured siding~~[-, with the exception of wood,]~~ so that a watertight surface is obtained;"

The Board found no reason to specifically exclude wood siding from this classification.

"C-6 Carpentry framing contractor. To do wood and light gauge, cold-formed metal framing, siding, ~~[wood truss,]~~ trusses, roof sheathing, and other work as is by custom and usage accepted in the construction industry as carpentry framing;"

⁶ See generally chapter 77, HAR, Exhibit A.

It has been standard industry practice for this classification to perform light gauge metal framing.

"C-9 ~~[Cesspool]~~ Septic tank contractor. To excavate and install ~~[cesspools and]~~ septic tanks, packaged sewage treatment systems, leach fields, and seepage pits in compliance with the requirements of the department of health;"

The installation of cesspools is no longer allowed. The classification is expanded to clarify the types of sewage work that may be performed.

"C-12 Drywall and ceilings contractor. To layout and install nonstructural metal studs, channel and joist framing systems, and all types of gypsum wallboard systems, including the taping and texturing operations incidental thereto. Also included is the installation of thermal batt insulation and suspended acoustical ceiling systems and the application of ~~[spray-on]~~ acoustical, thermal and fire barriers which ~~[would be incidental]~~ are related to the installation of ~~[wallboard;]~~ wallboards;"

To clarify that insulation, suspended acoustical ceiling systems, and spray on barriers may be performed under this classification.

"C-15b Telecommunications contractor. To install, maintain, and repair telephone, computer, ~~[and]~~ data, music, CATV, closed circuit television, and satellite systems; including the associated cabling, wiring, or fiber optics; provided that this shall not include the installation of any conduits thereto;"

To clarify that other types of low voltage systems may be installed under this classification.

"C-21a Engineered wood and laminate flooring contractor. To install, replace, or repair prefinished engineered wood and laminate flooring, including related underlayment and trim;"

To convert the C-68FE Laminate flooring license to a proper classification.

"C-22a Glass tinting contractor. To apply any material or combination of materials to surfaces described in the C-22 classification above, to provide a decorative or protective shield, or a tinting shield from natural or artificial light;"

To recognize the other types of glass shields or coatings that can be installed under this classification.

"C-23 **[~~Gunit~~] Shotcrete and gunit contractor.** To pneumatically apply aggregates, cement, and water as shotcrete or gunit and finish the surface; including the setting of ground wires and pencil rods to establish the finished surface planes;"

To conform this description with terminology used in the industry.

"C-25 **Institutional and commercial equipment contractor.** To install industrial instrumentation including, but not limited to, pneumatic instrumentation systems, laboratory equipment, lockers, and food services equipment, folding and sliding partitions, folding bleachers, stationary metal partitions, raised floor systems, prefabricated systems using metal chutes, [~~incinerator,~~] incinerators, stages and rigging of stage curtains and racks, recreational equipment, jail and prison equipment, and related locking devices or control systems, and other equipment and materials as are by custom and usage accepted in the construction industry as institutional and commercial equipment work; and to install factory built stoves, fireplaces, and prefabricated steel chimneys;"

To clarify the types of equipment that may be installed under this classification.

"C-31 **[~~Masonry~~] Cement and masonry contractor.** To lay brick and other baked clay products, rough or cast stone, marble, granite, or any decorative plaster, cut and dressed stone, artificial stone and brick veneer, CMU, and structural glass, brick or block, laid with or without mortar or adhesives, manufactured precast concrete facing and back-up panels and brick or block panel; installation of fire clay products and refractories; installation of concrete fencing; installation of grout, rubble work, caulking, tuckpointing, sandblasting, mortar, cement washing, and cleaning related to masonry construction; to place and finish cement concrete; to drill, saw, and core concrete; and to do epoxy injection in concrete for structural purposes;"

The title is being amended to recognize the scope of work covered under this classification.

"C-31a **Cement concrete contractor.** To mix aggregates, cement, and water in order to make acceptable concrete; to place and finish concrete including the setting of screeds and forms; to install precast concrete; to do tuckpointing and caulking of concrete block, precast concrete, and [~~pre-cast~~] precast stone; to caulk metal to concrete and masonry; to cut, drill, saw, core, and [~~pressure~~] grout concrete; to do sandblasting, waterblasting, cleaning, sealing, and epoxy

injection of concrete; ~~and~~ to apply shotcrete and gunite; and to perform spall repair;"

This classification is being amended to recognize the scope of work covered under this classification.

"C-31e Concrete cutting, drilling, sawing, coring, and ~~pressure~~ grouting contractor. To cut, drill, saw, core, and ~~pressure~~ grout concrete;"

To clarify that the scope of work includes all types of grouting.

"C-32 Ornamental, guardrail, and fencing contractor. Installation of all types of structural and nonstructural units ~~[for residential, commercial, and industrial construction]~~, both interior and exterior including, but not limited to, folding gates, guardrails, handrails, stairs, fencing and gates, window shutters and grills, roll up shades, non-electrical signs, room dividers and shields, accessories, railings, and traffic safety devices;"

To clarify that the work may not be limited to residential, commercial and industrial units only, and may include agricultural and forestry uses (i.e., it applies to all types of units and fences).

"C-32a Wood ~~and~~, vinyl, and aluminum fencing contractor. To install, maintain, or repair wood ~~or~~, vinyl, or aluminum fencing;"

To recognize another type of fencing material that is being more commonly used in the industry.

"C-36 Plastering contractor. To apply gypsum ~~plaster~~, synthetic, cement, and acoustical plaster or any combination of materials common to the plastering industry to any surface which offers either a mechanical or suction type bond by spray or trowel; to apply lath or any other material that will provide a bond for the plaster including spray on, multipurpose, acoustic, insulation, and fire retardant systems; and to apply cementitious fire proofing systems;"

To clarify the types of plaster work covered under this classification.

"C-37 Plumbing contractor. To install, repair, or alter complete plumbing systems which shall include supply water piping systems, hot water piping systems which includes, but is not limited to, heat pump water heaters, and hot water supply boilers with a heat input of 200,000 BTU/h or less, waste water piping

systems, fuel gas piping systems, non-potable water treatment systems, waste water treatment systems, and other fluid piping systems; the equipment, backflow prevention assemblies, instrumentation, non-electric controls, and the fixture for these systems and the venting for waste water piping systems and fuel gas piping systems; for any purpose in connection with the use and occupancy of buildings, structures, works, and premises where people or animals live, work, and assemble; including piping for vacuum, air, and medical gas systems, spas and swimming pools, lawn sprinkler systems, irrigation systems, sewer lines and related sewage disposal work performed within property lines, fire protection sprinkler systems when supervised by licensed mechanical engineers or licensed fire protection contractors, and solar hot water heating systems, and the trenching, backfilling, patching, and surface restoration in connection therewith;"

To clarify that plumbing work includes non-potable water systems.

"C-37a Sewer and drain line contractor. To install sewer and drain line from house to city sewer with connections; and to install septic tanks, package sewage treatment plants, and related work, within property lines;"

To clarify that this classification includes drain lines as reflected in the title.

"C-42 Roofing contractor. To install roofing to an acceptable surface and provide a weather tight covering using metal; composition and cementitious shingles; wood shingles and shakes; concrete, clay, and other types of tile; building integrated photovoltaic shingles and tiles; built-up, modified bitumen, single ply, and fluid type systems; and other roofing materials including spray urethane foam, asphalt, and liquid (cutback) asphalt. To apply protective or reflective roofing, [~~or both. To apply~~] stain, water repellent materials, deck coatings, and top coatings. To also install roof flashing, penetrations, standoffs, underlay, purlins, and nailer strips in connection with all of the above;"

To recognize the emergence of building integrated photovoltaic materials in the roofing industry, as well as to clarify the scope of work covered under this classification.

~~["C-42a Aluminum and other metal shingles contractor."]~~

~~["C-42b Wood shingles and wood shakes contractor."]~~

~~["C-42c Concrete and clay tile contractor."]~~

Eliminate these three classifications, and grant current license holders the C-42 classification. Each classification has only five current licensees.

The Board felt that it was appropriate to streamline this license by merging some of its subclassifications.

"C-43 Sewer, sewage disposal, drain, and pipe laying contractor. To construct [~~concrete and masonry~~] sewers, [~~packaged~~] sewer disposal plants, sewage lift stations, septic tanks, surge tanks, and appurtenances thereto; to lay all types of piping for storm drains, potable and non-potable water, and gas lines, irrigation and sewers, and manholes [~~in connection with the above work~~]; and repairing, relining, and reconditioning of pipelines, including the excavation, grading, trenching, backfilling, paving, and surfacing in connection therewith;"

To update this classification, with no substantive changes to its scope.

"C-43a Reconditioning, relining, and repairing pipeline contractor. To repair, reline, or recondition water and sewer lines manually or by remote control in conformity with county sewer or with water supply departments specifications;"

To include another means of pipeline repair used in the industry.

"C-48 Structural steel contractor. To fabricate and erect structural steel shapes, bars, rods, and plates of any profile, perimeter, or cross-section, that are or may be used as structural members for buildings and structures; including riveting, bolting, welding, and rigging in connection therewith. Erection of metal buildings, passenger loading bridges, metal roofing and metal siding [~~installed on steel framing~~], related metal flashing and trims, mechanical, overhead, sliding and roll-up steel doors, and grills and bars over windows;"

To expand the classification to include metal roofing and metal siding on wood framing, and to clarify that the scope of work includes metal flashing and trims.

"C-48b Prefabricated metal buildings contractor."

The C-68MI classification will be eliminated, and current C-68MI license holders will be awarded a newly established C-48b license.

To convert the C-68MI Prefabricated metal buildings license to a proper classification. The description of this license is yet to be determined.

"C-49 Swimming pool contractor. To construct and repair concrete, gunite, shotcrete, metal, or plastic type pools, whirlpool baths, hot tubs, [~~jaeuzzies~~] pool decks, and walkways; including, but not limited to, installation and repair of water and gas service lines, from closest point of service to pool equipment, pool piping, fittings, back flow prevention devices, pumps, heaters, chlorine dispensers, pool plastering and other types of interior finishing and sealing, ceramic tile, coping, swimming pool accessories and safety devices, fences for protective purposes if in original contract and excavation and grading in connection with swimming pool construction;"

To recognize and incorporate common terms used in the industry.

"C-49a Swimming pool service contractor. Repair and replacement of pumps, filters, heaters and related circulation piping for swimming pools, whirlpool baths, and [~~jaeuzzis~~] hot tubs; acid washing or repainting of swimming pool, whirlpool bath, and [~~jaeuzzi~~] hot tub interiors; and repairs to pool tile, coping stones, plaster, and decks;"

To eliminate the use of brand names.

"C-51 Tile contractor. [~~To prepare the base upon which ceramic, mosaic, granite, terrazzo, and other tile work, including all pseudo tile and marble or cultured marble products, will adhere by suction, fasteners, or by adhesives; and to install these products;~~] To install hard tile surfaces of ceramic, stone, porcelain, and other tiles to floors, walls, ceilings, and counters on both exterior and interior locations using appropriate bonding adhesives, mechanical fasteners, or other industry approved means; and to prepare substrate of backer boards, mortar bed, tile specific membranes for waterproofing, crack isolation, caulking, grout, and related setting components;"

To update the classification as recommended by the industry.

"C-55 Waterproofing contractor. To apply felt, glass, asphaltum, bentonite, hot rubberized coatings, epoxy, sodium silicate, pitch, silicone, elastomeric coatings, sheet and fluid applied membranes, repellants, vapor barriers, or any other materials or combination of materials, including bituminous systems and cementitious and reactive applications, to surfaces to prevent water and [~~water~~] moisture vapor transmission from penetrating and passing the

materials. Work shall include, but not be limited to, waterproofing exterior walls and between slabs, both above and below grade, planter boxes, expansion joints, tank linings and application of tank coatings, and application to parking decks, play courts, and walking decks to form a watertight non-skid surface~~[-but];~~ provided that the work shall not [to] include the work of the C-42 roofing contractor. [This] Work also includes surface preparations of all types, caulking, sandblasting, waterblasting, power cleaning, or steam cleaning preparatory to waterproofing; and installation of flashing details for penetrations and standoffs;"

To update the classification as recommended by the industry.

"C-56 Welding contractor. On-site job layout, cut, assemble and weld the metal products including, but not limited to, ~~[pipe lines,]~~ pipelines, tanks, pressure vessels, ~~[guard rails,]~~ guardrails, and fire escapes, by welding techniques using carbon arc, metal arc, submerged arc, flux core, resistance, and ~~[oxyacetylene]~~ gas processes;"

Nonsubstantive housekeeping amendments are being made.

~~["C-61b Solar heating and cooling systems contractor."]~~

Eliminate this classification and grant current license holders the C-61. There are only three current licensees, and they also hold the C-37 or C-61a.

There was no need for this classification as it was underutilized, and the current license holders qualified for other classifications.

"C-63 High voltage electrical contractor. To place, install, erect, or connect any electrical wires, fixtures, appliances, apparatus, conduits, raceways, and to do trenching, backfilling, patching, and surface restoration in connection with the installation of conduits and lines which transmit, transform, or utilize electrical energy of ~~[more than]~~ 600 volts or more phase to phase;"

Clarification as recommended by the industry.

C-68 Classified specialist.

Convert the C-68RJ Concrete reservoirs to C-39 Pre-stressed concrete reservoirs, with the following description:

"To construct and repair pre-stressed concrete reservoir tanks, including related post-tensioning, and excluding reinforcing steel;"

To convert the C-68 RJ Concrete reservoirs license to a permanent classification.

B. Assessment of Licensing Requirements in Other Jurisdictions

To assess whether its requirements were in line with the requirements of other jurisdictions and meet general construction industry standards and practices, the Board reviewed the regulatory practices of the fifty-one other jurisdictions (forty-nine states, Washington D.C., and Guam). There is a wide range of licensing schemes, with approximately half of the jurisdictions having some form of licensing board. A number of states have different boards for different types of contracting, such as plumbing, electrical, and mechanical contractors. Other states merely register contractors and have no qualifying experience or examination requirements. Twelve states have local (county) licensing requirements.

The following is a breakdown of the types of contractor regulatory bodies employed by all jurisdictions:⁷

Commercial Contracting

- 24 Licensing Boards
- 19 No Licensing Required
- 8 Registration Boards
- 1 Construction Supervisor License

Residential Contracting

- 25 Licensing Boards
- 9 No Licensing Required
- 9 Local Licensing
- 9 Registration Boards

In December 2005, the state Auditor reviewed the contractor licensing requirements in a report entitled A Comparative Study of the Department of Commerce and Consumer Affairs Professional and Vocational Licenses, Report No. 5-14, and found that most states require licensure or registration of contractors. Nineteen states required a written examination and eleven states required work experience ranging from two to five years. The report also found that most states required insurance or bond and workers' compensation insurance. The report also noted that one state had an education requirement, and another state required continuing education.

Based upon the foregoing information and the Board's evaluation of the regulatory requirements of the other fifty-one jurisdictions, the Board determined that the contractor

⁷ From the National Association of State Contractors Licensing Agencies.

licensing requirements in Hawaii, while on the more stringent side of the spectrum, are not out-of-line when compared to other states. The Board's regulatory scheme closely follows that of the California Contractors State License Board, and the Guam Contractors License Board has patterned much of its regulatory requirements after Hawaii. Other western states have requirements similar to Hawaii (e.g., Arizona, New Mexico, and Nevada).

C. Evaluation of the Definition of the C-5

This issue has been addressed under the assessment of the contractor classifications in Section II.A. of this report.

D. Whether the Board's Rules Reflect the Intent of the Legislature

The Board noted that the primary intent of the Legislature in creating the Board was to protect the public health, safety, and general welfare in dealing with persons engaged in the construction industry; and to provide the public effective and practical protection against incompetent, inexperienced, unlawful, and unfair practices of contractors. The administrative rules adopted by the Board to implement this responsibility reflect the Board's careful consideration of the licensing requirements throughout the approximately fifty-six years that Hawaii's contractor regulatory statutes have been in place.

The Board also concluded that while the current requirements are adequate, the examinations for each classification should be more thoroughly reviewed to ensure that the content is current and relevant and that applicants in all classifications are appropriately examined.

E. Amendments or Modifications to the Practice of Issuing Licenses

The Board reviewed the criteria, requirements, and procedures it follows for issuing the "A" general engineering, "B" general building, and "C" specialty contractor licenses, including all of the "C" specialty licenses that are automatically granted to general contractors.

To obtain a contractor's license, one must demonstrate four years of supervisory level work experience in the classification applied for, pass a licensing examination, and submit financial information, including a financial statement, state tax clearance, and credit report. Pursuant to section 16-77-32, HAR, "A" general engineering and "B" general building contractors are automatically provided the following additional specialty classifications without further examination or paying additional fees:

"A" general engineering

- (1) C-3 Asphalt paving and surfacing;
- (2) C-9 Cesspool;

- (3) C-10 Scaffolding;
- (4) C-17 Excavating, grading, and trenching;
- (5) C-24 Building moving and wrecking;
- (6) C-31a Cement concrete;
- (7) C-32 Ornamental, guardrail, and fencing;
- (8) C-35 Pile driving, pile and caisson drilling, and foundation;
- (9) C-37a Sewer and drain line;
- (10) C-37b Irrigation and lawn sprinkler systems;
- (11) C-38 Post tensioning;
- (12) C-43 Sewer, sewage disposal, drain, and pipe laying;
- (13) C-49 Swimming pool;
- (14) C-56 Welding;
- (15) C-57a Pumps installation;
- (16) C-57b Injection well; and
- (17) C-61 Solar energy systems.

"B" general building

- (1) C-5 Cabinet, millwork, and carpentry remodeling and repairs;
- (2) C-6 Carpentry framing;
- (3) C-10 Scaffolding;
- (4) C-12 Drywall;
- (5) C-24 Building moving and wrecking;
- (6) C-25 Institutional and commercial equipment;
- (7) C-31a Cement concrete;
- (8) C-32a Wood and vinyl fencing;
- (9) C-42a Aluminum and other metal shingles; and
- (10) C-42b Wood shingles and wood shakes.

The Board determined that four years of experience and the completion of a licensing examination, which usually involves testing in both business and trade subject matters, are appropriate requirements for ensuring that the applicant is qualified to offer its contracting services to the public.

Furthermore, the Board concluded that the issuance of automatic "C" specialty classifications is necessary, particularly in light of the Hawaii Supreme Court's 2002 decision in Okada Trucking. Prior to 2002, general contractors were allowed to perform any work necessary to complete the project unless a specialty classification was required to perform a portion of the work in compliance with another statute or county permit requirements. In Okada Trucking, the Hawaii Supreme Court determined that under the Board's then current laws and rules, the general contractor may only perform work in the specialty classifications it holds. Therefore, based upon the Court's decision, a general contractor would not be able to perform any work if it is not awarded any "C" specialty classifications.

A number of industry stakeholders sought more involvement or transparency in the Board's application process. However, the Board felt that adequate disclosures were provided in

conformance with the statutory requirements of chapter 444, HRS, and the Uniform Information Practices Act ("UIPA"), codified as chapter 92F, HRS.

Under section 444-16, HRS, and section 16-77-14, HAR, the Board posts a list of contractor license applicants and allows any member of the public to comment on these applicants. Under the UIPA, the Board may not disclose certain information regarding an applicant because of the significant privacy interest the applicant has in the information (e.g., employment history, financial information, etc.), and the disclosure of this information would frustrate a legitimate government function. In order to accurately assess an applicant's qualifications for licensure, the Board must receive an honest attestation and evaluation from individuals with direct personal knowledge of the applicant's prior work experience. This information is confidential under chapter 92F, HRS, and may not be disclosed until the applicant is issued a license. After an applicant is licensed, the Board may disclose non-confidential information in the application to the public, and the public may provide comments to the Board at any time thereafter.

The Board appreciates the public's interest in the qualifications of applicants and the application process itself. However, the Board notes that its members have the expertise and are specifically authorized by the Legislature to determine whether or not an applicant is qualified to obtain a contractor's license.

F. Description of the Process Used by the Board in Making its Findings

As described in the Introduction of this report, the Board solicited comments from industry stakeholders, contractor associations, and union representatives. Written comments received by the Board are attached to this report as Appendix B. In addition to written comments, many stakeholders expressed their views and concerns at the Rules Committee meetings. Issues regarding the application process, scope of license classifications, examinations, qualifying requirements, automatic specialties, and other licensing matters were raised, and all comments were reviewed and considered by the Board.

III. CONCLUSION

The Board assessed and reviewed its licensing criteria, requirements, and procedures for the issuance of the "A" general engineering, "B" general building, and "C" specialty contractor licenses. The Board determined that a more thorough review and evaluation is necessary before any substantial changes to the process can be proposed.

The Board determined that its licensing requirements are similar to other states with licensing boards, meet the general construction industry standards and practices, and exceed the qualifying requirements of most other jurisdictions.

The Board evaluated the definition of the C-5 (Cabinet, millwork, and carpentry remodeling and repairs) to determine whether it may be overly broad. As a result, the Board proposed separating the C-5 classification into residential and commercial classifications to more appropriately balance the work performed and the necessary experience required.

The Board determined that its administrative rules reflect the intent of the Legislature, as the rules implement and clarify the process the Board utilizes in exercising its responsibility of protecting consumers and the general public. In reviewing the scope of work that corresponds to each license classification, the Board proposed amending the descriptions of thirty-eight license classifications to further ensure that the licenses issued are relevant and appropriate to the construction industry.

Finally, the Board notes that the above amendments are only recommendations and may be subject to change if and when the Board begins its rulemaking process under chapter 91, HRS.

Appendix A

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

S.C.R. NO. 84
S.D. 1

SENATE CONCURRENT RESOLUTION

REQUESTING THE CONTRACTORS LICENSE BOARD TO CONDUCT AN
ASSESSMENT AND PREPARE A REPORT THAT EVALUATES EACH
LICENSING CLASSIFICATION UNDER CHAPTER 444, HAWAII REVISED
STATUTES.

1 WHEREAS, Hawaii's contractor licensing law, codified as
2 chapter 444, Hawaii Revised Statutes, is a consumer protection
3 statute intended to protect the public's health, safety, and
4 welfare when dealing with persons engaged in the construction
5 industry, and therefore requires a licensee to show experience
6 for each license obtained; and

7
8 WHEREAS, the Contractors License Board is the governing
9 board for contractors licensed in Hawaii; and

10
11 WHEREAS, the Contractors License Board issues "A" general
12 engineering contractor licenses, "B" general building contractor
13 licenses, and "C" specialty licenses; and

14
15 WHEREAS, the Contractors License Board has adopted
16 administrative rules that include various "C" specialty license
17 classifications with categories and descriptions of each
18 specialty license classification; and

19
20 WHEREAS, although payment of application, testing, and
21 license fees are required as part of the regulatory system for
22 contractors, the Contractors License Board automatically grants
23 seventeen additional "C" specialty licenses to licensed "A"
24 general engineering contractors and ten additional "C" specialty
25 licenses to licensed "B" general building contractors without
26 the need for further examination or additional payment of fees;
27 and

28
29 WHEREAS, past interpretations from the Contractors License
30 Board have determined that a "B" licensee may perform painting,

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1 ceramic tile, and other specialty licensed work required on a
2 project without possession of those specific licenses; and

3
4 WHEREAS, in addition, the C-5 Cabinet, Millwork, and
5 Carpentry Remodeling and Repairs specialty classification is
6 automatically granted to "B" general building contractors; and

7
8 WHEREAS, the Contractors License Board has not recently
9 reviewed the criteria, requirements, and procedures for "A"
10 general engineering contractor licenses, "B" general building
11 contractor licenses, and "C" specialty licenses; and

12
13 WHEREAS, a comprehensive evaluation of each licensing
14 classification under chapter 444, Hawaii Revised Statutes, is
15 necessary to instill confidence in the construction industry and
16 ensure that all criteria, requirements, and procedures for the
17 three licensing classifications are up to date; now, therefore,

18
19 BE IT RESOLVED by the Senate of the Twenty-seventh
20 Legislature of the State of Hawaii, Regular Session of 2013, the
21 House of Representatives concurring, that the Contractors
22 License Board is requested to conduct an assessment and prepare
23 a report that evaluates each licensing classification under
24 chapter 444, Hawaii Revised Statutes; and

25
26 BE IT FURTHER RESOLVED that the Contractors License Board
27 is requested to include the following in the report:

- 28
29 (1) A comprehensive assessment and review of all licenses
30 issued pursuant to chapter 444, Hawaii Revised
31 Statutes, including the criteria, requirements, and
32 procedures needed for "A" general engineering
33 contractor licenses, "B" general building contractor
34 licenses, and "C" specialty licenses, including all
35 "C" specialty licenses that are automatically granted;
36
37 (2) An assessment of whether the state licensing
38 requirements are in line with similar licensing
39 requirements in other jurisdictions and meet general
40 construction industry standards and practices;
41
42 (3) A specific evaluation of the definition of a C-5
43 contractor, including whether this definition is too
44 broad, whether this definition includes an appropriate

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1 balance between the work that is performed and the
2 experience necessary for a license, and a
3 determination of whether this definition should be
4 modified;

5
6 (4) A determination of whether chapter 77, Hawaii
7 Administrative Rules, appropriately reflects the
8 intent of the Legislature, with a specific focus on
9 the scope of work that corresponds to each contractor
10 classification;

11
12 (5) Suggested amendments or modifications to the practice
13 of issuing licenses for each license classification,
14 as appropriate; and

15
16 (6) A brief description of the process the Board used in
17 making its findings and recommendations in the report;
18 and

19
20 BE IT FURTHER RESOLVED that the Contractors License Board
21 is requested to look beyond the membership of the Contractors
22 License Board and actively engage other interested industry
23 stakeholders and union representatives when preparing its
24 assessment and report; and

25
26 BE IT FURTHER RESOLVED that the Contractors License Board
27 is requested to transmit a draft report, including any
28 recommendations for amendments to chapter 444, Hawaii Revised
29 Statutes, and chapter 77, Hawaii Administrative Rules, to the
30 Legislative Reference Bureau no later than November 1, 2013; and

31
32 BE IT FURTHER RESOLVED that the Legislative Reference
33 Bureau is requested to submit a final report, including any
34 recommendations for amendments to chapter 444, Hawaii Revised
35 Statutes, and chapter 77, Hawaii Administrative Rules, to the
36 Legislature no later than twenty days prior to the convening of
37 the Regular Session of 2014; and

38
39 BE IT FURTHER RESOLVED that certified copies of this
40 Concurrent Resolution be transmitted to the Director of Commerce
41 and Consumer Affairs, Interim Director of the Legislative
42 Reference Bureau, and Contractors License Board.



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Appendix B

Letter from the Contractors License Board to Industry Stakeholders and Union Representatives and Comments Received as of October 28, 2013

NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



KEALI'I S. LOPEZ
DIRECTOR

CELIA C. SUZUKI
LICENSING ADMINISTRATOR

CONTRACTORS LICENSE BOARD

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. BOX 3469
HONOLULU, HAWAII 96801
www.hawaii.gov/dcca/pvl

May 30, 2013

Gentlemen:

The Contractors License Board ("Board") was requested by the Twenty-Seventh Legislature, 2013, to conduct an assessment and prepare a report that evaluates each license classification under Chapter 444, HRS (see enclosed Senate Concurrent Resolution No. 84, S.D. 1). Therefore, the Board invites you to comment on any of the topics that will be included in the report.

The Resolution requests that the report include a comprehensive review of the criteria, requirements, and procedures for obtaining a contractor license, including the automatic granting of specialty licenses; an assessment of whether the state licensing requirements are in line with licensing requirements in other jurisdictions and meet general construction industry standards and practices; a specific evaluation of the C-5 (Cabinet, millwork, and carpentry remodeling and repairs) classification; a determination on whether the Board's rules appropriately reflect the intent of the Legislature; and suggested amendments to the practice of issuing licenses for each classification.

The Board welcomes your written comments on any of the above issues. Please submit your comments to the Board at the above address **by June 30, 2013**, for review and consideration by the Board at its July 19, 2013 meeting.

Thank you for your participation. Please call me at 586-2700 if you have any questions.

Very truly yours,

Verna Oda
Executive Officer

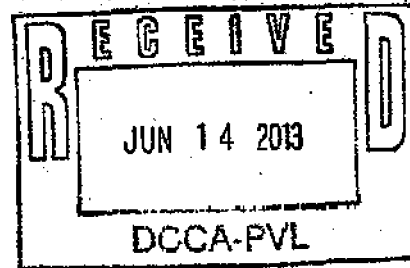
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Enclosure

IRON WORKERS STABILIZATION FUND

June 13, 2013

Randy Lau, Chair and
Member of the Board
Contractors License board
State of Hawaii
335 Merchant Street
Honolulu, HI 96813



Re: Review of "A", "B" and "C" Licenses

Dear Chair Lau and Members of the Board:

Pursuant to the Contractors License Board (CLB) letter seeking input from stakeholders and the general public concerning a review of the General Engineering Contractor (A License), General Building Contractor (B License) and Specialty License (C License), we offer the following suggestions.

- 1) Information regarding an applicant's experience in the field should be made available to the public during the application process. The CLB was created to ensure public safety. It is the public's right to review and comment on an applicant's experience, or lack thereof, during the application process and not after the applicant receives the license. Similarly, the CLB should allow more public input and scrutiny on applicant's experience during the application process, and not only after the applicant has received the license.
- 2) A person providing an affidavit on an applicant's experience should mail it directly to the CLB without providing a copy to the applicant. This increases the chances of the affidavit being unbiased.

It is not in the best interest of Public Safety for A License and B License Contractors to automatically obtain C Licenses without showing the same years of experience as any Specialty License contractor who has met all of the requirements to obtain that particular C License, as set forth in Section 16-77-18 of HAR, Title 16, Chapter 77.

Additionally, under industry practices, A and B Contractors usually restrict their work to either residential or commercial projects. This being the case, the CLB may want to restrict said contractors to be, specifically licensed to perform either residential or commercial work.

Randy Lau, CLB

June 13, 2013

Page 2

General Engineering Contractor ("A" License)

We believe that the C-38 Post Tensioning License should be removed from the "A" list. This is a very specialized license dealing with large forces, and, if the proper calculations are not made, buildings can collapse and workers installing these lines could be maimed or killed.

General Building Contractor ("B" License)

We recommend no changes.

Specialty License ("C" License)

1. Cabinet, millwork, and carpentry remodeling and repairs (C-5 License) - we recommend that the words "incidental" and "supplemental" be deleted.
2. Ornamental, guardrail, and fencing contractor (C-32 License)
 - a. In the description, add the word "highway" before "guardrail". Guardrails on buildings and other structures are installed by a contractor with a C-48 Structural Steel License. It is essential that these guardrails are properly installed to ensure that the structural soundness remain intact to protect the public.
 - b. Delete the word "structural" in the first sentence. Reason -- structural guardrails, handrails and fencing on retaining walls must be installed by C-48 Structural Steel contractors.
 - c. Any rails or fencing that deal with carrying loads, or for public protection by industry practice, must be installed by C-48 Structural Steel contractors
3. Welding Contractor (C-56 License) -- we believe that "guard rails" and "fire escapes" are under the purview of the Structural Steel License (C-48) and should be deleted from the C-56 category. Reason - guard rails and fire escapes deal with structural loads which should logically be under the purview of C-48 Structural Steel contractors. Additionally, any and all welding pertaining to structural elements of a building should be part of C-48. This shall include but not limited to, acetylene gas, arc-welding, fusion, flux core, electro and others.

4. Pole Contractor (C62a License) – we believe that all words following the semi-colon should be deleted. Reason – Steel trusses and steel braces require the experience of C-48 Structural Steel Contractors for public safety reasons.
5. Classified Specialist (C-68 License) – we believe that all of the specialty licenses in this section should be incorporated into one of the other specialty licenses. Per your rules, a Classified Specialist performs construction work requiring unique or special skill "which is not related to or does not completely fall within any of the listed classifications...". Through the listing the Contractors License Board provided us we believe most, if not all, should be incorporated into other specialty licenses.

Additionally, this is clearly a Public Safety issue. Since, there are no definitions in public records for these Classified Specialists, then it should be fair to assume there is no way to ascertain the requirements these Classified Specialists must attain to be licensed.

Accordingly, we believe that the following Classified Specialists should be made a part of the following licenses:

- a. Chimney and smokestacks (C68CY License)~~S~~ – Should be with C-48 Structural Steel.
- b. Prefabricated metal buildings (C68MI License) – Should be with C48 Structural Steel.
- c. Refinery and resource recovery equipment) (C68RH)~~S~~ – Should be with C-48 if it is dealing with the installation of a new building using structural steel. Should be C41 if it dealing with footings and forms.
- d. Concrete reservoirs (C68RJ) – Should be with C-38 Post Tension since any concrete reservoirs deal with post tension rods within the concrete.
- e. Communication Tower (C68TN) – The tower itself should use a C-48 and the footings for the tower should use C-41.

Randy Lau, CLB

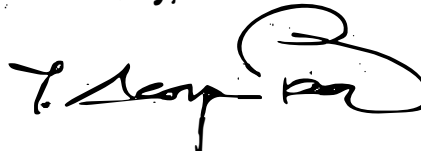
June 8, 2013

Page 4

- f. Power station cooling tower (C68TP) – The tower should be using C-48 for any structural work and C-41 for the footings.
- g. Wind power systems (C68WP) – Any and all structures for wind power should be using a C-48 for any structural works, and C-41 for the footings.

We request that these changes be made. Thank you for your time and consideration.

Sincerely,



T. George Paris
Managing Director

Cc: Governor Abercrombie
Kealii Lopez, Director DCCA

Painting and Decorating Contractors Association of Hawaii

970 N. KALAHEO AVE., SUITE A217 • KAILUA, HAWAII 96734 • TELEPHONE (808) 254-2322 •
FAX (808) 254-2355

June 17, 2013

Ms. Verna Oda
Contractors License Board
Department of Commerce and Consumer Affairs
P.O. Box 3469
Honolulu, Hawaii 96801

RE: SCR 84, S.D. 1 Requesting the Contractors License Board to conduct an assessment and prepare a report that evaluates each licensing classification under Chapter 444, Hawaii Revised Statutes.

Dear Ms. Oda:

The Painting and Decorating Contractors Association (PDCA) of Hawaii was chartered in 1961 and represents over 30 contractors and supplier firms that employ over 2500 individuals Statewide.

We believe automatically granting a "C" specialty license is not in the best interest of the public. Our contractors must qualify for "C" specialty licenses by demonstrating four years of supervisory experience in that specific trade along with the examination. The granting of "C" specialty licenses to "A" and "B" contractors without the same requirements imposed on the "C" specialty contractors does not protect the consumer and must stop.

We also believe that the C-5 (Cabinet, millwork, and carpentry remodeling and repairs) classification should not allow that contractor the free range to perform work beyond what is stated. They should not be allowed the added scope to remodel or make repairs to existing buildings or structures which they deem as incidental and supplemental to their work.

Thank you for the opportunity to submit our comments.

Raymond H. Fuji

Administrator

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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304

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

June 19, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

Dear Chairperson Lau:

Thank you for the opportunity to comment regarding the Board's comprehensive review pursuant to Senate Concurrent Resolution 84, SD 1.

As a conglomerate Association, the SAH leaves comments on the specifics of each of the specialty classifications to the members of those industries. We are however, concerned about several broadly applied requirements and Issues that this Resolution brings to the forefront.

First, we believe that we should let you know that overall we think that the Contractors License Board has been doing an excellent job over the years of providing the regulation that is required of the construction industry for the safety and protection of the general consuming public. This includes dealing with several complex and overlapping issues which for the most part we believe the Board has handled successfully; of course, some issues remain.

One area of complaint involves Administrative Rule 16-77-10(a) "Supporting documents required" Subsection (1)" requires a minimum of three (3) notarized letters certifying the individuals or RME's history and experience qualifications". As you know, the current practice appears to be that the applicant secures these documents directly and includes them with their license application. We find that procedure to be flawed.

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In order to get reliable, accurate and honest evaluations, these certificate statements should be mailed in directly to the Board, not viewed by the applicant. Under current practice, if the applicant should happen to retrieve one that has negative statements, they merely leave it out of their application. We have heard from a variety of contractors who have been asked to sign these statements that oftentimes the statements come totally filled in, in advance, only requiring the contractor's signature. While we agree that it is not good practice for the contractor to sign such a statement, it is often the case that they do so and we believe it renders this requirement superfluous. We do think that the basic requirement to submit these documents is a good idea however, the applicant should provide them to those who are going

to sign off on them and have them mailed directly to DCCA for inclusion in the application packet.

(Note: We are cognizant of the fact that this adds administrative costs to the procedure however in every case where we have asked licensed contractors if they would be willing to pay more licensing fees for an improved licensing process, the answer has been "yes".)

We are also concerned with Administrative Rule 16-77-14 "Posting of information and license application". It is based on this Section that the Board puts out its list of individuals who are applying for a license and the public is invited to comment on the person's eligibility for a license. Again, while the basic intent of this is excellent, in reality it is worthless because as the Board is aware a determination has been made that the applications are subject to the right of privacy. We know of one case where the applicant would have had to provide false information in order to show the four (4) years of supervisory experience because they had only worked in the construction industry for one contractor for three (3) months and was well known to be engaged in an unrelated industry prior to the application. However, we were unable to challenge any of this information since we have no idea what they put down. We believe that the Board should work together with industry in order to provide for an administrative exemption for this type of information. If there is other information on the application which is deemed to have a supreme privacy interest then that information should be made separate from the experience information so that the information can be readily released and made available to the public.

Perhaps more important than any item in the Board's purview for study is the issuance of automatic licenses, seventeen (17) to "A - General Engineering Contractors" and ten (10) to "B - General Building Contractors".

While there is no doubt that some of those specialty classifications are indeed part of a general contractor's overall scope of work and experience, there are many that are not. We agree with such classifications as C-6, Carpentry and Framing; C-10, Scaffolding; C-24, Building Moving and Wrecking; and C-31, Cement Concrete, all as being inclusive of the general contractors classification. However we do believe that a separate and higher application fee should be established since they are obtaining additional specialty licenses whereas others who apply for those licenses individually must pay fees.

We have similar comments on the General Engineering license however we would leave it to the Board to make a thorough evaluation of each one of the individual specialty licenses that are included with the A license in order to make a determination as to whether each and every one of them are required to be issued with the A license.

Lastly, we are particularly concerned, as Senate Concurrent Resolution 84, SD 1 points out, regarding the broad applicability of the C-5 Cabinet, Millwork, and Carpentry Remodeling and Repairs specialty classification. Our concern is that since the C-5 is one of the automatic licenses given to all B's and based on the Board's previous rulings that the C-5 specialty contractor can do just about any work as long as it falls under remodeling and repairs it seems

that this interpretation has afforded the general contractor with automatic access to any specialty classification regulated under Chapter 444 merely by having it classified a "remodeling" project.

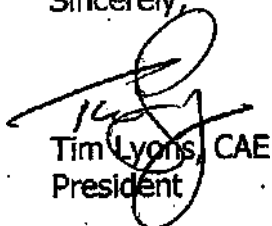
We believe the C-5 classification starts out right but then goes entirely too far. As stated, a C-5 contractor enables this individual "to install cabinets, cases, sashes, doors, trims or non-bearing partitions that become a permanent part of structure and to remodel or make repairs to existing buildings or structures or both" (emphasis added). We believe that the sentence should end after the word "structure". In other words, this classification should be limited to cabinet, millwork and carpentry remodeling and carpentry repairs. We would agree that the next words within that description including those that refer to "any other work which would be incidental and supplemental" should be removed from this classification. After all, incidental and supplemental applies to all specialty contractors and we see no reason why it should be highlighted in the C-5 but nowhere else in the list of seventy (70) plus other classifications.

In short, the C-5 specialty designation needs to be reworded in order to limit it to cabinet, millwork, carpentry remodeling and carpentry repairs.

In summary, we would like to thank the Board again for their time in reviewing the law. We know that it is an enormous project that requires a great deal of time and effort however based on the legislature's desire to see Chapter 444 protect the consuming public, we believe that the effort that the Board will make is a correct one and will go towards making the Contractors License Law a better working regulatory scheme.

Thank you for the opportunity to comment.

Sincerely,


Tim Lyons, CAE
President

JUN 24 2013



**TILE CONTRACTORS
ASSOCIATION OF HAWAII**

1440 Kapiolani Blvd., Suite 800, Honolulu, Hawaii 96814
Phone: Oahu (808) 441-8600; Fax: (808) 441-8750
www.tilehawaii.com; e-mail: tileinfo@tilehawaii.com

June 27, 2013

Contractors License Board
Chairperson
Mr. Randall B.C. Lau
Professional & Vocational Licensing Division
Dept. of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

RE: Chapter 444, HRS Senate Concurrent Resolution No. 84, S.D.1

Dear Chairperson Lau:

Thank you for the opportunity to provide comment for your assessment and legislative report of the existing license classifications which you have been tasked with by the legislature under Senate Concurrent Resolution 84, SD 1.

Our organization, The Tile Contractors Association of Hawaii, represents the tile industry in the state and all C-51 tile contractors and vendors. We will keep to the point and address those concerns which are primary to our association and community as it relates to the C51 specialty license as follows:

Of primary concern, the C5 license (cabinet & millwork) is too broad and being interpreted to allow ceramic tile as well as other trades work for remodeling projects. This is all construed under the term "incidental" which by definition is *minor, incidental, or subordinate*; and "supplemental" which is *additional*. The C5 has morphed into a catchall interiors renovation license that gives the ability to self-perform work using unskilled, out-of-state workers, or non-union work force. Businesses that have worked many years to develop as a C51 tile contractor now must compete with improperly licensed (C5) companies using unskilled labor to perform skilled work. It sets up for failure and circumvents the ability for maintaining qualified workers and puts the public at risk.

Here's an example of how the C5 is used in the real world...Company A from Seattle, company B from Texas, and company C from Florida have their "B" or C5 license and bid for the remodel of a hotel, timeshare, condo, etc. They are in the hospitality industry and they are "refurbishing" the interiors. New cabinets and some millwork trim and it needs to be painted and we have a small little tile backsplash....but in reality the project includes new tile floors at the bathrooms, new shower floors & walls, ADA modifications, waterproofing, new stone counters at the vanity and kitchen, and the backsplashes are all tile and let's add some tile out on the lanai too. Did we mention that this was all incidental to that new cabinet?

Let's see how this affects the community and the state...probably not collecting any GE Tax, no income tax from employees or local businesses, and paying unemployment to our people that are not working, but the state does collect rental car fees and bottle deposits. This is real and is happening with Starwood, Wyndham, and Marriott along with other properties.

In its current definition, we are opposed to granting a C5 license as an automatic to the B license. The C5 license must be limited in scope. A clear definition of "incidental" must be shaped and documented. These limitations and definitions must not only be applied to the scope, percentage, or dollar value, but the type of projects being performed. Tile work must be done by licensed C51 contractor and must be required on all commercial, multi-residential, resort, or other projects that involve more than one unit. The C5 should get back to its original intention of residential work that is not exposed to public or private commercial use.

We have fought as an industry throughout the country to maintain a standard of installation and trade practices to insure that failures are minimized and consumers, both residential and commercial, and the public have a product that performs as intended for many years. One of our national organizations that provide the guide for installation practices that is recognized by architects and the building industry is the Tile Council of North America (TCNA). The guide book in 1995 was 35 pages cover to cover since there was not a lot of varying structures, materials, or installation methods to consider. The large tiles were 12x12 and products did not change too much from year to year.

Let's move ahead to 2013 and we have a TCNA guidebook that is over 300 pages to account for all of the varying material advances, installation techniques, and substructures. There are a myriad of finish and setting materials that must be considered to have systems perform as intended. The C51 contractor has skilled tradespeople with training and understanding of these products through apprenticeship programs and professional certifications. Why should this be left as incidental and supplemental to a remodeling contractor?

We do not want to leave these decisions to those that are not qualified and licensed. Keeping tile licensed to earned and applied C51 contractors is the only way to protect the public's health, safety,

and welfare, and protect a major industry from harm. Any decision to allow this work under any other classification would be careless and misguided.

As a final to this report and part of your evaluation of the C51, it may be time to refine the license definition as follows:

C-51 Tile Contractors

To install Hardtile surfaces of ceramic, stone, porcelain, and other tiles to floors, walls, ceilings, and counters on both exterior and interior locations using appropriate bonding adhesives, mechanical fasteners, or other industry approved means and to prepare substrate of backer boards, mortar bed, tile specific membranes for waterproofing, crack isolation, caulking, grout, related setting components, and other incidental work in accordance with industry standards.

If your report to the legislature requires further review into specifics of the C51 tile license criteria, requirements, application, etc. our association would be willing to further review and bring it up to date. There was not enough time or access to information to include as a part of this report.

We thank you for your time and consideration and your commitment to the industry.

Respectfully submitted,

The Tile Contractors Association of Hawaii

The Pacific Resource
PARTNERSHIP



HAWAII OPERATING ENGINEERS INDUSTRY STABILIZATION FUND

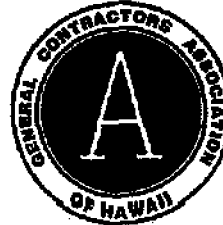


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BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION



Via Hand Delivery & E-Mail: verna.s.oda@dcca.hawaii.gov

June 28, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

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& CONSUMER AFFAIRS
STATE OF HAWAII

**SUBJECT: SCR 84, SD1 - Recommendations and Proposed Amendments to
Chapter 77, Hawaii Administrative Rules (HAR)**

Dear Chair Lau and Members,

As interested industry stakeholders, the undersigned organizations are collectively writing to request the Contractors License Board's (the Board) consideration of the comments and proposed amendments to Chapter 77, Hawaii Administrative Rules (HAR) governing contractors. This letter is in response to the Board's request to provide comments to Senate Concurrent Resolution 84, Senate Draft 1 (SCR 84, SD1) which "Requests the Contractors License Board to Conduct an Assessment and Prepare a Report that Evaluates Each Licensing Classification Under Chapter 444, Hawaii Revised Statutes."

Pursuant to SCR 84, SD1 the Board is tasked with conducting a comprehensive review of the following: (A) the criteria, requirements and procedures for obtaining a contractor license, including automatic granting of specialty licenses; (B) an assessment of whether the state licensing requirements are in line with licensing requirements in other jurisdictions and meet general construction industry standards and practices; (C) a specific evaluation of the C-5 (cabinet, millwork, and carpentry remodeling and repairs) classification; (D) a determination on whether the Board's rules appropriately reflect the intent of the legislature; and (E) suggested amendments to the practice of issuing licenses for each classification.

SCR 84, SD1 (2013) was developed in response to bills introduced this past session (S.B. 347 & H.B. 78) which proposed to require further examination and additional fees prior to issuance of additional specialty licenses for the "A" general engineering and "B" general building contractor

only, particularly targeting the automatic "C" specialty licenses. The bills did not recognize that the "C" specialty contractors receive approximately 46 "automatic" subclassifications of the licensee's particular specialty without examination or additional fees. We believe that the current "A" general engineering and the "B" general building contractor examinations are sufficient and adequately test in areas where the "A" general engineering and "B" general building licensed contractors may be qualified to perform. There has been no evidence presented that "A" general engineering or "B" general building licensees due to their inclusive "C" specialty licenses pose substantial risk to the consumer and the public.

A. The criteria, requirements and procedures for obtaining a contractor license, including automatic granting of specialty licenses to the "A" general engineering and the "B" general building contractor should not be changed.

- a. "A" general engineering contractors are qualified for all automatic "C" licenses. The allegation that the "A" general engineering contractor includes 17 automatic "C" specialty licenses without examination or payment of fees for those "C" specialty licenses is flawed because not all of the "C" licenses have trade examinations. The "A" general engineering contractor examination is comprehensive for all areas in which the "A" general engineering contractor is allowed to perform, including areas in which no trade examination exists. Prior to taking the "A" general engineering contractor test, the Board must first review an application and carefully scrutinize the applicant's 4 years supervisory experience.
- b. "B" general building contractors are qualified for all automatic "C" licenses. The claim that the "B" general building contractor includes ten automatic "C" specialty licenses without examination or payment of fees for those "C" specialty licenses is flawed because not all of the "C" specialty licenses have trade examinations. The "B" general building contractor examination is comprehensive for all areas that the "B" general building contractor is allowed to perform, including areas in which no trade examination exists. Similarly, the Board must review all applications prior to an applicant being approved to sit for the examination.
- c. Public invited to comment on Applications by individuals and companies. Notice of all applicants must be published for transparency and public review. Pursuant to Section 16-77-14, HAR,
whenever an applicant has filed a complete application, the name and address of the applicant, and the names and addresses and official capacity of the applicant's RME(s) . . . shall be publicly posted, as part of the board's investigation under Section 444-16, HRS, for not less than 14 days.
If anyone has objections to an applicant's experience or background, concerns can be raised before the Board, prior to the approval of an application. Applicants are subject to strict scrutiny not only by the Board but by members of the public and fellow industry stakeholders. Therefore, if an applicant is seeking an "A", "B" or "C" license, their applications are subject to strict public scrutiny.

- d. The Board closely scrutinizes all "A" "B" or "C" contractor applications. As mentioned above approval of a contractor's application must be approved the Board first - applicants must meet strict criteria¹ before even being allowed to take the test and prove the administrative portion of compliance. Applicants (company, RME or sole) must be 18 years old; provide credit history/background; bonding if applicable and 4 years of supervisory experience in particular area applying to within last 10 years; good reputation for honesty, truthfulness, financial integrity, and fair dealing.
- e. The "A" general engineering contractor examination² is comprehensive. The examination for an "A" Contractor test is four hours, with 100 questions which covers all areas of "A" general engineering work and requires 75% passage of subject area matters including: Bridges/Misc structures (15%); Planning and surveying (14%); Earthwork (15%); Utilities (13%); Heavy Equipment (9%); Canals, Reservoirs and Flood Control (10%); Asphalt Pavement (6%); Concrete Pavement (6%); Estimating/Basis of Pavement (5%); Metal Barriers, Striping, signs and fences (3%); and Safety-OSHA (4%).
- f. The "B" general building contractor examination³ is comprehensive. The examination for a "B" Contractor is four hours, with 80 questions, which covers all areas of "B" general building work and requires 75% passage of subject area matters including: Plan Reading and Estimating (8%); Sitework (7%); Concrete (12%); Masonry (8%); Metals (5%); Carpentry (18%); Thermal and Moisture Protection (15%); Doors and Windows (8%); Finishes (12%); and Safety (8%).
- g. Business Law examination⁴ required of all contractor applicants. In addition to the applicable trade exam, "all contractors are required to pass the Business and Law examination, which includes 80 questions and requires 75% passage rate. The breakdown on subject matters are as follows: Business Organization (3%); Licensing (10%); Estimating and bidding (12%); Contract Management (18%); Project Management (9%); Public Works Laws (5%); Risk Management (10%); Safety (7%); Labor Laws (7%); Financial Management (9%); Tax Laws (6%); Lien Laws (4%). These areas of testing are bound in the legislative intent of Hawaii's Contractors law which was to "protect the general public against dishonest, fraudulent, unskillful or unqualified contractors." *House Standing Committee Report 618* on House Bill No. 423, Regular Session of 1957 in Act 305 (1957).

¹ See State of Hawaii, Department of Commerce and Consumer Affairs, Professional and Vocational license application criteria (visited May 24, 2013) <http://hawaii.gov/dcca/pvl/Boards/contractor/application_publications>.

² See Hawaii-Prometric (visited May 24, 2013) <<https://www.prometric.com/en-us/clients/hawaii/pages/HIBOL.aspx>>.

³ *Id.*

⁴ *Id.*

- h. The included "C" specialty licenses for the "A" general engineering and "B" general building contractors should not require additional testing or fees, but be expanded to include additional "C" specialty licenses. In 1958, an "A" general engineering contractor could do "practically anything." As early as 1958 the Board recognized that the "A" general engineering contractor "can do practically anything [and] . . . He should sub the job out to a Specialty man if he is not capable of doing the job."⁵ The intent of Hawaii's Contractors Law and the capacity of what the "A" general engineering contractor and the "B" general building contractor from its inception are reflected in the Board's Minutes, which recognize that while an "A" general engineering contractor could do anything, he or she may not choose to do everything.
- i. Original intent of Hawaii's Contractors Law. The proposed amendments below reflect the original legislative intent of Hawaii's Contractors Law which was adopted under Act 305 in 1957. Upon adoption of Act 305, the legislature said the "[g]eneral intent of this bill is to protect the general public against dishonest, fraudulent, unskillful and unqualified contractors."⁶ The amendments below closely adhere to the original intent of Hawaii's Contractors law and what the founders of this law intended when they created three classifications of contractors, "A" general engineering, "B" general building and "C" specialty contractor.

In response to the Board's request, the undersigned organizations request the Board's consideration of the following comments and recommendations:

- B. Hawaii's state licensing requirements are generally consistent with licensing requirements in other jurisdictions, but the proposed amendments below would bring them into line with the administration of such licensing.**
Upon review of the Board's past meeting minutes, it is evident that Hawaii's contractor licensing law has used California's contractors licensing law as a guide. While Hawaii's law is different from California's law in some respects, for example they do not require electricians or plumbers to be individually licensed journey workers; in other areas they are very similar. As will be pointed out below, Hawaii's licensing classifications are very similar in description. However, Hawaii's license classifications are twice the number California has: while Hawaii currently has over one hundred license classifications, including 18 specialist licenses under the C-68, California has about 43.
- C. While the C-5 license is currently being reviewed by the Board due to the Hawaii Supreme Court's ruling in *District Council 50 v. Lopez* case, we reserve any recommendations as to the C-5 classification until after the Board's determination.** While we understand the Board is deliberating a response to the Supreme Court ruling in *District Council 50 v. Lopez*, specifically as it relates to "incidental and supplemental" and the undertaking of work related to, and necessary for, the completion of a project, we

⁵ See Board Minutes February 21, 1958.

⁶ House Standing Committee Report 618 (1957), House Bill No. 423, Act 305.

would support a determination by the Board that would continue to make determinations on a case by case basis.

D. The Hawaii Administrative Rules do not properly reflect the intent of the legislature, thus the following Recommendations are proposed (See attached Exhibit 1 for proposed amendments to Chapter 77, HAR)

1. Section §16-77-18(a), HAR, as follows:

Amendments to Responsible Managing Employee's experience requirement

Proposed amendment to Section 16-77-18(a) as follows: (a) Every individual applicant or RME shall have had, ~~within the past ten years immediately preceding the filing of an application,~~ not less than four years of supervisory experience as a foreman, supervising employee, or contractor in the particular classification in which the applicant intends to engage as a contractor.

The existing language limits the ability of the Board to determine the appropriateness of the experience required for the license being applied for. For example, a contractor could have garnered certain experience earlier in his career which could not be used to prove such supervisory experience if applying later for a particular license even if such work in a particular field may have been related.

2. Section 16-77-28, HAR All Contractors Classified.

a. Amendments to Section 16-77-28, HAR make rules consistent with Hawaii's law. The proposed amendments to Section 16-77-28, HAR are necessary to ensure that the rules are consistent with the law and will clarify what the "A" general engineering and "B" general building contractor are permitted to do by law. Section 444-7, Hawaii Revised Statutes (HRS) was adopted in 1957 and amended once in 1989. The current classifications set forth in the Hawaii Administrative Rules do not properly reflect what the true intent of the type of work the "A" general engineering and "B" general building contractors can do. The proposed amendments suggest a way to further clarify the type of work such contractors can perform.

b. Amendments to Section 16-77-28, HAR reflect intent of Hawaii's Contractor's law in 1957. The original intent of Hawaii's Contractor's law is captured in *House Standing Committee Report 618* on House Bill No. 423, Regular Session of 1957 in Act 305 (1957). The purpose of the state regulation of contractors through the Contractors License Board is "to protect the general public against dishonest, fraudulent, unskillful or unqualified contractors." A 1983 Report by the Auditor *concluded* that "most consumers lacked the technical knowledge, legal expertise, and financial resources available to government agencies and corporation to protect themselves against failure or malpractice by contractor." *Sunset Evaluation Report, Contractors, Chapter 444, Hawaii Revised Statutes*, Report No. 86-3, January 1983. During the Board's first rule adoption process on September 5, 1958 ~~the~~ Executive Secretary, Robert Shaw explained,

[t]hat phrase was taken out of the minutes of the Legislative Committee meeting. We have more than our share of fraudulent, incompetent and unskillful contractors on Oahu

and we are bringing them into the office for hearings and disciplinary action. Our investigators spend a great deal of time checking on construction jobs to see whether the contractor is licensed. One of our primary functions is to teach the public to use only licensed contractors."

This statement reflects that the legislative intent of Hawaii's contractor's law was to ensure that those holding themselves out as contractors were properly licensed and would adequately perform the job and finish a project.⁷

- c. The scope of the "A" general engineering and "B" general building contractor was set forth upon the initial adoption of Hawaii's contractors licensing law. Furthermore, in 1958, the Board interpreted what the "A" general engineering contractor as "a license to do any or all portion of work that is involved in construction for example, roads, grading, wharf etc."⁸ The legislative intent behind Act 305 (1957) law is clear⁹ that the definition of "A" general engineering contractor was authorized to perform all type of construction as described in HRS 444-7(a), HRS. For the "B" general building contractor, in 1958 the Board said,

[a]s a General Building Contractor you are automatically licensed to do any or all work required if the contract involves more than two crafts or trades. The law was made to prevent any General Building Contractor from bidding on any specialty job requiring less than two trades or crafts unless he is licensed in those trades or crafts.⁹

- d. Amendments similar to California's law structure. The proposed amendment is similar to California's Contractor's Rules and Regulations.¹⁰ California's Code of Regulations (similar to Hawaii's Administrative Rule), 16 CCR Section 830 describes the "A" general engineering contractor and the "B" general building contractor by referencing California's State Law, Section 7056 and Section 7057 respectively. California's law (Section 7056) describing the "A" general engineering contractor is exactly the same as Hawaii's law (Section 444-7(a), HRS). The Board has been using California's Code as a guide since its inception as referenced in Board's 1958 Minutes in discussion about the three classifications, whereby a Member said, "I have checked with the California Code, and several other states, and this question has never been raised in other states. Under Section 7, in classifying and defining the three classes, the Board has the power to limit the scope of operations. You cannot change the

⁷ See Board Minutes September 5, 1958.

⁸ See Board Minutes February 21, 1958.

⁹ *Id.*

¹⁰ See California Contractors License Law & Reference Book (visited June 10, 2013) <http://www.lexisnexis.com/clients/caagencylaw/CA_Contractors_2013.pdf>.

definition of the statute.”¹¹ Furthermore, when referencing the number of specialty licenses Hawaii had in 1958, which was 34 at the time – the Board made a comparison to California’s, roughly 40 specialty licenses during same period. The Board has historically followed the western states, particularly California for rules and regulations. On May 20, 1977 when discussing an upcoming National Association of State Contractors Licensing conference the Board “directed the Executive Secretary while on the mainland observe the operations of the California license agency.”¹²

- e. New section 16-77-28(f), HAR the C-68 licenses should be properly vetted. The proposed amendment will ensure that an existing contractor performing specialized work that may be closely related to a newly adopted C-68 specialty license will not be cited for unlicensed activity. Further, the proposed amendment will ensure that the creation of a new C-68 license does not fragment an existing classification. The amendment proposes that until the Board formally adopts a new specialty “C” license under the C-68 classification, the performance of such work by others that may be related to such specialty work should not be precluded from performing such work. The Board must formally adopt the C-68 specialist license within 18 months of initial adoption. Under Chapter 103D, HRS the Policy Procurement Board is allowed 18 months to formally adopt an interim rule that may govern procurement. In California such specialty classifications are developed by staff and approved by the Board as policy. Currently, applicants for a C-68 license (18 current C-68 licenses in Hawaii) are required to meet all applications requirements, including four years supervisory experience in particular trade and pass the business law exam. There are no trade examinations for the 18 C-68 licenses.
- f. Proposed amendments to Section 16-77-28 do not overstep the Hawaii Supreme Court’s decision in *Okada Trucking*. The proposed amendments do not overstep the *Okada Trucking* decision; instead, the amendments further clarify what each license classification, whether the “A” general engineering, “B” general building or “C” specialty contractor, can do by following what California’s administrative rules does by referencing back to the statute. The statute clearly articulates the areas in which a contractor is permitted to perform. Furthermore, the amendments propose what has been a long standing position of the Board “that an “A” general engineering contractor can do all the work (except electrical, plumbing and elevator work) on an “A” project regardless of whether they are a prime or a sub.”¹³

3. Delete Subtitle Subchapter 6, Scope of Classifications and include under heading Subchapter 5, Classification. *Nonsubstantive amendment*

¹¹ See Board Minutes February 21, 1958.

¹² See Board Minutes May 20, 1977.

¹³ See Board Minutes February 15, 2002.

- a. Delete subtitle Scope of Classifications, Subchapter 6, instead include all titles in Subchapter 5, Classification. This change is nonsubstantive, but would eliminate confusion between Subchapters five and six. This change proposes to remove subtitle "Subchapter 6, Scope of Classifications" and including Sections 16-77-28, 16-77-32, 16-77-33, 16-77-34 and 16-77-35 under one subtitle of Subchapter 5, Classification. This change would properly include all sections in Chapter 77 related to classifications under one subchapter.
4. **Section 16-77-32. General engineering, general building and specialty contractors**
 - a. Move Section 16-77-32, HAR in its entirety into Section 16-77-28, HAR. This amendment proposes to combine two rules into one to clarify classifications and scopes into one Rule, instead of separating such, thereby eliminating confusion.
 - b. Amendment in new section 16-77-28(b) will clarify that an "A" general engineering licensee is permitted to perform pipe related work five feet outside of the building without licensed plumbers. It is important to add the provision to clarify that an "A" licensee can perform pipe related work five feet outside the building without using licensed plumbers since it is in concurrence with HAR Section 16-80-3. The reference to the five foot rule in Chapter 80, HAR has been in place since the administrative rule's inception of 1973.

The proposed amendment in the new Section 16-77-28(b) would include that "[t]he "A" general engineering may also perform any exterior piping and related appurtenances work five feet or more outside the building line without licensed plumbers." There have been attempts to do away with what is commonly referred to as the "five foot" rule currently in HAR, Chapter 80 as recent as June 2011. In HAR Section 16-80-3 the definition of plumbing work includes a provision that says, "[h]owever, this provision shall not prohibit other properly licensed contractors from performing any exterior piping five feet or more outside the building line without licensed plumbers." The added language is necessary to ensure that there are no claims by other subcontractors that such piping work, located five feet outside the building, requires a licensed plumber to either supervise or perform such work. The other provisions related to the "A" contractors to install pole and lines or duct lines should not be disturbed as these have been in place since the 1970's.¹⁴

- c. The concept of automatic "C" licenses can be traced back to 1967, however the Board's original intent was not to limit the amount of work the "A" or "B" general contractor could perform but expand it. The industry practice as early as 1958 recognized the fact that the "A" general engineering contractor could perform almost *all specialty work* on projects qualified as general contracting projects, without having to obtain the applicable specialty licenses.¹⁵ In 1958, the Board found that

¹⁴ See Board Minutes May 15, 1978.

¹⁵ Lance M. Inouye, *Okada Trucking Bombshell*, 163 Journal of Professional Issues in Engineering Education and Practice, July 2003.

If a General Engineering Contractor takes any portion of the work he is capable of doing, he is not in any way harming the general welfare of the public, he can do the work and not harm anybody. A General Building Contractor may take any portion of the building and not jeopardize the general welfare of the public. If a Specialty Contractor goes beyond the scope of his license and does something else besides what he is licensed for, then he is not capable of doing the work and is jeopardizing the purpose of this Act. I think a General Engineering Contractor can do practically anything. If he hasn't got a capable man and the public makes a complaint to the Board, we can investigate the matter and the Board can rule and get recourse at the Court. It is for the Board to find out whether the contractor has or has had a man on the job who is capable of doing the job and can prove his experience. He should sub the job out to a Specialty man if he is not capable of doing the job.¹⁶

Furthermore, on May 21, 1993 under the guidance of former Board Executive Secretary Charles Cook and Mr. Wilbert Toma, former Chair of the Board, he stated that the intent behind HAR Section 16-77-2(c) "was to expand, not limit, the scope of activity that a "B" license could engage in. Mr. Cooke said that when a structure was involved a "B" license could do all the work involved." *Emphasis added.*

- d. The 2002 decision by the Hawaii Supreme Court in *Okada Trucking* changed industry practice. The 2002 *Okada Trucking* decision changed the Board's longstanding interpretation that "on the scope of an "A" and "B" licensee (in general, on an "A" or "B" project, an "A" or "B" licensee, respectively may perform all of the work except electrical, plumbing, elevator, asbestos, or boiler work unless they held the appropriate specialty contractors license) . . ." (*Emphasis added.*)¹⁷ Since *Okada* the Board has interpreted that "an 'A' or 'B' licensee may still act as the 'prime' contractor and be responsible for the overall project; however, the 'A' or 'B' licensee may only perform work in the trades in which they have the appropriate 'C' license and the remaining work must be subbed out to appropriately licensed 'C' contractors¹⁸." By statute, an "A" general engineering contractor can perform all work pursuant to Section 444-7(b), HRS, which would be inclusive of all type of work listed.
- e. The concept of automatic "C" licenses was adopted when specialty contractors were fairly represented on the Board. Upon the creation of Hawaii's Contractor's law and the Contractor's License Board in 1957 the original make

¹⁶ See Board Minutes February 21, 1958.

¹⁷ *Id.*

¹⁸ *Id.*

up of the Board included seven members, whereby the membership included five contractors (one general engineering, two general building, and two specialty) and two non-contractors. Thereafter, in 1965, the Board increased to 13 members, whereby the breakdown of members consisted of nine contractors (three general engineering, three general building, three specialty) and four non-contractors. In 1983, Act 275 revised the composition of the Board to what it currently is - by increasing the number of contractors to 10 (five general engineering or general building, five specialty) and three non-contractors. The county residency requirements were also adopted in 1983. Therefore automatic "C" specialty licenses were adopted when specialty contractors were fairly represented on the Board. While general contractors may have outweighed specialty contractors, the balance presented by non-contractors was considered in the deliberation of automatic "C" specialty licenses offering a balancing of ideas and positions.

- f. Section 16-77-32 automatic "C" specialty licenses should be expanded and include additional specialty classifications pursuant to Section 444-7, HRS. The proposed changes properly reflect what the "A" general engineering and "B" general building contractor can perform pursuant to Section 444-7, HRS and would make the rules consistent with the law.

For the "A" general engineering contractor the following changes proposed:

<u>License Added/Deleted</u>	<u>Rationale</u>
Add C-14 Sign: To fabricate or install electrical or nonelectrical signs and sign devices for the purpose of display, advertising, or directions; and to install all sign supports and sign accessories;	Most sign installations can be erected by the "A" contractor and can be done in connection with other fixed works. Further the "A" contractor examination includes testing on areas of signage and estimating.

For the "B" general building contractor the following changes proposed:

<u>License Added/Deleted</u>	<u>Rationale</u>
Add C-1 Acoustical and Insulation: To install interior or exterior acoustic tile systems, spray systems, and insulation in buildings and structures for the purpose of sound control. These systems or materials may be installed independently of or in conjunction with acoustic tile and/or drywall systems as multipurpose (acoustic, insulation, fire retardant) systems;	Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . more than two unrelated trades . . . The installation of insulation and acoustic systems is directly related to building any structure.

<p>Add C-7 carpet laying: To apply or install acceptable fabric floor coverings, artificial turf, or other prefabricated materials to surfaces;</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . "requiring . . . more than two unrelated trades . . .". The installation of carpeting is related to the building of a structure.</p>
<p>Add C-14 Sign: To fabricate or install electrical or nonelectrical signs and sign devices for the purpose of display, advertising, or directions; and to install all sign supports and sign accessories;</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . more than two unrelated trades . . . The installation of signs can be performed by a "B" contractor.</p>
<p>Add C-21 Flooring: To apply or install floor covering material such as linoleum, rubber, vinyl, cork, asphalt, plastic aluminates, or other materials that are by custom and usage accepted in the construction industry as composition flooring; including the installation of wood floor covering and also to include floor sanding and refinishing of floor surfaces. This also includes the use of rubber granules to create a floor covering or surface.</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . "requiring . . . more than two unrelated trades . . .". The installation of flooring is similar to the C-7 carpet laying classification proposed to be added above – the installation of flooring involves building a structure.</p>
<p>Add C-32 Ornamental, guardrail, and fencing: Installation of all types of structural and nonstructural units for residential, commercial, and industrial construction, both interior and exterior including, but not limited to, folding gates, guardrails, handrails, stairs, fencing and gates, window shutters and grills, roll up shades, non-electrical signs, room dividers and shields, accessories, railings, and traffic safety devices;</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . "more than two unrelated trades . . .". The installation of gates, guardrails, stairs and fencing, window shutters and grills can be performed by a "B" contractor pursuant to HRS 444-7(c) and the construction of a structure being built.</p>
<p>Delete C-32a wood and vinyl fencing: To install, maintain, or repair wood or vinyl fencing;</p>	<p>With the addition of C-32, the C-32a license would be inclusive, thus not necessary to also hold the C-32a sublicense since it would be automatic to the C-32.</p>

<p>Add C-33 Painting and decorating: To apply materials common to the painting and decorating industry for protective and decorative purposes, including highway and parking striping and painting of playcourt lines, by the use of, but not limited to, emulsions, waxes, water repellants, epoxies, polyesters, urethane, liquid-glass, fibrous, cement, and rubber base coatings. Surface preparations of all types, caulking, sandblasting, waterblasting, power cleaning, or steam cleaning preparatory to painting. Installation of wall surface covering, decorative texturing, taping, A-10 and finishing of drywall. This also includes the application of sealants in connection with the above;</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . more than two unrelated trades . . . Painting is related to the building of a structure. The areas tested on the trade exam overlap with the testing areas of the "B" contractor. While certain training and safety measures must be reviewed and followed, the "B" contractor should be able to perform such work as it is directly related to a structure being built.</p>
<p>Add C-42 roofing: To install roofing to an acceptable surface and provide a weather tight covering using metal; composition and cementitious shingles; wood shingles and shakes; concrete, clay, and other types of tile; built-up, modified bitumen, single ply, and fluid type systems; and other roofing materials including A-13 spray urethane foam, asphalt, and liquid (outback) asphalt. To apply protective or reflective roofing, or both. To apply deck coatings and top coatings. To also install roof flashing in connection with all of the above;</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . more than two unrelated trades . . . Roofing is directly related to the building of a structure because the C-42a and C-42b are already included in the "B" license, it is not unreasonable to allow the B to be able to use of the C-42 license altogether.</p>
<p>Delete C-42a aluminum and other metal shingle: To install aluminum and other types of metal shingles so that an acceptable watertight surface is obtained; es:</p>	<p>With the addition of C-42, the C-42a license would be inclusive, thus not necessary to also hold both since the sublicense would be automatic to the C-42.</p>
<p>Delete C-42b wood shingles and wood shakes: To install wood shingles and shakes; including all flashing materials to form a watertight surface, staining in conjunction with shingle and shake application, and application of water repellent materials;</p>	<p>With the addition of C-42, the C-42b license would be inclusive, thus not necessary to also hold both since the sublicense would be automatic to the C-42.</p>
<p>Add C-54 interior design: To enter into contracts to provide interior design services and perform the renovation work; provided that the renovation work shall be subcontracted to and physically performed by appropriately licensed contractors. The licensee shall inform consumers that they do not physically perform the renovation work and state that in all advertising; and be primarily responsible and liable for the actions of the other contractors performing the renovation work.</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . more than two unrelated trades . . . Interior design does not require applicants to take a trade examination. While it is very different from painting and decorating – interior design is directly related to the building of a structure, whether residential, industrial or commercial. Such services by interior designers are related to renovation work which is work that the "B" contractor performs.</p>

<p>Add C-55 Waterproofing: To apply felt, glass, asphaltum, epoxy, pitch, silicone, elastomeric coatings, sheet membranes or any other materials or combination of materials to surfaces to prevent water and water vapor from penetrating and passing the materials. Work shall include, but not be limited to, waterproofing exterior walls and between slabs, both above and below grade, planter boxes, tank linings and application of tank coatings, and application to parking decks, play courts, and walking decks to form a watertight non-skid surface, but not to include the work of the C-42 roofing contractor. This also includes surface preparations of all types, caulking, sandblasting, waterblasting, power cleaning, or steam cleaning preparatory to waterproofing;</p>	<p>Pursuant to HRS 444-7(c) a "B" general building contractor is permitted to do work to any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals . . . requiring . . . more than two unrelated trades . . . Current roof and reroofing includes the use of newer application of coating and membranes and is tied to work performed by the roofing contractor and the renovations of buildings by the "B" licensee. (see C-42 above).</p>
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5. Section 16-77-33, HAR. Limitations of classifications.

- a. Amendment consistent with proposed amendments in Section 16-77-28 above. Proposed amendments in Section 16-77-33, HAR will further clarify the contractor classifications of the "A" general engineering, "B" general building and "C" specialty contractors by referring to the statute, Section 444-7, HRS in the classifications. Furthermore, it will clear up any confusion as to referencing performance of work classifications.
- b. Amendments similar to California's law structure. The proposed amendment follows California's Code of Regulations, Section 834 Limitation of Classification (similar to Hawaii's Administrative Rule) whereby it refers back to California's State Law, Section 7056 and Section 7057 respectively when referencing the areas of work in which a contractor can operate.

6. Section 16-77-34, HAR Definition of incidental and supplemental should not be amended.

- a. Definition of incidental and supplemental should not change. Definition of incidental and supplemental in Section 16-77-34, HAR is proper and should not be amended.

Thank you for the opportunity to offer proposed amendments. We, the undersigned respectfully request the Board's consideration of the proposed amendments.

Best regards,



Cindy McMillan
Project Manager
Pacific Resource Partnership¹⁹



Tyler Dos Santos-Tam
Executive Director
Hawaii Construction Alliance²⁰



John R. Monis
Executive Director
Hawaii Operating Engineers
Industry Stabilization Fund²²



Peter Ganaban
Business Manager/Secretary-Treasurer
Hawaii Laborers' Union, Local 368²¹



Greg Thielen
President
Building Industry Association of Hawaii²³



Marnie Koga Hursty
President
General Contractors Association of Hawaii²⁴

¹⁹ The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

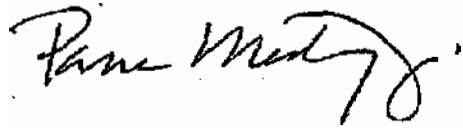
²⁰ The Hawaii Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the four member unions of the Hawai'i Construction Alliance represent over 15,000 working men and women in the four basic crafts of Hawai'i's construction industry.

²¹ The Hawaii Laborers' Union is one of the four basic trades that constitute the Hawaii Construction Alliance of some 15,000 members. Local 368 was formed more than 50 years ago to perform construction and related work for decades in Hawaii. We are part of Laborers' International Union of North America (LIUNA) with about 600,000 members nation-wide.

²² The purpose of the Hawaii Operating Engineers Industry Stabilization Fund is to fully represent the interest of the Operating Engineers Local Union No. 3 and Hawaii's leading contractors. Their mission is to foster smart and responsible growth in the construction industry, thereby contributing to a healthy economy for everyone in the State of Hawaii. The Hawaii Operating Engineers Stabilization Fund's further mission is to strive in "Uniting Our Strengths and Working Together for a Better Tomorrow."

²³ The Building Industry Association of Hawaii (BIA) is known as the voice of the construction industry. BIA promotes their members through advocacy and education, and provides community outreach programs to enhance the quality of life for the people of Hawaii. BIA is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

²⁴ The General Contractors Association of Hawaii (GCA) is an organization comprised of over 600 general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.



Pane Meatoga
District Representative
District 17-Hawaii
Operating Engineers Local Union No. 3²⁵

²⁵ The Operating Engineers Local Union No. 3 represents the interests of people who build and protect. Most of Local 3's members work as heavy equipment operators and construction workers, but we also represent public employees, such as maintenance workers and police officers. Local 3's jurisdiction covers Northern California, Northern Nevada, Hawaii and Utah, and our membership makes it the largest construction trades local in the United States.

EXHIBIT "1"

Hawaii Administrative Rules Chapter 77 – Proposed Amendments*

*All proposed changes are marked by strikethrough or underscored in red. For Section 16-77-28, subsections (b) to (g) incorporates Section 16-77-32 and only amended language is underscored or stricken through. For reasons and justification see letter attached.

§16-77-18, HAR, as follows:

Experience requirement. (a) Every individual applicant or RME shall have had, ~~within the past ten years immediately preceding the filing of an application,~~ not less than four years of supervisory experience as a foreman, supervising employee, or contractor in the particular classification in which the applicant intends to engage as a contractor.

S U B C H A P T E R 5

CLASSIFICATION

§16-77-28 All contractors classified. (a) All persons licensed under chapter 444, HRS, ~~shall be~~ are hereby classified by the board into ~~one or more~~ the following classifications or subclassifications, or both, as follows:

- (1) General engineering contractor "A" as defined in Section 444-7(b), HRS, which is hereby incorporated into and made a part of this chapter;
- (2) General building contractor "B" as defined in Section 444-7(c), HRS, which is hereby incorporated into and made a part of this chapter, and
- (3) Specialty contractor "C" as defined in 444-7(d), HRS, and further classified into subclassifications in Exhibit A, entitled Specialty Contractor Classifications, dated May 23, 2003, located at the end of this chapter which are hereby incorporated and made a part of this chapter.

~~(b) The definitions of these classifications shall be as provided in section 444-7, HRS.~~

~~(c) Exhibit A, entitled Specialty Contractor Classifications, dated May 23, 2003, located at the end of this chapter, is hereby incorporated into and made a part of this chapter.~~

(b) (b) The "A" general engineering contractor may also install poles in all new pole lines and replace poles, provided that the installation of the ground wires, insulators, and conductors is performed by a contractor holding the C-62 pole and line classification. The "A" general engineering contractor may also install duct lines, provided that the installation of conductors is performed by a contractor holding the C-13 electrical classification. The "A" general engineering contractor may also perform any exterior piping and related appurtenances work five feet or more outside the building line without licensed plumbers.

(c) ~~a~~ Licensees who hold the "A" general engineering contractor classification shall ~~automatically hold~~ qualify for the following specialty classifications without further examination or paying additional fees:

- (1) C-3 asphalt paving and surfacing;
- (2) C-9 cesspool;
- (3) C-10 scaffolding;
- (4) C-14 Sign;
- (5) C-17 excavating, grading, and trenching;
- ~~(5)~~(6) C-24 building moving and wrecking;
- ~~(6)~~(7) C-31a cement concrete;
- ~~(7)~~(8) C-32 ornamental guardrail, and fencing;
- ~~(8)~~(9) C-35 pile driving, pile and caisson drilling, and foundation;
- ~~(9)~~(10) C-37a sewer and drain line;
- ~~(10)~~(11) C-37b irrigation and lawn sprinkler systems;
- ~~(11)~~(12) C-38 post tensioning;
- ~~(12)~~(13) C-43 sewer, sewage disposal, drain, and pipe laying;
- ~~(13)~~(14) C-49 swimming pool;
- ~~(14)~~(15) C-56 welding;
- ~~(15)~~(16) C-57a pumps installation;
- ~~(16)~~(17) C-57b injection well;
- ~~(17)~~(18) C-61 solar energy systems.

~~(c)~~(d) Licensees who hold the "B" general building contractor classification shall ~~automatically hold~~ qualify for the following specialty classifications without further examination or paying additional fees:

- (1) C-1 Acoustical and insulation contractor;
- ~~(1)~~(2) C-5 cabinet, millwork, and carpentry remodeling and repairs;
- (3) C-6 carpentry framing;
- ~~(2)~~(4) C-7 carpet laying;
- ~~(3)~~(5) C-10 scaffolding;
- (6) C-12 drywall;
- (7) C-14 Sign
- ~~(4)~~(8) C-21 Flooring
- ~~(5)~~(9) C-24 building moving and wrecking;
- (10) C-25 institutional and commercial equipment;
- ~~(6)~~(11) C-31a cement concrete;
- (8) C-32 Ornamental, guardrail, and fencing;
- ~~(9)~~ C-32a wood and vinyl fencing;
- (9) C-33 Painting and decorating
- (10) C-42 roofing;
- ~~(10)~~ C-42a aluminum and other metal shingles;
- ~~(11)~~ C-42b wood shingles and wood shakes
- (11) C-54 Interior design; and
- (12) C-55 Waterproofing.

~~(c)~~(d) Licensees who hold a specialty contractors license shall automatically hold the subclassifications of the licensee's particular specialty without examination or paying additional fees.

- (f) Interim classifications under C-68 classified specialist may be established-adopted by the board effective for not more than 18 months until the work performed is defined and a hearing is held to establish the proper classification, pursuant to Chapter 91, HRS. Until such time as a proper classification is established pursuant to Chapter 91, HRS, creation of a C-68 classified specialist shall not preclude other license classifications from performing the work. Otherwise, a C-68 classified specialist shall be subject to the same requirements as other contractor classifications.
- (ge) The board, after a hearing, may establish or modify or delete existing classifications, based on established usage in the construction industry.

Delete Title and incorporate into Subchapter 6 **SUBCHAPTER 6**

SCOPE OF CLASSIFICATIONS

Incorporate entire section of Section 16-77-32 into Section 16-77-28 § 16-77-32 ~~General engineering, general building, and specialty contractors. (a) Licensees who hold the "A" general engineering contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:~~

- ~~(18) — C-3 asphalt paving and surfacing;~~
- ~~(19) — C-9 cesspool;~~
- ~~(20) — C-10 scaffolding;~~
- ~~(21) — C-17 excavating, grading, and trenching;~~
- ~~(22) — C-24 building moving and wrecking;~~
- ~~(23) — C-31a cement concrete;~~
- ~~(24) — C-32 ornamental guardrail, and fencing;~~
- ~~(25) — C-35 pile driving, pile and caisson drilling, and foundation;~~
- ~~(26) — C-37a sewer and drain line;~~
- ~~(27) — C-37b irrigation and lawn sprinkler systems;~~
- ~~(28) — C-38 post tensioning;~~
- ~~(29) — C-43 sewer, sewage disposal, drain, and pipe laying;~~
- ~~(30) — C-49 swimming pool;~~
- ~~(31) — C-56 welding;~~
- ~~(32) — C-57a pump installation;~~
- ~~(33) — C-57b injection well;~~
- ~~(34) — C-61 solar energy systems.~~
- ~~(d) — The "A" general engineering contractor may also install poles in all new pole lines~~

~~and replace poles, provided that the installation of the ground wires, insulators, and conductors is performed by a contractor holding the C-62 pole and line classification. The "A" general engineering contractor may also install duct lines, provided that the installation of conductors is performed by a contractor holding the C-13 electrical classification.~~

~~(c) Licensees who hold the "B" general building contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:~~

- ~~(7) C-5 cabinet, millwork, and carpentry remodeling and repairs;~~
- ~~(8) C-6 carpentry framing;~~
- ~~(9) C-10 scaffolding;~~
- ~~(10) C-12 drywall;~~
- ~~(11) C-24 building moving and wrecking;~~
- ~~(12) C-25 institutional and commercial equipment;~~
- ~~(13) C-31a cement concrete;~~
- ~~(12) C-32a wood and vinyl fencing;~~
- ~~(13) C-42a aluminum and other metal shingles;~~
- ~~(14) C-42b wood shingles and wood shakes.~~

~~(d) Licensees who hold a specialty contractors license shall automatically hold the subclassifications of the licensee's particular specialty without examination or paying additional fees. [Bif 8/14/80; am and ren §16-77-32, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04] (Auth: HRS §§444-4, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-10)~~

§16-77-33 Limitation of classifications. (a) A licensee classified as an "A" general engineering contractor shall operate only within those areas defined in Section 444-7(b), HRS, or as a "B" general building contractor shall not act, assume to act, or advertise as a specialty contractor except in the specialty classifications which the licensee holds.

(b) A licensee classified as "B" general building contractor shall operate only within those areas defined in Section 444-7(c), HRS. Pursuant to Section 444-7(c), HRS a "B" general building contractor license does not entitle the holder to undertake a contract unless it requires more than two unrelated building trades or crafts or unless the general building contractor holds the specialty license to undertake the contract. Work performed which is incidental and supplemental to one contractor classification shall not be considered as unrelated trades or crafts.

(c) A licensee classified as a specialty contractor as defined in Section 444-7(d), HRS shall not act, assume to act, or advertise as a contractor in any classification other than those one in which he/she is classified which the licensee holds. Pursuant to Section 444-8(c), this shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which the specialty contractor is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

(d) Nothing in this section prohibits any contractor from using subcontractors to perform any part of its work.

(e) Any licensee who acts, assumes to act, or advertises in any classification other than for which the licensee is duly licensed under this chapter shall be construed to be engaged in unlicensed activity.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawaii Chapter

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July 17, 2013

Randall B.C. Lau, Chairman
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce & Consumer Affairs
State of Hawaii
c/o Ms. Verna Oda, Executive Officer
335 Merchant Street
Honolulu, Hawaii 96813

**SUBJECT: SCR 84, SD 1 Recommendations and Proposed Amendments to
Chapter 77, Hawaii Administrative Rules (HAR)**

Dear Chair Lau and Members of the Board:

The Electrical Contractors Association of Hawaii, National Electrical Contractors Association, Hawaii Chapter, requests the Contractors License Board (CLB) to consider comments and proposed amendments to Chapter 77, Hawaii Administrative Rules (HAR) governing contractors. This letter is in response to the CLB request for comments to Senate Concurrent Resolution 84, Senate Draft 1 (SRC,SD1) that tasks the CLB to conduct an assessment and prepare a report that evaluates each contractor's license classification under Chapter 444, Hawaii Revised Statutes.

We recommend the elimination of all electrical work that is currently allowed by "A" general engineering contractors pursuant to HAR 16-77-32 (b) under Subchapter 6 – Scope of Classifications. We propose that HAR 16-77-32 (b) be deleted in its entirety.

We are not opposed to any installation of any non-electrical pole or non-electrical duct line by the "A" general engineering contractor but are opposed to any and all installation of electrical pole or electrical duct line. The handling and installation of any electrical poles or electrical duct line that carries a conductor, ground wires and Insulators are considered electrical work and should only be performed by a C-62, pole and line contractor or C-13 electrical contractor respectively. Electrical work is governed by the National Electrical Code (NEC) of which the "A"

general engineering contractor is not required to be proficient in nor tested on. Electrical contractors are tested on the NEC before being granted an electrical contractor's license. In addition, the license renewal requires certification of continued education on the NEC and passing an examination. The examination of an "A" general engineering contractor for licensure is not comprehensive to include questions on electrical work. Enclosed is a letter from Michael Johnson, Director of Standards and Safety for the National Electrical Contractors Association with his opinion that includes reasons why the installation of electrical conduits is considered electrical work covered by the NEC.

One of the responsibilities of the CLB is to ensure the general public that all contractors are fully qualified to perform the work on a particular project. Based on the above, an "A" general engineering contractor is not qualified to perform electrical work unless the "A" general engineering contractor also holds a C-13 electrical contractor license. It is time for the CLB to clarify this issue with common sense and objectivity to prevent further confusion as to who can and should perform this work.

Another item is to correct HAR 16-77, Exhibit A – Specialty Contractor Classifications. The C-63 high voltage electrical contractor description should be corrected to read, "600 volts phase to phase or more", as amended below. Currently, it's described as, "...electrical energy of more than 600 volts phase to phase." This correction would be consistent with the description of a C-13 electrical contractor that is allowed to perform the work with electrical energy up to 600 volts, phase to phase.

C-63 High voltage electrical contractor. To place, install, erect, or connect any electrical wires, fixtures, appliances, apparatus, conduits, raceways, and to do trenching, backfilling, patching, and surface restoration in connection with the installation of conduits and lines which transmit, transform, or utilize electrical energy of ~~more than 600 volts~~ or more phase to phase;

Thank you for the opportunity to provide input on SCR84, SD1 with recommendations and amendments to Chapter 77, Hawaii Administrative Rules. We respectfully request that the CLB give serious consideration to the proposed amendments.

Respectively Yours,

Al Itamoto

Al Itamoto
Executive Director



July 12, 2013

Al Itamoto
1286 Kalani St, Suite B-203
Honolulu, HI 96817-4947

Hi Al,

Thank you for contacting us about the electrical work scope issues you are working on in Hawaii. This request is one of a few we see on occasion and is typically resolved by establishing a clear scope of work and designating those who are trained and qualified for performing electrical installations.

NECA agrees that the installation of electrical conduit systems in underground installations qualifies as "electrical work." Appropriate training on the applicable codes and standards, appropriate equipment, work procedures, and safety-related work practices is essential to perform these tasks. Essentially, installations of electrical conduit systems are governed by the National Electrical Code® (NEC) and the National Electrical Safety Code® (NESC) and clearly included in the Construction Specification Institute's Electrical Divisions 1600 and 2600 Master Format™ for construction specifications. Qualified installers should perform these types of installations as they are trained in and understand the applicable electrical codes and regulations.

There are inherent safety risks and concerns for the public, workers, and properties associated with this type work if the installation is not performed correctly and in accordance with applicable codes and safety standards. It should also be understood that this type of work also requires a qualified person that understands and complies with NFPA 70E *Standard for Electrical Safety in the Workplace* and applicable OSHA safety regulations.

Your efforts to assist contractors in conformance with the State Administrative Rules for consistency and safety are a positive step to improve understanding and application of regulations related to all electrical work in Hawaii maintaining established standards in the electrical industry. Please feel free to contact me, if I can be of any further assistance.

Best Regards,

Michael J. Johnston

NECA Executive Director Standards and Safety

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

3 Bethesda Metro Center * Suite 1100 * Bethesda, MD 20814 * 301 657 3110 * 301 215 4500 FAX

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jimlvons@hawaiiantel.net

June 21, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

Dear Chairperson Lau:

The Hawaii Flooring Association has reviewed SCR 84, SD 1 and the Board's invitation to comment.

At this time we have no further comments to provide you other than to let you know that we generally support the comments provided by the Subcontractors Association of Hawaii and hope that you will make every effort to address their concerns.

Sincerely,

A handwritten signature in black ink, which appears to read "Kaleo Nakamura".

Kaleo Nakamura
President



ROOFING CONTRACTORS ASSOCIATION OF HAWAII

Century Square-1188 Bishop St., Ste. 1003 Honolulu, HI 96813-3304
Phone (808) 537-1224*Fax: (808) 533-2739

June 21, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

Dear Chairperson Lau:

The Roofing Contractors Association of Hawaii thanks the Contractors License Board for taking the time to do this study and for the invitation to comment.

We are in concert with the comments provided by the Subcontractors Association of Hawaii however we would also like to add some comments.

As it relates to the automatic licenses provided to General B contractors, we can find absolutely no logic why the C-42a Aluminum Shingle and other Metal Shingles and the C-42b Wood Shingles and Wood Shakes specialty classifications are automatic licenses that are provided to every single "B" Building contractor who successfully receives a license.

We challenge the Board to show us how it is that a general contractor application is evaluated for experience if they show absolutely no experience in installing wood shingles and wood shakes or aluminum and other metal shingles. In fact, most general contractors have not had this kind of experience yet by providing them with a "B" license you are automatically giving them those licenses to perform.

Based on that, we would highly recommend to the Board that you remove the C-42a and the C-42b from the list of automatic licenses that General B Contractors receive, to become effective upon some future date in order to provide sufficient notice and protect the rights to those who have already applied for a license with the understanding that those two (2) categories would be included.

Notwithstanding the comment above that we endorse the comments of the Subcontractors Association of Hawaii, we are particularly concerned with the C5 classification and based on the Board's previous rulings regarding a ceramic tile and a painting project which were deemed allowable items for a general contractor to perform because it was under a remodeling contract, we strenuously object and are concerned that given a similar situation regarding roofing that

the Board would rule that a general contractor could also do any type of roofing if it was a remodeling project. This application is entirely too broad and we believe that the Board must "reign" it in by limiting the C5 to carpentry and carpentry repair.

Again we would like to thank the Board for inviting us to comment and we hope that you will take our comments into consideration.

Sincerely,



Bernadette Robins
President



PACIFIC INSULATION
CONTRACTORS ASSOCIATION

Century Square
1188 Bishop St. Ste. 1003
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Phone: (808) 537-5619
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June 21, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

Dear Chairperson Lau:

The Pacific Insulation Contractors Association has reviewed SCR 84, SD 1 and the Board's invitation to comment.

At this time we have no further comments to provide you other than to let you know that we generally support the comments provided by the Subcontractors Association of Hawaii and hope that you will make every effort to address their concerns.

Sincerely,

Ron Labanon
President



HAWAII ISLAND CONTRACTORS' ASSOCIATION

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Via E-Mail: verna.s.oda@dcca.hawaii.gov
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July 10, 2013

Randy Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

SUBJECT: SCR 84, SD1 – Recommendations and Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR)

Dear Chairman Lau and Honored Board Members,

I am writing on behalf of the Hawaii Island Contractor's Association ("HICA") and its Legislative Committee requesting that the Contractors License Board ("CLB") consider the comments proposed herein regarding amendments to Chapter 77, Hawaii Administrative Rules (HAR) which applies to contractors. This communication is the result of the request to us from CLB Executive Officer, Ms. Verna Oda, and pertains to Senate Concurrent Resolution 84, Senate Draft 1 (SCR 84, SD1) that "Requests the CLB to conduct an assessment and prepare a report that evaluates each licensing classification under chapter 444, Hawaii revised statutes."

First and foremost, we would like to thank you for taking the time to seek our input and for considering our opinions carefully when making your assessment as defined by SCR 84, SD1. Your final submission will no doubt have profound impacts on our membership and the industry as a whole, and we feel that our organization has a significant stake in this issue.

The Hawaii Island Contractors Association is the voice of the construction industry on Hawaii Island. Established in 1961, we provide industry support, education and advocacy to our members. We are comprised of over 150 licensed contractors and specialty and industry support professionals and we work to build bridges to opportunities for those in the contracting industry as a whole.

Due to the diversity of our membership, views and opinions may vary between members. However, it is the duty of the Directors and Board to provide the best possible solution to matters that are so vital to our existence. Consequently, we feel it is best to start with the history of the specialty licensing rules here in Hawaii.

We hold that specialty ("C") licenses were brought into existence because people wanted to specialize in a particular discipline, or type of work, that would allow them to contract directly with the public or with a general contractor. By doing so, they could focus on their chosen scope of work without having to meet ALL the requirements of the General Engineering ("A") license and General Building ("B") license. Chapter 444-7; paragraph (d) for Specialty Contractor notes in the last sentence "whose principal contracting business involves the use of specialized building trades or crafts". Similar wording is used for A and B classifications at the beginning of the description. Many of the specialty licenses also require inspection by the Counties and/or Special Inspection as dictated by the building code. The CLB provides clarification of required licenses in areas that may not be clear or that are absent.

Prior to the Okada Decision, many of the "so-called" specialty licenses were allowed to be performed by the General Contractor and are still being allowed in certain cases. When this case was newly decided and being implemented, one of our Directors, Mr. Leslie Isemoto (a licensed GC) represented the Hawaii Contractors License Board at the National Association of Contractor Licensing Agencies at the 2001 meeting and advised all other States that they should review their State Statutes or suffer the same result of the Okada Decision. We do not know if any other States have suffered the same consequences resulting from the Okada Decision, but we suggest that the CLB consider policies in other states when formulating your current assessment. In addition, recent oral arguments of the C-5 classification, has brought about misconceptions that the specialty licenses are automatically given to A and B license holders, and does not require further examination or fee. The general contractors (A and B) license exams already cover all of the specialty licenses that are automatically issued.

While we feel that C licenses remain, but rather than adding additional requirements and/or limiting the number of C licenses included with A and B licenses, we feel that the C licenses provided should be expanded to include the lists below.

We strongly hold that should this be done, Public Sector work would see a dramatic decrease in the number of costly and time consuming protests that have been taking place.

The following "C" Specialty Licenses should also be included in the scope of "A" General Engineering Contractor:

- C-3b Play Court Surfacing Contractor - work involved is similar to C-3A license
- C-14 Sign Contractor - with an "A" and "B" license, we can build dams and bridges, but cannot install signs. C32- Ornamental, guardrail and fencing- automatic to "A" includes the installation of non-electrical signs.
- C-23 Guniting Contractor - guniting is concrete only pneumatically applied. C-49 Swimming pool contractor is automatic to A and includes guniting work
- C-27 Landscaping contractor
- C-31 Masonry Contractor
- C-33 Surface Treatment Contractor - already included in C-31a
- C-34 Soil Stabilization Contractor - this only a specific application of concrete like guniting
- C-36 Plastering Contractor - C-49 swimming pool contractor allows plastering
- C-37d Water Chlorination and Sanitation Contractor
- C-37e Treatment and Pumping Facilities Contractor
- C-41 Reinforcing Steel Contractor - "A" license allow C-38 post tensioning work. Additionally, prior determination made by the License Board allows reinforcing steel to be installed by a C-49 Swimming Pool Contractor license holder as long as the pool is earth supported
- C-51 Tile Contractor - C-49 swimming pool contractor allows ceramic tile work
- C-55 Waterproofing Contractor
- C-57 Well Contractor - "A" license allows C-35 caisson drilling work and is also allowed to perform C-57a and C-57b work

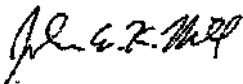
The following "C" Specialty Licenses should also be included in the scope of "B" General Engineering Contractor:

- C-1 Acoustical and Insulation Contractor
- C-14 Sign Contractor
- C-21 Flooring Contractor
- C-22 Glazing and Tinting Contractor
- C-31 Masonry
- C-36 Plastering Contractor
- C-41 Reinforcing Steel Contractor
- C-42 Roofing Contractor
- C-51 Tile Contractor
- C-55 Waterproofing

Despite our suggestion that the licenses should be expanded for the GC holders, we still believe that these specialties should be kept in place and provided as was the original intent of their addition. Also, we don't foresee a major downturn in subcontractor work since it is often more cost effective for a GC to hire a subcontractor to do specialty work, rather than do it in house. However, requiring EVERY minor specialty scope of work be performed by a specialty license holder (other than the GC), costs the consumer more money in the long run.

Finally, we understand that this issue was initially brought up during an examination of the scope included in a C-5 license. We do not believe that this license needs to be reexamined, revised or clarified further. The CLB has traditionally used an unofficial 1% "guideline" during scope determinations. We feel that the CLB can continue to address these items on a case by case basis, and that attention is needed due to the varying characteristics of each case.

Thank you again for allowing us the opportunity to comment on this vital issue. Please feel free to contact us should we be of any further assistance.



John Dill
Legislative Committee Co-Chair
Hawaii Island Contractors Association

PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



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GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

August 2, 2013

Mr. Randall Lau
Chairperson
State of Hawaii Contractors License Board
Department of Commerce and Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

SCR84'SD1

Dear Chair Lau and Members of the Board:

Thank you for the opportunity to provide comments regarding the Board's comprehensive review pursuant to Senate Concurrent Resolution 84 SD1.

Our organization, the Plumbing and Mechanical Contractors Association of Hawaii represents the plumbing, air conditioning, refrigeration, and fire sprinkler contractors in Hawaii and are the management representatives for the largest certified training programs for each of these trades.

As part of the Contractors License Board's assessment and review of each license classification under HRS444, our organization would like to submit the attached proposed changes to the scope of the C-5, C-37, and C-43 classifications. We believe these are sensible changes that recognize contractors' specialized skill, experience and knowledge, and will help to protect public safety and insure the consumer of a quality product that is installed by properly licensed and qualified contractors.

We are happy to answer any questions the Board may have and look forward to discussing our proposals at the next Board meeting.

Thank you for the opportunity to provide comments.

Respectfully submitted,

Gregg S. Serikaku
Executive Director

PAMCA - PROPOSED CHANGES TO CONTRACTOR LICENSE CLASSIFICATIONS
(Deleted language is crossed out and new language is italicized, bolded and bracketed.)

C-5 Cabinet, millwork, and carpentry remodeling and [carpentry] repairs contractor

To install cabinets, cases, sashes, doors, trims, or nonbearing partitions that become a permanent part of structure, and to ~~perform carpentry~~ remodel or to make **[carpentry]** repairs to existing buildings or structures, or both, ~~and to do any other work which would be incidental and supplemental to the remodeling or repairing.~~ The repairs, ~~carpentry work, or remodeling~~ shall include the installation of window shutters, garage doors, bifold, and shutter doors, and the installation of manufactured sidings and any other **[related carpentry]** work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections.

Notes on changes:

1. Clarifies that the C-5 scope is limited to "carpentry" remodeling or "carpentry" repairs.
2. Removes the "incidental and supplemental to the remodeling or repairing" language

Rationale:

HRS 444-7(d) defines a specialty contractor as one *"whose operations as such are the performance of construction work requiring special skill such as, but not limited to, electrical, drywall, painting and decorating, landscaping, flooring, carpet laying, plumbing, or roofing work, and others whose principal contracting business **involves the use of specialized building trades and crafts.**"* This language unmistakably shows that the various specialty licenses are intended to cover specific *trades and crafts*, therefore the language in the description of each classification should be limited to the scope of the specific trade or craft.

Further, under HRS 444-8(c), specialty contractors are allowed to perform work in other crafts or trades if such work *"is **incidental and supplemental to the performance of work in the craft** for which the specialty contractor is licensed."* Clearly this language shows that the "incidental and supplemental" definition applies to the **craft** or **trades** for which the specialty contractor is licensed and is not intended to cover a type of project such as "remodel" or "repair".

Therefore, the C-5 classification description should be clarified so that it only allows work in the specific carpentry trade, and does not broadly extend the scope of the C-5 to allow any work that is incidental and supplemental to a remodel or repair project.

PAMCA - PROPOSED CHANGES TO CONTRACTOR LICENSE CLASSIFICATIONS
(Deleted language is crossed out and new language is italicized, bolded and bracketed.)

C-37 Plumbing contractor

To install, repair, or alter complete plumbing systems which shall include supply water piping systems, hot water piping systems which includes, but is not limited to, heat pump water heaters, and hot water supply boilers with a heat input of 200,000 BTU/h or less, waste water piping systems, fuel gas piping systems, waste water treatment-systems, and other fluid piping systems; the equipment, backflow prevention assemblies, instrumentation, non-electric controls, and the fixture for these systems and the venting for waste water piping systems and fuel gas piping systems; **[the installation of non-potable water treatment systems and related piping:]** for any purpose in connection with there use and occupancy of buildings, structures, works, and premises where people or animals live, work, and assemble; including piping for vacuum, air, and medical gas systems, spas and swimming pools, lawn sprinkler systems, irrigation systems, sewer lines and related sewage disposal work performed within property lines, fire protection sprinkler systems when supervised by licensed mechanical engineers or licensed fire protection contractors, and solar hot water heating systems, and the trenching, backfilling, patching, and surface restoration in connection therewith;

Notes on changes:

1. Clarifies that non-potable water treatments systems and relating piping work intended to treat non-potable water for reuse is under the scope of the licensed plumbing contractor.

Rationale:

The current exam for the C-37 Plumbing Contractor license is based on the Uniform Plumbing Code (UPC) which is also the basis for the State of Hawaii model plumbing code. Due to the complex nature of non-potable water systems and the real danger of cross connections with potable water, the UPC provides very specific and comprehensive guidelines for the installation of non-potable water systems. Therefore non-potable water systems should only be installed by a contractor whose license is based on the UPC.

PAMCA - PROPOSED CHANGES TO CONTRACTOR LICENSE CLASSIFICATIONS
(Deleted language is crossed out and new language is italicized, bolded and bracketed.)

C-43 Sewer, sewage disposal, drain, and pipe laying contractor

To construct concrete and masonry sewers, packaged sewer disposal plants, sewage lift stations, septic tanks, and appurtenances thereto; to lay all types of piping for storm drains, water, and gas lines, irrigation and sewers, manholes in connection with the above work **[provided the piping is not part of a closed loop system connecting mechanical or plumbing equipment, machinery or fixtures]**; and repairing and reconditioning of the pipelines, including the excavation, grading, trenching, backfilling, paving, and surfacing in connection therewith;

Notes on changes:

1. Clarifies that the C-43 contractor may not lay piping that is part of a closed loop system.

Rationale:

Piping associated with closed loop systems such as a chill-water loop for an air conditioning system, or a non-potable water loop for an onsite recycled water treatment system, requires that the contractor have a complete understanding of the mechanical workings of each system as well as the specialized technical knowledge to maintain the integrity of the system. This not only reduces the potential for lengthy warranty disputes that are caused when various components of a system are installed by different contractors, but more importantly, this ultimately helps to protect consumer welfare by providing such consumer with a properly functioning system that is designed, sized, and installed by a specialty contractor qualified in the installation of the entire system.

SAH - Subcontractors Association of Hawaii

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August 13, 2013

Mr. Randall B. C. Lau
Chairman
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
c/o Ms. Verna Oda, Executive Secretary
P.O. Box 3469
Honolulu, HI 96801

Dear Chairman Lau and Members of the Board:

The Subcontractors Association of Hawaii has previously delivered its comments to the Board via our correspondence dated June 21, 2013 however on June 28, 2013 the Building Industry Association of Hawaii, The Pacific Resource Partnership, The Hawaii Construction Alliance, The Hawaii Operating Engineers Industry Stabilization Fund and the Hawaii Laborers Union Local 368 submitted additional comments which we believe are outlandish and run contrary to the intent of the Resolution as adopted by the legislature. Based on that it is our opinion that additional comments are required.

The joint statements submitted by the parties above only serve to confuse the issue by falsely categorizing sub-classifications provided to specialty contractors as the equivalent of the multiple separate subcontracting specialty licenses provided on an automatic basis to General "A" and General "B" contractors. Their proposal reflects a misunderstanding and misapplication of those sub-classifications. As an example, in the C-42 Roofing Contractor category, if an individual only has a C-42b Wood Shingles and Wood Shakes experience then they would only qualify for that license however an individual who earns a C-42 category does so based on their demonstration of experience in all categories. To turn this application around and say that the C-42b is an automatic specialty classification that a C-42 license gains when in fact it is already included under the C-42 is a total misapplication of the law.

In Items A(a) and B(b), the submitters indicate that the automatic C Specialty Licenses that A's and B's receive without examination or payment of fees is "flawed". This reasoning is based on the fact that not all C's have trade examinations. Assuming just for one second that this was the case, the statement would only apply as far as examinations go and not the payment of fees. We believe the point is that "A" and "B" licensees are getting additional licenses that "C" Specialty Contractors have to otherwise pay for and it is unfair that a general contractor would receive these "free" licenses.

In Item A(c), the submitters note that applicants are subject to "strict scrutiny" by members of the public. We challenge that statement and we have done so in our submittal of June 19, 2013 by indicating that based on the privacy laws, members of the public as well as members of the industry are not allowed to review the information regarding an applicants experience or background and without that review, we can hardly understand how it would qualify for "strict" scrutiny.

In Items A(e) and Item A(f), the submitters indicate the percentage of various subject matter which is contained on the general examinations. We would note that it is hardly fair that a general contractor's examination which only has 15% of the questions on thermal and moisture protection, somehow automatically qualifies them for a C-42a Metal Roofing or C-42b Wood Shake and Shingle license when for an applicant who applies for those classifications separately, 100% of their Part II test is on moisture protection.

Perhaps the most ludicrous of all their proposals is contained in Item A(h) indicating that the list of additional specialty licenses should be expanded. Anyone who sat in on the hearings for the passage of this Resolution understood that the item of contention is that general contractors receive these additional classifications without additional exam or testing and a proposal to have the list expanded rather than looking at a review of those that are given and a re-justification is ludicrous. The weak rationale presented for most of the additional C specialty classifications that the General "B" contractor should be allowed to obtain under the submitters proposal is that the items are "directly related to building any structure or, that the installation of (blank) "can be performed by a "B" contractor". This is not rationale; this is a flawed reasoning that amounts to a power grab and as such, it should be dismissed by the Board. It is not worthy of consideration.

Sadly then, we must conclude that the submitters have only provided their proposals as a means to counteract any positive intent of the Resolution as passed by the legislature and it amounts to nothing more than an attempt to decoy and steer the Board away from any meaningful change.

Thank you for the opportunity to comment again.

Sincerely,



Tim Lyons, CAE
President

AUG 19 2013



A'ohe hana nui ka alu'a
 "No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
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KOKA G. BURKOSKI
 Executive Director

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 Hawaii Teamsters & Allied
 Workers Local 696

VAUGHN CHONG
 Roofers, Waterproofers & Allied
 Workers United Union of Roofers
 Local 221

August 20, 2013

Mr. Randall B.C. Lau, Chair
 Contractors License Board
 Professional and Vocational Licensing Division
 Department of Consumer Affairs
 335 Merchant Street
 Honolulu, Hawaii 96813

Re: SCR 84, SD1, Requesting the Contractors License Board to conduct an assessment and prepare a report that evaluates each Licensing Classification under Chapter 444, Hawaii Revised Statutes.

Aloha Chair Lau and Members:

The Hawaii Building and Construction Trades Council, AFL-CIO (HBCTC) is one of 386 state, local and provincial councils organized throughout the United States and Canada and is locally comprised of various construction trade unions in Hawaii with a combined membership of nearly 15,000 statewide. First organized in 1953, HBCTC is authorized and chartered through the Building and Construction Trades Department located in Washington DC which was first organized in 1907.

For over a century, the BCTD has secured the trade jurisdiction and autonomy of its affiliates as the respected arbiter of trade issues and through that work has contributed to the continuity of employment and economic security of organized construction workers in the United States and Canada.

We are pleased to contribute our comments and recommendations regarding Hawaii Revised Statutes, Chapter 444 and Hawaii Administrative Rules, Title 16, Chapter 77 as it pertains to SCR 84, SD1 (2013). As an interested stakeholder, we recognize your efforts to,

I. Review all licenses issued pursuant to Chapter 444, HRS, including the criteria, requirements, and procedures needed as well as an assessment of the automatic classifications currently granted;

II. Assess whether state licensing requirements are in line with other jurisdictions and meet general construction industry standards and practices;

III. Evaluate the definition of a C-5 contractor, including whether the definition is too broad and should be modified;

IV. Determine whether Chapter 77, HAR appropriately reflects the intent of the Legislature; and

V. Suggest amendments or modifications as deemed appropriate.

Background:

HB423, SD1 (1957) was passed by the Legislature of the Territory of Hawaii in 1957. The first administrative rules were debated and adopted shortly thereafter. Now known as ACT 305 (1957), the language contained in this soon to be law, was generally crafted from language taken from existing California laws and regulations at the time.

It is arguable, after reviewing the minutes of meetings that ensued following the formation of the first Contractors License Board (CLB), that there was much debate and differing of opinions over some of the same issues we are now discussing; i.e.; classifications and limitations (see CLB Minutes February 21, 1958), and the definition of incidental and supplemental (see CLB Minutes June 20, 1958) and how and when it is applied.

It is our position, after reviewing ACT 305 (1957) as well as the minutes of the CLB at the time the initial administrative rules were being discussed and drafted, that the intent of the legislation was to create three distinct contractor licenses and associated classifications as well as a comprehensive application process designed to protect the public by pre-qualifying applicants knowledge and experience in the classification being sought prior to granting the applicant a license to operate in that classification. On January 28, 2002, the Hawaii Supreme Court issued a ruling (Okada v. Board of Water Supply) that supports our position. We are hopeful that as a result of SCR84, SD1, we can improve our existing statutes and rules as it relates to contractor licensing and provide greater conformity and general clarity between HRS §444 and HAR §16-77.

I. a) Review all licenses issued pursuant to Chapter 444, HRS, including the criteria, requirements, and procedures needed as well as an assessment of the automatic classifications currently granted

On Friday, July 19, 2013, a hearing was held by the CLB to discuss the contents of SCR84, SD1. Comments were received from various stakeholders.

In written comments provided by the GCA and various other stakeholders (June 28, 2013; page 1 and 2), they contend that 1) in reference to the automatic "C" specialty licenses granted to General "A" and "B" licensees, 'there has been no evidence presented that... "A" general engineering and "B" general building licensees, due to their inclusive "C" specialty licenses, pose substantial risk to the consumer and the public', and further that 2) "no references have been made to the 46 automatic sub-classifications of the "C" license". We offer the following comments respectively.

- 1) HRS §444-7 establishes three 'distinct' license classifications of contractors, a General Engineering "A" Contractor, a General Building "B" Contractor and a Specialty "C" Contractor. HRS §444-7 further defines the scope of work for each of the three classifications.

The general "A" engineering contractor is classified as "a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill."

Current law provides that, an "A" general engineering contractor is limited to an additional (17) seventeen "C" specialty contractor licenses in addition to its "A" license with no further proof of qualification and/or knowledge in that specific specialized classification.

If at the time of application, the applicant for a general "A" contractor license wishes to be licensed in additional classifications, they can do so according to current rules and upon providing requisite proof of qualifications and experience. See HRS §444-8(b) where it states, "a contractor may make an application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or classifications." This process places the burden of proof on the applicant, to confirm they are indeed adequately qualified in the area to which they wish to be licensed. Such a requirement is vital to ensure, "...the protection of the general public." as mandated in HRS §444-4.

The general "B" contractor is classified as "a contractor whose principal contracting business is in connection with any structure built, being built or to be built, for the support, shelter, and enclosure of persons, animals, chattels..., requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof."

Similar to that of the general "A" engineering contractor, Hawaii law currently limits the general "B" building contractor to an additional (10) "C" specialty contractor licenses in addition to its "B" license with no further proof of qualification and/or knowledge in that specific specialized classification.

If at the time of application, the applicant for a general "B" contractor license wishes to be licensed in additional classifications, they can do so according to current rules and upon providing requisite proof of qualifications and experience. See HRS §444-8(b) where it states, "a contractor may make an application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or classifications." This process places the burden of proof on the applicant, to confirm they are indeed adequately qualified in the area to which they wish to be licensed. Such a requirement is vital to ensure, "...the protection of the general public." as mandated in HRS §444-4.

HAR §16-77-33(a) provides that "A licensee classified as an "A" general engineering or as a "B" general building contractor shall not act, assume to act or advertise as a specialty contractor except in the specialty classifications which the licensee holds".

In reviewing the adopted administrative rules (1964), we note the CLB at the time limited the additional licenses assigned to the general "A" engineering contractor and the general "B" building contractor to those "C" specialty contractor classifications that encompassed the scope of work relative to each respective general contractors primary classification as defined in HRS §444-7(b) and HRS §444-7(c).

Based on these historical facts supported by subsequent Hawaii Supreme Court rulings and the provisions of ACT 305 (1957), we strongly believe it was the intent of the legislature as effectuated by the CLB at the time and reflected in the subsequently adopted administrative rules as stated above, that the general contractors be limited within a specific scope of work 'directly' related to their primary classification as defined, and that further classification in other specialty trades would require additional proof of experience and knowledge in that respective trade.

We believe this to be a prudent approach to fulfilling the mandate of protecting the general public as provided for in HRS §444-4 and has been accepted as industry standard and practice since its adoption.

- 2) The specialty "C" contractor is classified as "a contractor whose operations as such are the performance of construction work requiring special skills such as, but not limited to, electrical, drywall, painting and decorating, landscaping, flooring, carpet laying by an installation method, plumbing, or roofing work, and others whose principal contracting business involves the use of specialized building trades or crafts."

Testimony submitted questions the fact that specialty "C" contractors in one classification are granted automatic sub-classification within the same "C" classification if they exist. "We believe, as is consistent with the additional classifications assigned to the general "A" and "B" contractors, that the CLB has historically assigned sub-classifications, or 'secondary' classifications if you will, under a 'primary' classification, if the scope of work of the 'secondary' classification is encompassed in the scope of work of the 'primary' classification.

To illustrate, the "C" sub-classifications include work that the "C" licensees already are qualified to perform within the same classification and specialty skill-set; i.e.; C-22 and C-22a. The specialized work within a C-22a license already exists in the specialized work that is within a C-22 license. In other words, someone who qualifies for a C-22 license can also qualify to do the work in the C-22a license.

To further illustrate, in the case given the contractor holding the C-22a license can install a tint on glass, but not necessarily install the glass itself, whereas a contractor holding a C-22 license can install and tint the glass as it is within the same specialty classification and skill set of the primary C-22 license.

It is our position based on the information provided above, that the sub-classifications assigned to the primary "C" license is consistent with industry standards and practices and that further qualification and proof of experience and knowledge is required to obtain additional classifications, notwithstanding HAR § 16-77-33(b).

Recommendation:

Amend and delete specific "C" classifications listed in HAR §16-77-32(a) and (c) that are not relative to the primary scope of each respective classification as defined in HRS §444-7. (see below) Clarify that contractors are prohibited to working outside of what they are licensed to perform unless they meet CLB prescribed requirements. We believe such actions are consistent with accepted industry standards and practices, and conforms with the original intent of the legislature and the CLB.

SUBCHAPTER 5

CLASSIFICATION

§16-77-28 All contractors classified. (a) All persons licensed under chapter 444, HRS, shall be classified by the board into one or more classifications or sub-classifications, or-both, as follows:

General engineering contractor "A"

General building contractor "B"

Specialty contractor "C"

(b) The definitions of these classifications shall be as provided in section 444-7, HRS.

(c) Contractors licensed in one classification shall be prohibited from contracting in the field of any other classification unless they are licensed in that classification or are permitted to do so pursuant to HAR §16-77-34.

([e]d) Exhibit A, entitled Specialty Contractor Classifications, dated May 23, 2003, located at the end of this chapter, is hereby incorporated into and made a part of this chapter.

([d]f) Classifications under C-68 classified specialist may be established by the board until the work performed is defined and a hearing is held to establish the proper classification. A C-68 classified specialist shall be subject to the same requirements as other contractor classifications.

([e]g) The board, after a hearing, may establish or modify or delete existing classifications, based on established usage in the construction industry. [Eff 8/14/80; am and ren §16-77-28, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; am and comp 4/15/04] (Auth: HRS §§444-4, 444-7, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-10, 444-11, 444-13)

SUBCHAPTER 6

SCOPE OF CLASSIFICATIONS

§16-77-32 General engineering, general building, and specialty contractors. (a) Licensees who hold the "A" general engineering contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:

- (1) C-3 asphalt paving and surfacing;
- (2) C-9 cesspool;
- (3) C-10 scaffolding;
- (4) C-17 excavating, grading, and trenching;
- (5) C-24 building moving and wrecking;
- (6) C-31a cement concrete;
- (7) C-32 ornamental guardrail, and fencing;
- (8) C-35 pile driving, pile and caisson drilling, and foundation;
- (9) C-37a sewer and drain line;
- (10) C-37b irrigation and lawn sprinkler systems;
- ~~[(11) C-38 post tensioning;]~~ *(A general "A" contractor does not customarily and historically perform the scope of work in this classification)*
- ~~[(12) C-43 sewer, sewage disposal, drain, and pipe laying;~~
- ~~[(13) C-49 swimming pool;~~
- ~~[(14) C-56 welding;~~
- ~~[(15) C-57a pumps installation;~~
- ~~[(16) C-57b injection well;~~
- ~~[(17) C-61 solar energy systems;]~~ *(Note: Contrary to the expressed authority granted to the Contractor License Board pursuant to HRS §444-8(c) relative to limiting the field of scope of operations)*
- ~~[(b) The "A" general engineering contractor may also install poles in all new pole lines and replace poles, provided that the installation of the ground wires, insulators, and conductors is performed by a contractor holding the C-62 pole and line classification. The "A" general engineering contractor may also install duct lines, provided that the installation of conductors is performed by a contractor holding the C-13 electrical classification.]~~ *(Note: Contrary to the expressed authority granted to the Contractor License Board pursuant to HRS §444-8(c) relative to limiting the field of scope of operations)*
- (c) Licensees who hold the "B" general building contractor classification shall automatically hold the following specialty classifications without further examination or "paying additional fees:"
 - (1) C-5 cabinet, millwork, and carpentry remodeling and repairs;
 - (2) C-6 carpentry framing;
 - (3) C-10 scaffolding;
 - ~~[(4) C-12 drywall;]~~ *(Note: Is not work required to provide for the support, shelter or enclosure a structure)*
 - (5) C-24 building moving and wrecking;
 - ~~[(6) C-25 institutional and commercial equipment;]~~ *(Note: Is not work required to provide for the support, shelter or enclosure a structure)*
 - (7) C-31a cement concrete;
 - ~~[(8) C-32a wood and vinyl fencing;]~~ *(Note: Is not work required to provide for the support, shelter or enclosure a structure)*
 - ~~[(9) C-42a aluminum and other metal shingles;]~~ *(Note: Is not work required to provide for the support, shelter or enclosure a structure; siding work using such material is covered in the amended C-5 classification)*
 - ~~[(10) C-42b wood shingles and wood shakes;]~~ *(Note: Is not work required to provide for the support, shelter or enclosure a structure; siding work using such material is covered in the amended C-5 classification)*

(d) Licensees who hold a specialty contractors license shall automatically hold the subclassifications of the licensee's particular specialty without examination or paying additional fees. [Bff 8/14/80; am and ren §16-77-32, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04] (Auth: HRS §§444-4, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-10)

- L. b)** As part of the criteria and requirements of being licensed in any of the three classifications, the applicant must show adequate knowledge and experience as provided for in HAR §16-77-18(a). The GCA and various stakeholders propose delete certain language found in HAR §16-77-18(a) as it pertains to the requirement of four years of experience within the ten years immediately preceding the filing of an application.

The HBCTC believes this proposed amendment(s) and deletion of the requirement undermines the general intent of the law "which is to protect the public. Today's world is evolving at a rapid pace. The ten year rule helps to ensure that those who are licensed or wish to be licensed remain current with applicable knowledge and experience as it pertains to technology, methodology, practice, building codes, materials, government mandates, environmental mandates, etc. etc. etc. Deleting such requirements would not only weaken the protections to the public, but also expose the state to potential liability. Further, California law (see Section I Chapter 1 of the California Contractor License-General Requirements; and California Code of Regulations, Title 16, Article 2, Section 825(a)), provides similar requirements as stated.

Recommendation:

Leave HAR 16-77-18(a) 'as is' and un-amended.

- L. c)** With regards to the term "incidental and supplemental" we would like to offer the following suggested language that intends to clarify and define the term and how it is applied in the context of Hawaii contractor licensing law and administrative rules. There has been a lot of confusion and legal challenges because of the current ambiguity of this term and how it is applied. There seems to also be some confusion between how the term is defined in the context of complying with HRS §444-8(c) and HAR §16-77-34 versus how the term is defined in the context of complying with procurement law, HRS §103D-302(b).

Providing such clarification would help to reduce and mitigate future disputes related to the definition and applicability of the term as it relates to contractor licensing in Hawaii.

To further support our position, current statutes refer to the term incidental and supplemental work as it pertains to a 'project' and should actually pertain to the work performed by a specialty craft that is essential to the completion of such work being performed. We believe the rules as written are contrary to the provisions of §444-8(c) (see below) which is supported by the recent Hawaii Supreme Court rulings (District Council 50 v. Keali'i Lopez (DCCA), April 17, 2013) stating that, "The Board's broad definition of "incidental and supplemental"...could present a grave risk to

public health and safety" ...and further, "contravenes the manifest legislative purpose of the statute" ...and lastly, "is contravening the express purpose of HRS chapter 444". and therefore, should be amended as follows:

§444-8(c) This section shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which the specialty contractor is licensed, is incidental and supplemental to the performance of "work in the craft for which the specialty contractor is licensed."

Recommendation:

To adopt the proposed amendments to HAR §16-77-34 that intends to clarify and further conform with HRS §444 as it pertains to incidental and supplemental work.

§16-77-34 Work incidental and supplemental defined. For purposes of limited exception provided in HRS §444-8(c), work in other classifications are "[i]ncidental and supplemental" to the work for which a specialty contractor as defined in HRS §444-7(d), is licensed if that work is minor and narrow in scope, and essential to accomplish the work in the craft for which the specialty contractor is licensed. A specialty contractor may use subcontractors to complete the incidental and supplemental work, or he may use his own employees to do so, [is defined as work in other trades directly related to and necessary for the completion of the project undertaken by a licensee pursuant to the scope of the licensee's license.] [Eff 8/14/80; am and ren §16-77-34, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04] (Auth: HRS §§444-4, 444-7) (Imp: HRS §§444-7, 444-8, 444-9)

II. Assess whether state licensing requirement are in line with other jurisdictions and meet general construction industry standards and practices

As stated above, although we generally agree that the language contained in Hawaii's contracting laws were taken from California law in 1957, we must recognize that numerous changes in such laws have occurred in both jurisdictions over the years that may or may not be consistent with one another and may not necessarily reflect the original intent of the legislation at the time it was adopted.

Further, while we support the consideration and exploration of other jurisdictions as a 'guide', we maintain Hawaii as a unique and independent culture rich with history and traditions that have over the years, established its own industry standards and practices which should be given precedent when discussing possible changes in policy.

III. Evaluate the definition of a C-5 contractor, including whether the definition is too broad and should be modified.

Hawaii Administrative Rules in place in 1964 defined the scope of work of a C-5 contractor as follows:

C-5 Cabinet and Millwork Contractor. A cabinet and millwork contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to

intelligently cut, surface, join and frame wood and wood products into cabinet case, sash, door, trim, non-bearing partition, and such other mill products as are by custom and usage accepted in the building and construction industry as cabinet and millwork. Included is the placing and finishing in buildings of such cabinet and millwork.

Today's defined scope of work of a C-5 contractor is as follows:

C-5 Cabinet, millwork, and carpentry remodeling and repairs contractor. To install cabinets, cases, sashes, doors, trims, or nonbearing partitions that become a permanent part of a structure, and to remodel or to make repairs to existing buildings or structures, or both; and to do any other work which would be incidental and supplemental to the remodeling or repairing. The repairs, carpentry work, or remodeling shall include the installation of window shutters, garage doors, bifold, and shutter doors; and the installation of manufactured sidings and any other work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections;

Somewhat, over the years, the C-5 classification has morphed into a 'catch-all' classification that seems to include the scope of work of a C-30 classification, which at one time covered "Limited Home Improvement and Renovation" and which is no longer a recognized classification. This apparent combination of two classifications into one, as well as referring within the classification itself to include 'all work incidental and supplemental', has caused considerable confusion and disagreement as to the assignment of work.

Discussion has been had regarding the potential of creating two C-5 classes, one residential and one commercial in order to address stakeholder concerns. We also understand that some language in the C-5 classification is intended to assist 'mom and pop' contractors who renovate residential homes.

In an effort to streamline this classification, bring it in line with its actual scope of work and address the concerns of all stakeholders while preserving the ability for the smaller residential 'mom and pop' contractors to continue doing business, we offer the following recommendation and amendments to the C-5 classification as listed below which include the re-instatement of the C-30 classification to be categorized as a Remodeling, repairs and renovation contractor.

We understand and recognize that over the year's technologies, methodologies, materials, standards, etc. etc. may evolve and thus may require changes to a particular classification to update and address these types of industry changes. However, the changes that have occurred over the years with respect to the C-5 classification do not appear to be relative to such circumstances. Recent Hawaii Supreme Court rulings (District Council 50 v. Keali'i Lopez (DCCA), April 17, 2013) state that, "The Board's broad definition of "incidental and supplemental"...could present a grave risk to public health and safety"...and further, "contravenes the manifest legislative purpose of the statute"...and lastly, "is contravening the express purpose of HRS chapter 444". The recommendations we offer intend to address these concerns.

Regarding the term 'incidental and supplemental' as it is currently included in the C-5 classification, we have the following comments and recommendation. As a "C" licensee and pursuant to HRS §444-8(c) and HAR §16-77-34, such work as referenced is already provided for.

As such, language that refers to the term 'incidental and supplemental' work within a classification itself is redundant and unnecessary as it is already provided for in HRS §444-8(c) and HAR §16-77-34. Therefore we propose the deletion of, and reference to such a term subsumed within the C-5 classification.

In addition, we recommend the re-classification of the C-5a Garage door and window shutters contractor and create a new sub-classification (C-30a) which would incorporate this scope of work as it relates to the residential remodeling and repair C-30 classification also being proposed. The current C-5b Siding application contractor would be reclassified as C-5a and would be amended to include wood shingle and shake.

Lastly, we recommend amendments as provided below, to the C-6 classification to clarify the work to be performed by this classification be relative to work essential to construct 'framed' structures.

Please see the following text of Hawaii's current C-5, C-5a, C-5b and C-6 classification and respective scope description(s) and the recommended amendments.

C-5 Cabinet, Millwork ~~Finish carpentry-remodeling and repairs~~ contractor. To ~~[install] cut, surface, join, and frame wood and other products into~~ cabinets, cases, sashes, doors, trims, or nonbearing partitions ~~[that become a permanent part of structure, and to remodel or to make repairs to existing buildings or structures, or both; and to do any other work which would be incidental and supplemental to the remodeling or repairing. The repairs, carpentry work, or remodeling shall include the installation of window shutters, garage doors, bifold, and shutter doors;] and [the] install[ation of] aluminum, vinyl or other manufactured sidings; this contractor also places, erects, and finishes such cabinets and millwork in structures. [and any other work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections;] (Note: Deleted language is included in the newly proposed C-30 classification listed below)~~

C-~~5~~30a Garage door and window shutters contractor. To install overhead, mechanical and sliding garage doors, including installation of window shutters which involves similar installation methods; (Note: the scope classification is included in the newly proposed C-30 classification listed below as well.)

C-5[b]a Siding application contractor. To prepare surfaces and install aluminum, vinyl or other manufactured siding, ~~[with the exception of wood,]~~ so that a watertight surface is obtained;

C-6 Carpentry framing contractor. To do wood and metal framing, siding, wood truss, roof sheathing, and other work as is by custom and usage accepted in the construction industry as carpentry framing essential to construct framed structures;

Re-instate "C-30" remodeling classification (Part VI, Section 6.1 (b) HAR, 1964) with the following definition:

C-30 Remodeling, repairs and renovation contractor. to remodel or to make repairs to an existing single residential unit, which require the repairing, remodeling, altering,

converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, window shutters, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house and any other work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections; the installation of home improvement goods or the furnishing of home which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

IV. Determine whether Chapter 77, HAR appropriately reflects the intent of the Legislature.

We believe that the provisions found in HAR §16-77 are generally reflective of the intent of the law as it reads with the exception of the proposed amendments contained herein. We also reserve comment for further proposed amendments as the discussion continues. It is our intent, through our proposed amendments, to achieve greater conformity with HRS §444 and as mandated in HRS §444-4(1), to "grant licenses, including conditional licenses, to contractors pursuant to this chapter and rules," and HRS §444-4(2), to "adopt, amend or repeal such rules as the board may deem proper fully to effectuate this chapter and carry out the purpose thereof, which is the protection of the general public." Although it is very difficult to determine the exact intent of the legislature at the time ACT 305 was adopted. The minutes of record indicate considerable debate that can be interpreted many ways. Therefore it is prudent on our part, where such multiple interpretations might exist to rely on the language of the law itself as it reads and in the context of which the law was written.

We believe it is very clear that the legislative intent as evidenced and supported by the language found in HRS §444 and HAR §16-77, was to create specific classifications of contractors and to allow General "A" and "B" contractors to "undertake" "prime" contracts within the scope of their classification as outlined in HRS §444-7, however prohibit such "A" and/or "B" are contractors from... "undertaking any work, solely or as part of a larger project, that would require it to act as a specialty contractor in an area in which the general contractor was not licensed to operate" (HRS §444-9), unless it has in its employ, a properly qualified and licensed individual or sub-contracts that portion of work out to a properly qualified and licensed specialty contractor.

As further evidenced in HAR §16-77-32, the CLB in its initial administrative rules and under the authority provided for in HRS §444-8, clearly intended to restrict the performance and scope of work of a respective contractor to that of which falls within that respective contractor's license and relative primary scope of work and classification as defined in HRS §444-7 and HAR §16-77-32. This law and accompanying administrative rule has been in place since the adoption of ACT305 and has been considered industry standard and practice in Hawaii for nearly six decades.

Our position is further supported by the Supreme Court's ruling, No. 22956- Okada Trucking v. Board of Water Supply, January 28, 2002, which underscores the above.

V. Suggest amendments or modifications as deemed appropriate.

Suggested amendments or modifications pursuant to SCR84, SD1 contained herein.

Additional Comments:

In review of the comments submitted by the General Contractors Association (GCA) of other various parties on June 28, 2013, we offer the following comments:

1. **Item 4c., page 8:** The GCA et al states that as early as 1958, it was recognized that "the "A" general engineering contractor could perform almost all specialty work on projects qualified as general contracting projects, without having to obtain the applicable specialty licenses." They further provide out-takes from the CLB minutes of February 21, 1958. They further cite HAR Section 16-77-2(c) and quote then CLB Chair Wilbert Toma as stating the intent of the section referred to was to expand, not limit the scope of the activity that a "B" license could engage in.

We respectfully disagree with this interpretation. Administrative Rules as early as 1964 indicate the CLB's intent at the time to invoke its authority pursuant to HRS §444-8; and HRS §444-9 as cited in the Hawaii Supreme Court's writ of certiorari (*Okada v. Board of Water Supply* issued on January 28, 2002) in its comments, to limit the scope of activity that an "A" and "B" licensed contractor can perform to those provided for in HAR §16-77-32. Furthermore, the assertion that the minutes of February 21, 1958 indicate that the CLB's "intent was not to limit the amount of work the "A" or "B" general contractor could perform, but expand it." is erroneous. In the same CLB minutes of February 21, 1958, we note comments provided by then Attorney General representative, Nalegawa who stated, "It is within the police powers of the Board in protecting the best interest of the public to enact rules and regulations and classify the contractors. Under Section 7, in classifying and defining the three classes, the Board has the power to 'limit' the scope of operations. You cannot change the definition of the statute."

In other words, in protecting the best interest of the public, the Board, is authorized to limit and not expand as the GCA contends.

Further, the CLB minutes of July 17, 1959, page 2, item F states as follows:

"'Limit' on number of Specialty Classifications allowed General Engineering and General Building Contractors. General Engineering and General Building Contractors requesting supplemental classifications should prove to the Board that they have the experience in the specialty classifications being requested."

Our position is based on the above comments, as well as the Administrative Rules in place in 1964, that it was indeed the intent of the CLB in effectuating the provision of HRS §444 and its charge to protect the general public, to limit the scope of the operations of the general "A" and "B" contractors to those "C" classifications as provided in HRS §444-7 (b) and (c) at the time.

HAR §16-77-2(c) that GCA references on this item cannot be located, therefore we reserve comment until such time that this information becomes available.

2. **Item 4d., page 9:** The GCA et al contends that the 2002 decision by the Hawaii Supreme Court in *Okada Trucking v. BWS* changed industry practice and further asserts that "an "A" general engineering contractor can perform all work pursuant to Section 444-7(b), HRS, which would be inclusive of all type of work listed."

We respectfully disagree with these comments. "If you do something for 100 years only to find that you've been doing it wrong all along...the mere fact of time passed does not make that wrong a right."

As stated above, the Hawaii Supreme Court reviewed the laws, rules and regulations governing contractor licensing and issued a ruling that clarified the "true" interpretation and intent of the law (*Okada v. Board of Water Supply* issued on January 28, 2002).

Further, the statement that "an "A" general engineering contractor can perform all work pursuant to Section 444-7(b), HRS is erroneous. HRS §444-7(b) reads as follows:

HRS §444-7 (b) A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects...

Nowhere in the statute does it provide for the "performance" of such work.

3. **Item 4f., page 10:** The GCA et al is recommending the Section 16-77-32 automatic "C" specialty licenses should be expanded and include additional specialty classifications pursuant to Section 444-7, HRS.

We disagree with the GCA's above request to expand the automatic "C" specialty licenses assigned to the "A" and "B" general contractors for the following reasons.

The recommendation made by the GCA is in direct violation of §444-8 as listed below. The statute expressly provides limited authority to the Board. Such authority does not allow the Board to re-write statutes through the administrative rules process. "This is supported by comments made and as recorded in the CLB minutes of February 21, 1958, by then Attorney General representative, Nakagawa who stated, "It is within the police powers of the Board in protecting the best interest of the public to enact rules and regulations and classify the contractors. Under Section 7, in classifying and defining the three classes, the Board has the power to 'limit' the scope of operations. You cannot change the definition of the statute."

§444-8 Powers to classify and limit operations. (a) The contractors license board may adopt rules and regulations necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which the contractor is classified and qualified to engage, as defined in section 444-7.

4. Item 5a and 5b, page 13: *Limitations of classifications*.

The GCA et al makes recommended amendments to Section 16-77-33.

We respectfully disagree. This request undermines the intent of the law and the CLB's authority "to "limit the field and scope of the operations of a licensed contractor".

5. Item 6a, page 13: *HAR definition of incidental and supplemental should not be amended (GCA).*

We respectfully disagree with the GCA's recommendation to leave the definition of the incidental and supplemental un-amended. There has been enough confusion caused by the ambiguity and application of this term to warrant discussion and amendments to clarify the meaning of the term and how it is applied.

Current statutes refer to the term incidental and supplemental work as it pertains to a 'project' and should actually pertain to the work performed by a specialty craft that is essential to the completion of such work being performed. We believe the rules as written are contrary to the provisions of §444-8(c) (see below) which is supported by the recent Hawaii Supreme Court rulings (District Council 50 v. Keali'i Lopez (DCCA), April 17, 2013) stating that, "The Board's broad definition of "incidental and supplemental"...could present a grave risk to public health and safety"...and further, "contravenes the manifest legislative purpose of the statute"...and lastly, "is contravening the express purpose of HRS chapter 444". and therefore, should be amended as follows:

§444-8(c) This section shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which the specialty contractor is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

Suggested Amendments to §16-77-34

§16-77-34 Work incidental and supplemental defined. For purposes of limited exception provided in HRS §444-8(c), work in other classification is "[i]ncidental and supplemental" to the work for which a specialty contractor as defined in HRS §444-7(d), is licensed if that work is minor and narrow in scope, and essential to accomplish the work in the craft for which the specialty contractor is licensed. A specialty contractor may use subcontractors to complete the incidental and supplemental work, or he may use his own employees to do so, [is defined as work in other trades directly related to and necessary for the completion of the project undertaken by a licensee pursuant to the scope of the licensee's license.]

In summary, the recommendations we propose herein are intended to strengthen and clarify ambiguities that might exist in Hawaii statute and rules and to further provide conformity between HRS §444 and HAR §16-77. By doing so, we hope to fulfill the underlying charge of protecting the general public against dishonest, fraudulent, unskillful and unqualified contractors and therefore humbly request your consideration and support for such recommendations contained herein and further request that the CLB include the above recommendations in its report to the legislature and/or any prospective legislation being or to be considered.



**International Union of Painters and Allied Trades
District Council 50**

August 22, 2013

Mr. Randall B.C. Lau, Chair
Contractors' License Board
Professional and Vocational Licensing Division
Department of Consumer Affairs
335 Merchant Street
Honolulu, Hawaii 96813

**Re: SCR 84, SD1, Requesting the Contractors License Board to
conduct an assessment and prepare a report that evaluates each
Licensing Classification under Chapter 444, Hawaii Revised
Statutes.**

Aloha Chair Lau and Members of the Contractors' License Board:

This is the response of the International Union of Painters and Allied Trades,
District Council 50 to SCR84, SD1.

At the outset, you are all aware of the decisions of the Hawai'i Supreme Court
in Okada Trucking Co. v. Bd. of Water Supply, 97 Hawai'i 450, 462, 40 P.3d 73, 85
(2002) ("Okada") and District Council 50 v. Lopez, ___ Hawai'i ___, ___ P.3d ___, 2013
Haw. LEXIS 139 (2013) ("Okada II"). Both cases make clear, among other things,
that:

1. HRS §444-9 prohibits unlicensed work;
2. §444-9(c) allows specialty (not general) contractors with a "limited ability
to perform work outside of their licensed specialty area";
3. The "incidental and supplemental" exception "must not make up the
majority of the [specialty contractor's] project", but rather must be
"subordinate" to licensed work.

The Supreme Court concluded that your interpretation of the Legislature's words,
"incidental and supplemental", was "clearly erroneous". Hence, it is incumbent upon
the board to amend its current interpretation contained in HAR § 16-77-34 and
implement a new definition consistent with the Legislature's terms pursuant to formal
rule making. Failure to do so will only result in continued confusion and litigation, as
warned by the attorneys representing the General Contractors Association.
<http://www.hawaiilawyer.com/index.php/news/new-court-decision-adds-to-the-costs-of-construction/>

With respect to SCR 84, SD1, we concur with and support the position set
forth in the August 13, 2013 letter to you from the Hawai'i Building and Construction
Trades Council, AFL-CIO, of which we are a participant.

We are, in particular, strongly opposed to any attempt to expand the scope of "A" and "B" contractors. As the Supreme Court made clear in *Okada II*, the "legislature has stated that HRS chapter 444 was 'enacted, in part, to ensure the health and safety of the public by requiring that contractors possess a minimum level of expertise, experience and training.'" Adding new "C" specialty classifications to existing "A" and "B" contractors without also requiring those contractors to satisfy the rigorous licensing requirements for those "C" licenses would imperil the public health and safety. In particular, C-7, C-21, C-33 and C-55 must not be added as automatic licenses to a General "B" license. We believe that requiring "A" and "B" contractors to comply with the same licensing requirements as "C" contractors will ensure that such contractors are qualified to perform specialty work.

Rather than expand the scope of "A" and "B" contractors, we concur with the recommendations of the Hawai'i Building and Construction Trades Council, AFL-CIO that the automatic "C" classifications be modestly limited.

We also offer the following additional recommendations for changes:


HAR §16-77-18(a) should be amended as follows:

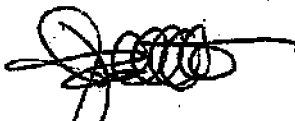
- (a) Every individual applicant or RME shall have had, within the past ten years immediately preceding the filing of an application, not less than at least four years of field supervisory and hands-on experience as a foreman, supervising employee, or contractor in the particular classification in which the applicant intends to engage as a contractor.

Every specialty license class has its own set of safety requirements and industry standards. These guidelines have been created to insure that the work is done properly and in a manner which would minimize the potential dangers associated within that scope of work. Extensive training is the key factor to educating workers to reduce potential risks and accidents. Protecting consumers from fraudulent practices as well as the health and welfare of the public are the primary concerns.

Thank you for the opportunity to comment on SCR84, SD1 as it relates to Chapter 444, HRS.

Sincerely,


RYDEN VALMOJA
Business Manager/Secretary-Treasurer
International Union of Painters and
Allied Trades
District Council 50


JOHN FRIGILLANA, JR.
President
International Union of Painters
and Allied Trades
District Council 50

The Pacific Resource
PARTNERSHIP



HAWAII OPERATING ENGINEERS INDUSTRY STABILIZATION FUND

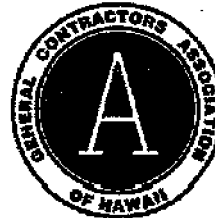


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Uniting our strengths and working together for a better tomorrow



BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION



August 22, 2013

U.S. Mail & E-Mail: verna.s.oda@dcca.hawaii.gov
Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

SUBJECT: Supplemental Letter Regarding SCR 84, SD1, which "Requests the Contractors License Board to Conduct an Assessment and Prepare a Report that Evaluates Each Licensing Classification Under Chapter 444, Hawaii Revised Statutes."

Dear Chair Lau and Members,

As a follow up to the earlier submitted stakeholder's letter dated June 28, 2013, we are writing to provide the Contractors License Board (Board) further background regarding the Board's past deliberations and scope determinations for the "A" general engineering and "B" general building with respect to their permitted performance of work prior to the 2002 *Okada Trucking Co. v. Board of Water Supply* (Okada) decision.

For your information and review, attached please find the Declaration of Verna Oda, dated May 18, 2001, submitted with accompanying exhibits to the Hawaii Supreme Court to consider in their deliberations for the *Okada Trucking* decision. See Addendum "1." In summary, Oda's Declaration together with the Board Minutes confirmed that the "A" or "B" general contractor could perform all the work, except for work with respect to electrical, plumbing, asbestos, boilermaker or elevator work. The attached Minutes to the Declaration reflect consistent dispositions by the Board articulating such. In particular, Exhibit 7 captures the essence of the Board's scope determinations and directives to the industry in its 2000 "Guidelines of the Contractors License Board to Determine the Appropriate License that is Required based on the Scope of the Project." This document confirms the Board's consistent interpretation (under 2.b.) that if the project is an "A" or "B" project, then: "The "A" or "B" contractor can do all of the work with its own crew (except electrical, plumbing, or elevator work unless appropriately licensed), or may sub any or all of it out to appropriately licensed subcontractors." (Emphasis added.)

Further, in your continued deliberations, we respectfully request the Board highly consider our proposed amendments which addressed the items that the Board was tasked to complete under SCR 84, SD1. With respect to the five criteria, we collectively responded as follows:

- A. The criteria, requirements and procedures for obtaining a contractor license, including automatic granting of specialty licenses;
- Summary response: *The criteria, requirements and procedures for obtaining a contractors license, including automatic licenses should not be changed.*
- B. An assessment of whether the state licensing requirements are in line with licensing requirements in other jurisdictions and meet general construction industry standards and practices;
- Summary response: *Hawaii's administrative rules describing the "A" and "B" contractor classifications are not in sync with other jurisdictions. While Hawaii's contractor licensing laws with regard to classifications reflect California's, our administrative rules do not reflect such. The proposed amendments to the administrative rules would align our rules with California's where the legislative intent behind the law would be consistent.*
- C. A specific evaluation of the C-5 (cabinet, millwork, and carpentry remodeling and repairs) classification.
- Summary response: *We would support a determination by the Board that would continue to make determinations on a case by case basis.*
- D. A determination on whether the Board's rules appropriately reflect the intent of the legislature –
- Summary response: *Currently, the Board's Administrative Rules do not appropriately reflect the intent of the legislature, however the adoption of our proposed amendments in the June 28 letter would align the Board's rules with the intent of the legislature.*
- E. Summary response: Suggested amendments to the practice of issuing licenses for each classification.
- Summary response: *No changes to the issuance of contractor licenses under Chapter 444 are necessary.*

Thank you for the opportunity to provide additional information. We look forward to your continued deliberations.

Best regards,



Cindy McMillan
Project Manager
Pacific Resource Partnership¹



Tyler Dos Santos-Tam
Executive Director
Hawaii Construction Alliance²

¹ The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

² The Hawaii Construction Alliance is comprised of the Hawaii Regional Council of Carpenters; the Hawaii Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 308; and the Operating Engineers, Local Union No. 3. Together, the four member unions of the Hawaii Construction Alliance represent over 15,000 working men and women in the four basic crafts of Hawaii's construction industry.



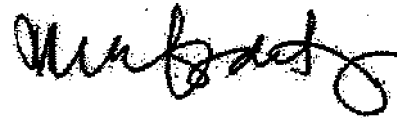
John R. Monis
Executive Director
Hawaii Operating Engineers
Industry Stabilization Fund⁴



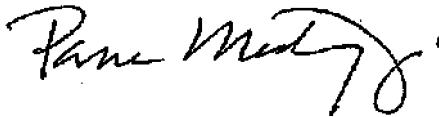
Peter Ganaban
Business Manager/Secretary-Treasurer
Hawaii Laborers' Union, Local 368³



Greg Thielen
President
Building Industry Association of Hawaii⁵



Marnie Koga Hursty
President
General Contractors Association of Hawaii⁶



Paner Meotoga
District Representative
District 17-Hawaii
Operating Engineers Local Union No. 3⁷

³ The Hawaii Laborers' Union is one of the four basic trades that constitute the Hawaii Construction Alliance of some 15,000 members. Local 368 was formed more than 50 years ago to perform construction and related work for decades in Hawaii. We are part of Laborers' International Union of North America (LIUNA) with about 600,000 members nation-wide.

⁴ The purpose of the Hawaii Operating Engineers Industry Stabilization Fund is to fully represent the interest of the Operating Engineers Local Union No. 3 and Hawaii's leading contractors. Their mission is to foster smart and responsible growth in the construction industry, thereby contributing to a healthy economy for everyone in the State of Hawaii. The Hawaii Operating Engineers Stabilization Fund's further mission is to strive in "Uniting Our Strengths and Working Together for a Better Tomorrow."

⁵ The Building Industry Association of Hawaii (BIA) is known as the voice of the construction industry. BIA promotes their members through advocacy and education, and provides community outreach programs to enhance the quality of life for the people of Hawaii. BIA is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

⁶ The General Contractors Association of Hawaii (GCA) is an organization comprised of over 600 general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

⁷ The Operating Engineers Local Union No. 3 represents the interests of people who build and protect. Most of Local 3's members work as heavy equipment operators and construction workers, but we also represent public employees, such as maintenance workers and police officers. Local 3's jurisdiction covers Northern California, Northern Nevada, Hawaii and Utah, and our membership makes it the largest construction trades local in the United States.

No. 22956

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE MATTER OF:

OKADA TRUCKING CO., LTD.,

Petitioner-Appellee-
Petitioner,

vs.

BOARD OF WATER SUPPLY, CITY
AND COUNTY OF HONOLULU,

Respondent-Appellee-
Respondent,

and

INTER ISLAND ENVIRONMENTAL
SERVICES, INC.,

Intervenor-Respondent-
Appellant-Respondent"

DOCKET NO. PCH-99-11

DECLARATION OF VERNA ODA

DECLARATION OF VERNA ODA

Pursuant to Rule 52 of the Hawaii Rules of Appellate
Procedure, Verna Oda declares as follows:

1. I am competent to testify to the matters stated herein and
make this declaration based upon facts which I have personal
knowledge"
2. I am employed by the State of Hawaii, Department of Commerce
and Consumer Affairs ("Department"), as the Executive
Officer for the Contractors License Board ("Board"). I have
been the Executive Officer of the Board since September 1,

1998.

3. The Board has interpreted the scope of an "A" general engineering contractor, and a "B" general building contractor as follows:

a. On an "A" project (i.e., a fixed works project requiring specialized engineering knowledge and skill under HRS § 444-7(b) or "B" project (i.e., a structure that requires more than two unrelated building trades or crafts under HRS § 444-7(c)), an "A" or "B" licensee respectively can bid on the entire project; provided that:

1. With respect to electrical, plumbing, or elevator work on the "A" or "B" project, the electrical, plumbing, or elevator work is:

- a. Subcontracted out to a licensed electrical, plumbing, or elevator specialty contractor, respectively. However, if the "A" or "B" licensee has its own electrical, plumbing, or elevator specialty contractor's license, the "A" or "B" licensee does not need to subcontract out the respective electrical, plumbing, or elevator work; and
- b. Performed by craftsmen who are licensed under HRS chapters 448E or 448H (e.g., a journey worker electrician, supervising electrician,

journey worker plumber, master plumber, or
'elevator mechanic, respectively)'.

c. This interpretation is reflected in:

1. The Board's meeting minutes of
January 20, 1989; March 22, 1991;
May 21, 1993; May 17, 1996; and July 26,
1996;
2. A July 29, 1998 letter to Gordon
Matsuoka at the Department of Accounting
and General Services; and
3. The Board's November 17, 2000
"Guidelines of the Contractors License
Board to Determine the Appropriate
License that is required based on the
Scope of the Project".
4. Attached hereto as Exhibits "1" through
"7" are true and correct copies of the
above minutes, letter, and guidelines,
respectively.

d. This interpretation is based on the Board's
understanding that:

1. The counties only allow a licensed
electrical or plumbing specialty
contractor to pull the respective
electrical or plumbing permits; and

2. The Department of Labor and Industrial Relations only allows a licensed C-16 elevator specialty contractor to pull the elevator permit. See, Hawaii Administrative Rules ("HAR") § 12-229-3.
2. With respect to asbestos and boiler work on the "A" or "B" project:
 - a. The asbestos work is subcontracted to and performed by a licensed C-19 asbestos specialty contractor, and the boiler work is subcontracted to and performed by a licensed C-4 boiler, hot-water heating, and steam fitting specialty contractor. However, if the "A" or "B" licensee has its own C-19 or C-4 specialty contractor's license, the "A" or "B" licensee does not need to subcontract out the respective asbestos or boiler work.
 - b. This interpretation is based on HAR §§ 16-77-112 and 12-220-15, respectively.
4. Under HAR § 16-77-32(a) the "A" licensee automatically gets sixteen (16) "C" specialty contractor licenses; and under HAR § 16-77-32(c) the "B" licensee automatically gets seven (7) "C" specialty contractor licenses. The Board has interpreted HAR § 16-77-32(a) and (c) as follows:

a. These subsections were promulgated to allow an "A" or "B" licensee to act as a specialty contractor on a project that is not considered either an "A" project (i.e., a fixed works project requiring specialized engineering knowledge and skill) or a "B" project (i.e., a structure that requires more than two unrelated building trades or crafts). For example:

1. If the project only involves building a swimming pool, it is not considered an "A" project. Thus, only a contractor with a C-49 swimming pool specialty contractor's license may bid on and perform this type of work. However, under HAR § 16-77-32(a), the "A" licensee automatically gets the C-49 swimming pool specialty contractor's license, and may bid and perform work on this project as a C-49 specialty contractor (not as an "A" contractor).
2. If the project only involves installing aluminum shingles, it is not considered a "B" project. Thus, only a contractor with a C-42 roofing specialty contractor's license or C-42a aluminum shingles specialty contractor's license may bid on and perform this type of work. However, under HAR § 16-77-32(a), the "B" licensee automatically gets the C-42a aluminum shingles specialty contractor's

license, and may bid and perform work on this
project as a C-42a specialty contractor (not as an
"B" contractor).

I, Verna Oda, declare under penalty of law that the
foregoing is true and correct.

DATED: Honolulu, Hawaii, May 18, 2001

Verna Oda
VERNA ODA

The scope of activity committee determined that contractors license is not required to do the above work

c. Walter G. Kaohu, Inter-Island Industrial Maintenance and Repairs

Question: Is a license required to perform electrical and mechanical maintenance repairs on power generation equipment in which no new construction or installation of electrical and mechanical equipment is performed?

The scope of activity committee determined that contractors license is not required to perform electrical and mechanical maintenance and repairs which is part of the generator package, including repair of factor installed controlled wiring. All other electrical work requires a C-13 Electrical Contractors license.

d. Kele Hickman, Dolphin Diving, Towing & Fishing Co.

Question: Is a contractors license required in the placement of beach erosion control material -- product to be used is a fabric-like material made of polypropylene?

The scope of activity committee determined that an "A" General Engineering contractors license is required to perform this type of work.

General Contractors License

Questions: (1) Is a general contractor possessing valid current ABC general contractors license permitted to perform any part of the electrical work on a large multi-trade project in progress when, due to no fault of the general contractor

(a) an electrical subcontractor declares bankruptcy and thus abandons the work jeopardizing completion of the project and creating economic hardship for the general contractor and disruption to the owner's plans; and the general contractor is able to hire the defaulting subcontractor's licensed RME to continue to do the electrical work; and

(b) that the licensed RME has himself been satisfactorily performing the electrical work on the project which has been completed to date; and

(c) that the licensed RME possesses an active supervisory electrician's license in this State; and

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EXHIBIT "1"

(d) that licensed RMB and his crew are available and have agreed to become regular employees of the general contractor; and

(e) the sole purpose of the above arrangements is to maintain the continuity of work in progress and to limit costly and disruptive delays?

(2) Is a general contractor possessing a valid current ABC general contractors license permitted to employ masons to perform its own masonry work when:

(a) such masonry work is only a part of a larger multi trade project; and

(b) that entire project includes other various tasks performed by the general contractor such as site preparation, concrete, rough and finish carpentry, etc and

(c) the general contractor employs skilled and experienced masons to construct CMU walls as a part of said project?

(3) Is a general contractor possessing a valid current ABC general contractors license permitted to construct with his own employees fuel piping systems, including installation of buried fuel tanks outside of project building, installation of buried fuel piping assembly outside of building, and connections to standby generators inside of building when:

(a) the general contractor has constructed in the past similar systems; and

(b) such piping work is only a part of a larger multi trade project; and

(c) the general contractor employs skilled and experienced pipe fitters to construct the gas piping system?

The scope of activity committee determined the following (responding to questions by paragraph number):

Paragraph (1), (a), (b), (c), (d) and (e): The general contractor possessing a valid ABC license can undertake the work provided that he holds the C-13 Electrical contractor license. No extenuating circumstances allow him to perform the work unless the proper license is held under our present interpretation of the law and rules.

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Paragraph (2), (a), (b) and (c): The answer to all questions is yes because the "A" contractor is allowed to do this work under the provisions of paragraph 444-7(b)e

Paragraph (3), (a), (b) and (c): The answer is yes because of reasoning in the above paragraph.

f. Inter Island Diversified Maintenance

Question: Is a contractors license required to perform general maintenance and repairs to buildings and landscape grounds which does not involve the performance of new construction or new installation?

The scope of activity committee determined that a license is not required to perform ground maintenance where no installations, such as sprinklers or irrigation controls, are installed.

In regards to repairs to buildings, the committee requests additional information as to what kind of repair work to buildings they are engaging in.

Moved by Mr. Yokoyama, seconded by Mr. Arakaki and unanimously carried to accept the scope of activity committee's recommendations in item f through f.

g. Standard Electric, Inc./Don Hamada, C&C, Dept. of Transportation Services

Question: Is a contractors license required when undertaking traffic signal, street and highway lighting work?

Mr. Hamada of the City & County's Department of Transportation Services appeared at today's meeting to request clarification from the board as to why a C-1 Electrical contractor could not undertake traffic signal work.

After discussion concerning this matter, it was determined that a C-13 Electrical contractor may undertake work on traffic signal, street and highway lighting provided the electrical energy is less than 60 volts phase to phase.

Moved by Mr. Yokoyama, seconded by Mr. Rodriguez and carried by a majority of the members present voting ay (opposing was Mr. Katsura; abstaining was Mr. Koga) to accept the recommendation regarding the above item.

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3. Scope of "B" General Building Contractor Work

- a. Can a general building contractor, building a project involving more than two unrelated building trades or crafts, be responsible for the electrical and plumbing work if duly licensed electricians and plumbers on the general contractor's payroll perform the work?

Recommendation: No; electrical and plumbing work must be performed by electrical and plumbing contractors.

- b. If the answer to the above is negative and both electrical and plumbing contractors are required, does this mean that the general building contractor would be required to have specialty contractors perform all of the specialty work other than incidental and supplemental work, involved in the project?

Recommendation: No; other specialty work can be performed by the general building contractor.

It was moved and seconded (Rodriguez/Katsura) and unanimously agreed to accept the recommendations of the scope of activity committee.

7. Applications Committee:

Nicholas Ives, Jr., Chairman

Mr. Ives reported there were no "new items to discuss regarding the applications committee.

Old
Business:

Reciprocity

The Executive Secretary reported that several associations submitted letters to the Board expressing their concerns relating to reciprocity agreements between Hawaii and other states.

Chairman Ives suggested that the Board send letters to all associations clarifying how reciprocity would work and that applicants must still provide written certification from the reciprocating State that the applicant's license has been in good standing for the previous five years.

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SECRET "2"

Minutes of Meeting of May 21, 1993

4. Legislative Committee:

Marvin Koga, Chairman

Mr. Koga reported that there were no new items to discuss regarding the Legislative Committee.

5. Rules Committee:

Robert Yamada, Chairman

Mr. Yamada reported that there were no new items to discuss regarding the Rules Committee.

Scope of Activity Committee:

Howard Tasaka, Chairman

The Board had a discussion concerning the scope of work that a "B" general building contractor can perform in the state. Due to the increased confusion and uncertainty on this particular issue in the construction industry, the Board decided to provide a position on the matter, which previously had been subject to varying interpretations.

In the past, some of the interpretations that the Board had discussed were: (a) a "B" licensee could perform all of the work on a structure so long as three or more trades or crafts were involved; (b) a "B" licensee could only perform work if he/she held the appropriate "C" license regardless of whether a structure was involved or not; and (c) a "B" licensee could perform all of the work on a new structure but not on a repair or renovation project unless he/she held the appropriate "C" license.

Present at the meeting were Mr. Charles Cook, former Executive Secretary, and Mr. Wilbert Toma, former Chairman of the Board. Mr. Cook was the Executive Secretary when the predecessor rule to HAR, §16-77-32(c) was promulgated and he stated that the intent behind the rule was to expand, not limit, the scope of activity that a "B" licensee could engage in. Mr. Cook said that when a

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EXHIBIT "3"

structure was involved, a "B" licensee could do all of the work involved. When a structure was not involved, the previous board provided a "B" licensee with some "C" licenses to enable the "B" licensee to engage in "C" work. Thus, the scope of activity that a "B" licensee could actually perform was enlarged.

Mr. Toma fully concurred with Mr. Cook's explanation and interpretation and expressed his views on the pros and cons of whether a "B" General Building contractor can do all the work.

-- Executive Session:

At 9:57 it was moved by Mr. Yamada, seconded by Mr. Katsura to enter into Executive Session to consult with the Board's Deputy Attorney General, Rodney Tam, and pursuant to S92-4 and S92-5.

It was moved by Mr. Iida, seconded by Mr. Yokoyama and unanimously carried to return to the Board's regular order of business after a short recess.

RECESS.

The board reconvened to their regular order of business at 11:17 a.m.

After extensive discussion, it was moved by Mr. Yamada, seconded by Mr. Koga and carried by a majority vote (with Messrs. Katsura, Miura and Kanai voting in the negative) to clarify the position of the Board as to the interpretation of the current statutes and rules to allow a "B" general building contractor to perform all of the work involved on a structure that is built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind and requires three or more trades or crafts in its construction. In addition, on these types of projects, a "B" licensee can superintend (i.e., supervise and subcontract out) the entire project or any part of it. Moreover, the electrical, plumbing and elevator work must be performed by the appropriately licensed specialty contractor because of the special permits required by the Counties.

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Conversely, if a project does not involve a structure for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind or requires less than three trades or crafts, a "B" General Building contractor may not bid on, sub-out and supervise the project; however, the "B" licensee may still perform the work if he/she holds the appropriate "C" license (i.e., the "B" licensee is allowed to act as a "C" specialty contractor if the project falls within any of the seven (7) "C" licenses under HAR, §16-77-32(c)).

In the future, the Board will evaluate alternative policy interpretations on the issue and may restrict the scope of a "B" licensee by rule amendments. Once enacted, these rule amendments will have the force and effect of law.

7. Applications Committee:

Robert Katsura, Chairman

Mr. Katsura reported that there was no new items to discuss regarding the Applications Committee.

Old Business:

a. Tom Stevens of the IRS regarding Federal Tax Clearance

Mr. Stevens along with Leanne Imanaka, a manager of collection at the IRS, appeared at the Board's July 17, 1992 meeting and distributed information regarding proposed collection procedures for the first renewal period after a Federal tax clearance is enacted.

Mr. Stevens stated as they generally shared information with the State Tax Office this would continue in the this respect.

After discussion and questioning regarding the pros and cons of requiring Federal tax clearance by the Contractors License Board, it was deferred at that meeting.

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N/A

EXECUTIVE SESSION

At 10:30 a.m., it was moved by Mr. Yamada, seconded by Ms. Kaneapua and unanimously carried to reconvene to the Board's regular order of business.

3. Investigation Committee:

Edgar Yokoyama, Chairperson

Mr. Yokoyama reported that there were no new items to discuss regarding the Investigation Committee.

4. Legislation Committee:

Norman Sakamoto, Chairperson

With the absence of Mr. Sakamoto, the Executive Officer reported that there were no new items to discuss regarding the Legislation Committee.

5. Rules Committee:

Robert Yamada, Chairperson

Mr. Yamada reported that there were no new items to discuss regarding the Rules Committee.

~~6. Scope Committee:~~

Howard Tasaka, Chairperson

In the absence of Mr. Tasaka, the Executive Officer reported on the following scope questions:

- a. Gerard Steenman, President and RME Water Engineering Technology, Inc.

Mr. Steenman requested consideration of last month's Board opinion regarding the license(s) required to erect a 100' Temcor aluminum dome on biological contact towers. The Board had

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EXHIBIT "4"

previously determined that a C-44 or C-48 license would be required at its April 29, 1996 meeting.

Water Engineering Technology (WET) holds the following licenses: "A" General Engineering, C-5 Cabinet, millwork, and carpentry remodeling and repairs, and C-13 Electrical. They feel that an "A" General Engineering contractor should be able to perform this work.

Mr. Steenman reported that WET was involved in a project with Hawaii Dredging and WET was questioned on the adequacy of their "A" license to continue installing water treatment and storage tanks together with aluminum dome covers.

Mr. Steenman reported that he was licensed in 1970 and has had no complaints throughout his 25 years in business. He stated that in 1970 he obtained a "home improvement" specialty license C-30 (currently a C-5 Cabinet, millwork, and carpentry remodeling and repairs contractor) and in 1972 obtained a "sewer, sewage disposal" specialty license C-43. In 1977 he obtained a C-13 Electrical license and in 1981 obtained an "A" General Engineering license because the nature of work being performed had changed to the installation of water treatment and storage tanks and aluminum covers.

Mr. Michael Weitzenhoff, General Manager of WET, introduced himself and stated that WET's work strictly involves industrial and municipal fixed works: no residential, no welding, and no fabrication.

Mr. Weitzenhoff also stated that with their "A" General Engineering license, WET and its predecessor Aqua Enterprises, Inc. have built nearly 60 aluminum dome covers for water and wastewater storage tanks and similar storage systems since 1985. He mentioned that all of their installations remain in successful operation without complaint or defect.

Mr. Weitzenhoff explained that the work WET performs involve bolting up factory prefabricated, "packaged" aluminum parts for the dome covers on concrete or bolted tanks. No fabrication is required or performed. The dome is completely aluminum. The dome is not a "roof", nor is any steel framing used nor is

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anything attached to steel framing. The dome covers are used for storage or treatment of liquids and never for habitation.

The Board questioned Mr. Steenman and Mr. Weitzenhoff as to how many domes have been installed. Mr. Steenman responded that three domes have been installed in Kaliua.

Mr. Rupert Chun, Director of the Steel Fabricators and Erectors of Hawaii, introduced himself and addressed the Board regarding a license for building aluminum domes at water and wastewater treatment plants.

Mr. Chun submitted written testimony and reported that a geodesic dome is a self-supporting roof structure that can be utilized in numerous applications, sports arenas, shopping centers, schools, and storage tanks. The dome's structure and roof sheets can be constructed out of steel or aluminum and that the most widely used system is the aluminum dome by Temcor. The structure is basically an articulated structure with structural members forming triangular shapes and carrying only axial loading. Flat sheets are fastened to the structural members providing a water-tight roof system.

Based on the above, Mr. Chun stated that the Steel Fabricators and Erectors of Hawaii recommends that installers have a C-48 Structural steel license.

Mr. Chun also stated that the scope of an "A" General Engineering license was never questioned because "A" General Engineering work involves water processing or fuel processing systems.

Mr. Chun mentioned that this type of work should be done by a C-48 Structural steel contractor because a dome/geodome is a structural system.

Mr. Charlie Rodgers of the Ironworkers Stabilization Fund stated that his organization agrees with Mr. Chun. Mr. Rodgers indicated that this type of work gets by until it's called to your attention. Mr. Rodgers recommended that a C-48 Structural steel contractor's license be required to install and furnish the dome.

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June 1996

Executive Session:

Mr. Weitzenhoff stated that this type of work was strictly fixed work and that their work has no habitation inside.

At 10:59 a.m., it was moved by Mr. Yamada, seconded by Ms. Kaneapua and unanimously carried to enter into Executive Session in accordance with §92-4 and §92-5 to consult with Rodney J. Tam, the Board's deputy attorney general.

EXECUTIVE SESSION

Reconvene to Board's Regular Order of Business:

At 11:50 p.m., it was moved by Mr. Yamada, seconded by Ms. Kaneapua and unanimously carried to reconvene to the Board's regular order of business.

The Board asked Mr. Steenman to clarify the scope of the project. In response, Mr. Steenman stated that WET will supply and install the dome cover only and that WET is the subcontractor to Hawaiian Dredging.

The Board explained that under the statutes and rules, an "A" General Engineering contractor cannot perform specialty work unless the contractor has the appropriate specialty license. It would be out of scope if an "A" contractor only did specialty work and not the whole project. Conversely, if the "A" contractor is doing the whole project, the contractor would be within the scope of an "A" license.

Mr. Steenman stated that he was not at any time the general contractor on a project and that he was always doing jobs as a subcontractor. He stated that he was not interested in being a general contractor.

The Board stated that an "A" contractor can do all of the work (except electrical, plumbing, or elevator work) on an "A" project, regardless of whether they are the prime or a subcontractor. "A" projects are specified in HRS 5444-7(b). However, if the job is not an "A" project or does not involve "A" work, an "A" contractor can bid on and perform the work only if the job falls within one of the sixteen (16) "C" licenses that are given to the "A" contractor in HAR §16-77-32(b) or any other "C" licenses that the "A" licensee has.

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Wm. R. R.

The Board stated that it considered the installation of a storage tank and the dome to be "A" work under HRS §444-7(b). If this were the case, WET could do this work under its "A" license even if this was a subcontract job.

However, in this case, the job involved only the installation of the dome and the Board previously determined at its April 29, 1996 meeting that a C-44 Sheet metal or C-48 Structural steel license was required. Since the job does not involve "A" work and WET did not have the appropriate C-44 or C-48 license, they could not do the work under their "A" license.

WET stated that in 1981 they asked the Board's previous Executive Officer, Al Costa, what license is required to install water treatment/storage tanks and aluminum covers and were told that an "A" license was all that was necessary. Thus, they argued that they relied on this information and it would be unfair for the Board to change its mind 15 years later.

The Board stated that they are not changing their mind. As in 1981, the Board believes that an "A" license is required when the job involves both the installation of the tank and the dome. However, dome work alone is not considered "A" work. Thus, the interpretations are consistent.

Nevertheless, the Board proposed to establish a C-68 specialty license to cover the installation of dome covers that involves bolting up factory prefabricated, "packaged" aluminum parts for the dome covers or factory prefabricated sheets for the storage tanks only and to issue this license to Mr. Steenman as RME for WET and to WET.

It was moved by Mr. Yamada, seconded by Mr. Tokunaga and carried by majority vote (with Mr. Eugenio, Mr. Kanai and Ms. Kaneapua voting against the motion) to establish this new C-68 specialty license and issue it to Mr. Steenman (as RME) and WET.

b. RICO

1. Would a corporation be able to qualify for an owner-builder permit to demolish an existing sugar mill?

it appears to be new construction work and not restoration or patching work.

5. Can a "B" contractor who does not him/herself hold a C-13 or C-37 license, pull a permit for electrical or plumbing work if the contractor has in his employ, a master plumber or supervising electrician, as the case may be?

Recommendation: The Scope committee determined that it is not within the general contractor's scope to contract for or to perform electrical or plumbing work, and therefore electrical and plumbing permits should be issued to appropriately licensed C-13 Electrical or C-37 Plumbing contractors.

b. Noble Construction

What license is required to install cranes and hoists and metal wall louvers?

Recommendation: The Scope committee determined that a C-44 Sheet metal or C-48 Structural steel contractor's license is required to perform the above work.

c. L. Armando Bautista, Esq.

Is a license required to install window blinds?

Recommendation: The Scope committee determined that a contractor's license is not required to install window blinds which are easily attachable and does not require modification of window frames, sashes, trim or the like in its installation.

d. Sherman Miller

Does a person need to possess a contractor's license to create either pictorial or illusionary images on surfaces such as walls, ceilings and domes after a painting contractor prepares, primes and paints on the base coat?

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Mon. Oct.

N/A

EXHIBIT "5"

BENJAMIN I. LAYETANG
GOVERNOR



**COPY FOR YOUR
INFORMATION**

KATHLEEN S. BATA
DIRECTOR

NOE PRIDE TON
LICENSES ADMINISTRATION

**CONTRACTORS LICENSE BOARD
STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. BOX 3489
HONOLULU, HAWAII 96801**

July 29, 1998

Mr. Gordon Matsuoka
State Public Works Administrator
Dept. of Accounting & General Services
P.O. Box 119
Honolulu, HI 96810

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IS A TRUE AND CORRECT COPY OF THE
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[Signature]

Dear Mr. Matsuoka:

Re: Interpretations by the Contractors License Board

This is in response to your May 1, 1998 letter. Since your letter raises a number of points, we will address them in the order presented.

Let me first state that it was never the Contractors License Board's ("Board") intent to review all of DAGS' projects or to have DAGS send all of its plans and specs to the Board for review. Since the Board only meets once a month, it would not be feasible to send the plans and specifications on a daily or regular basis with the expectation that their determinations would be faxed back the next day. In addition, the Board does not have time at the monthly meeting to review lengthy plans and specifications of any project. The Board prefers to review brief descriptions of the work involved or ~~condensed/abbreviated~~ plans and specs. Accordingly, the Board's responses and interpretations are only based on the facts that are presented in the brief descriptions or abbreviated documents.

1. Use of the phrase "or all of the specialty contractor classifications deemed necessary for the work".

With respect to DAGS' use of the phrase "or all of the specialty contractor classifications deemed necessary for the work" in its specifications, the Board reiterates its position stated in its April 2, 1998 letter to you. The Board's position has always been that if a project is considered an "A" or "B" project, only an "A" or "B" licensee (respectively) can bid on the project. A "C" licensee cannot bid on these types of

EXHIBIT "1."

Mr. Gordon Matsuka
July 29, 1998
Page 2

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John Oles

projects even if it appears that they have all of the specialty licenses necessary to perform the work. Thus, "C" licensees cannot combine their licenses to bid on an "A" or "B" project.

The example provided on page 2 regarding the \$15,000 project to install a sprinkler system and resurface a parking lot does not appear to be an "A" project as defined in HRS §444-7(b). This project involves two trades and since it appears that the work is divided evenly among the two trades, a C-3, C-37b, or an "A" (acting as a specialty under HAR §16-77-32(a) under this subsection, the "A" license automatically has the C-3 and C-37b licenses) licensee can bid on the project and act as the prime contractor.

The Board understands DAGS' concern with the "competitiveness of the bidding climate". However, the Board makes its determinations as to who is the appropriate bidder based on its laws and rules. Changes in the "bidding climate" and market do not alter the Board's determination that only an "A" or "B" licensee can bid on "A" or "B" projects respectively.

Regarding a "building project with only two unrelated trades or crafts", the Board has never said that a "specialty contractor with multiple 'C' licenses cannot bid on jobs with two or more trades or crafts". HRS §444-8(c) states that:

This section shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which the specialty contractor is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

Haw. Rev. Stat. §444-8(c) (1993). Thus, your statement that a "project involving two trades or crafts cannot be done" is untrue. If a project involves two trades, the person that is licensed in the trade that requires most of the work can bid on the job as the prime contractor, perform the work in their classification, and either (1) sub-out the work in the other trade or (2) perform the work themselves if the other work is incidental and supplemental to their classification.

You indicate that you "do not see anything in the laws or rules that mandates when a project becomes an "A" or "B" project. For your information, the scope of an "A" project is defined in HRS §444-7(b) and the scope of a "B" project is provided in HRS §444-7(c) and HAR §16-77-33(b). Again, if a project is an "A" or "B" project, only an "A" or "B" licensee can bid on the project. The "B" licensee qualified by showing experience that he supervised the coordination of structural work and by taking an

Mr. Gordon Matsuoka
July 29, 1998
Page 3

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Kenn Oda

exam. In the case of an "A" licensee, that contractor qualified by showing experience that he supervised the coordination of fixed works that require specialized engineering knowledge and skill. It is for these reasons that the Board is adamant that if a project is an "A" or "B" project, only "A" or "B" licensees qualify to bid and undertake these projects. On an "A" or "B" project, an "A" or "B" licensee can either (1) perform all of the work itself (except for electrical, plumbing, and elevator work unless appropriately licensed) or (2) sub any or all of the work to appropriately licensed specialty contractors.

The Board is in agreement with your statement that "a licensee holding three specialty licenses may act as a contractor for each of those classifications," however, it does not mean that a person holding a C-5, C-6, C-13, C-33, C-37, and C-51 could bid on a job to build a new residence which requires a "B" license. Using your rationale, this specialty contractor above appears to have all of the specialty licenses to perform the work to build the house, however, the Board's position is that this contractor does not have the required "B" license and therefore cannot bid a project to build a new residence.

2. Eleele Elementary School.

Your notice stated that a C-3 (asphalt paving and surfacing) or an "A" license is required to bid on the job. Based on the limited description in the notice, the Board believed that the project required an "A" license (not C-3) under HRS §444-7(b), because the work required "demolition/removal, site preparation, soil treatment for vegetation control, asphaltic concrete paving, pavement markings, and other incidental work." Again, the Board limited its interpretation only to what was presented and agrees that additional information may change its interpretation.

3. Kalihi-Kai Elementary School.

Based on the limited description in the notice, the Board determined that project was not a "B" project. Rather, the Board believed that "air-conditioning 5 (five) classrooms in Building J" requires a C-52 Ventilating and air conditioning license. The remaining work appeared to be "incidental and supplemental" to the air conditioning work. Thus, the Board believed that only the C-52 licensee could bid on and perform all of the work (or sub it out) on this project. In addition, a "B" licensee could bid on and perform this work or sub it out if it held the C-32 license. Again, this determination was based solely on the limited description in the notice; additional information may change this determination.

Mr. Gordon Matsuoka
July 29, 1998
Page 4

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Kenneth Lee n

The Board does not refuse to explain the rationale of "incidental and supplemental". For your information, that term is clearly defined in HAR §16-77-34 and we suggest that you review it for clarification.

4. Uniformly applying the contractor's licensing laws.

The Board strives to be consistent in its interpretation and application of its laws and rules. The Board receives many scope inquiries and given the limited amount of time to review these inquiries, the Board asks that only brief (yet accurate) descriptions or abbreviated plans and specs be submitted to them. Based on what is presented, the Board makes its determination.

Persons adversely affected by the Board's interpretation may contest the Board's determination. A different outcome may arise depending on the additional information presented. In the UH project involving air conditioning work referred to in your letter, the Board probably reviewed the information presented to them and determined that a "B" license was required. After further information was submitted on appeal, the judge determined that a C-52 licensee could bid on and perform all of the work since the concrete pad and fencing was "incidental and supplemental" to the air conditioning work or a "B" licensee can bid on or sub out the C-52 work. In line with this ruling, the Board determined that the air conditioning work in the Kauli-Kai Elementary School project above required a C-52 license.

With respect to reroofing projects that include the installation of gutters, the Board has determined in February 1997 and April 1998 that the gutter work is or can be "incidental and supplemental" to the roofing work. The Board's approach is that they look at the primary purpose of the project and then determine whether the remaining work is incidental or not. Since you stated that you received different opinions from the Board on this issue, please provide the differing opinions for the Board's review.

Opinions of the Board may change over time due to changes in the Board's laws and rules, industry practice, or new materials or procedures in construction. Thus, an opinion in May 1995 may differ from an opinion in January 1997. With respect to pulling cables through conduits, the Board reviewed its earlier opinion. Based upon industry practice and considerations for the public's health and safety, the Board determined that a C-15 licensee can pull cables through conduits; however, only a C-13 licensee can install the conduits. For your information, the Board intends to modify its rules to reflect this determination.

Mr. Gordon Matsuka
July 29, 1998
Page 5

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Mina Oda

5. Final questions.

- a. The Board was "looking at [your] licensing requirements" only because the project notices referred to in our April 2, 1998 letter to you were brought to the Board's attention for interpretation. In an attempt to assist a sister agency to properly interpret the Board's laws and rules, the Board sent you an informal interpretation.
- b. The Board will not look at all of your projects.
- c. Please do not send all of your projects to the Board for review.
- d. The rationale for "incidental and supplemental" is contained in HAR §16-77-34. Please review it accordingly.
- e. The Board is not looking at restricting specialty contractors to bid only on projects with one unrelated trade or craft.
- f. For projects which involve only two unrelated trades or crafts, determine the primary purpose of the project. That classification is only contractor that can act as the prime contractor. Then determine whether the work is "incidental and supplemental" to the primary purpose. If it is, then the prime contractor can do all of the work on the project or sub the other work out. If it is not, the prime contractor must sub it out.

Finally, the Board looks forward to meeting with you and Mr. Stephen Miwa on August 10, 1998, at 9:00 a.m. in the Kuhina Nui Room at the Department of Commerce and Consumer Affairs.

If you have any questions or comments on the foregoing, please do not hesitate to contact me at (808) 536-2700.

Very truly yours,



Charlene L.K. Tamanaha
Executive Officer

CLKT:lp

GUIDELINES OF THE CONTRACTORS LICENSE BOARD
TO DETERMINE THE APPROPRIATE LICENSE
THAT IS REQUIRED BASED ON THE SCOPE OF THE PROJECT

1. Determine whether the project is an "A" or a "B" project under HRS §444-7.
 - a. "A" projects are listed and described in HRS §444-7(b).
 - b. "B" projects are described in HRS §444-7(c) and must involve:
 1. A structure for the support, shelter, and enclosure of persons, animals, chattels, or movable property; and
 2. More than two unrelated trades or crafts.
2. If it is an "A" or "B" project:
 - a. Only an "A" or "B" contractor, respectively, can bid on the project.
 - b. The "A" or "B" contractor can do all of the work with its own crew (except electrical, plumbing, or elevator work unless appropriately licensed), or may sub any or all of it out to appropriately licensed subcontractors.
 - c. In this situation, there will be only one (1) contract between the homeowner and either the "A" or "B" contractor.
3. If the project is not an "A" or "B" project, but involves only one trade or craft:
 - a. Only a "C" contractor licensed in that specialty classification, or an "A" or "B" contractor if the trade or craft falls within one of the "C" licenses they automatically hold under HAR §16-77-32 or obtained on their own, can bid on the project.
 - b. That "C" contractor (or the "A" or "B" contractor if licensed as the appropriate "C" contractor above) can do the work with its own crew, or may sub any or all of it out to appropriately licensed subcontractors.
 - c. In this situation, there will be only one (1) contract between the homeowner, and either the "C" contractor or the "A" or "B" contractor acting as a specialty contractor.

November 17, 2000

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Steve R.

EX-117

4. If the project is not an "A" or "B" project, but involves two or more trades or crafts:

- a. A "C" contractor (or an "A" or "B" contractor if licensed as the appropriate "C" contractor above) can only bid on that portion of the work that falls within its specialty classification, and work that falls in other classifications provided the work in the other classifications is "incidental and supplemental" to the performance of work in its specialty classification.
 1. "Incidental and supplemental" is defined in HAR §16-77-34 and is applied on a case-by-case basis.
- b. That specialty contractor (or the "A" or "B" contractor if licensed as the appropriate "C" contractor above) can do the above work with its own crew, or may sub any or all of it out to appropriately licensed subcontractors.
- c. In this situation, separate contracts may be required with each "C" contractor, and "A" or "B" contractor if licensed as the appropriate "C" contractor above.

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June" Ed.

Hawaii Building and Construction Trades Council, AFL-CIO
Additional Testimony before the
Contractors License Board, August 23, 2013
Reference: SCR84, SD1 (2013)

Comments as reflected in the minutes of the CLB (1957/1958) by then AG's rep. Mr. David Nakagawa and former Executive Secretary Robert Shaw, indicate that it was the intent of the CLB to restrict the general "A" and "B" contractors to specific specialty classifications as enumerated in its adopted rules. This indication is supported by statute as well as subsequent rulings by the Hawaii Supreme Court.

Some claim that, what many refer to as the Okada ruling, has somehow changed the understanding of the scope of respective contractors licenses under HRS 444 and HAR 16-77. Our position is that the Hawaii Supreme Court in the Okada ruling did not 'change', but rather 'defined' ACT 305 as passed in 1957.

We believe subsequent attempts to find 'workable interpretations' in contravention of the law have resulted in the mis-application of its provisions and significant confusion throughout the industry, further resulting in rules that are inconsistent and "contravening the express purpose of HRS chapter 444" as stated by the Hawaii Supreme Court in DC50 v. Lopez-DCCA. They further stated in reference to the current C-5 classification, "the Board's broad definition of "incidental and supplemental"... could present a grave risk to public health and safety"...and "contravenes the manifest legislative purpose of the statute".

It is our intent, as reflected in our proposed recommended amendments, pursuant to SCR84, SD1 (2013), to correct these 'workable 'MIS'-interpretations that only continues to confuse and in some cases circumvent state statute.

As such, we offer this Board for consideration, three proposed actions as provided for in our written testimony:

- I. **To amend and delete specific "C" classifications listed in HAR §16-77-32 that are not relative to the primary scope of each respective classification as defined in HRS §444-7 and further clarify in HAR §16-77-28 that contractors are prohibited from working outside of what they are licensed to perform unless they meet CLB prescribed requirements. We believe such clarification is consistent with accepted industry standards and practices, and conforms with the original intent of the legislature and the CLB as evidenced in HRS §444-8 and HAR §16-77-33 related to limitations;**
- II. **To adopt proposed amendments to HAR §16-77-34, pertaining to incidental and supplemental work, to clarify and further conform**

with state statute, but more specifically with the "limited exception" provided in HRS §444-8(c);

III. To adopt various proposed amendments to the C-5, C-5(a), C-5(b) and C-6 classifications as well as re-introduce the abandoned C-30 classification as the new remodel/renovation classification with a newly created C-30a sub-classification.

We believe our proposed amendments to the rules 'in its totality' will clarify existing rules that as written and in some cases, are inconsistent with state statute; i.e.; the over-expansive and all-encompassing C-5 classification and the definition of the term 'incidental and supplemental' and how it is applied in the context of HRS 444.

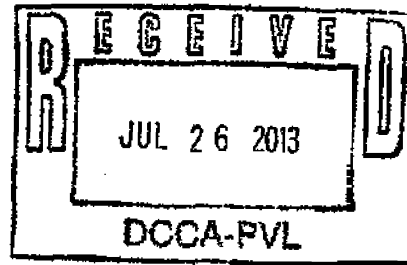
Further, we believe our proposed amendments will eliminate continued misinterpretations and mis-applications of statutes and rules that have caused significant confusion and in some cases, financial loss leaving the state vulnerable to litigation.

We reserve comment on other proposals for consideration before the Board as they become available.

IRON WORKERS STABILIZATION FUND

July 23, 2013

Randy Lau, Chair
and Members of Board
Contractors License Board
State of Hawaii
335 Merchant Street
Honolulu, HI 96813



Dear Chair Lau and Board Members:

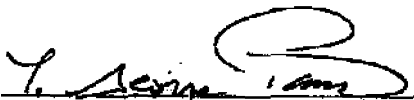
As all of us in the construction industry realize, the significant District 50 case decided by the Hawaii Supreme Court a few months ago, and, the board's review of the "A", "B" and "C" licenses that was mandated by Senate Concurrent Resolution 84, S.D. 1 of the 2013 legislative session are of utmost importance for our industry. We in the construction trades want to provide the board our knowledge and on the job training experience which we respectfully request that you insert into your report to the legislature that is due in November, four months from now. We want our legislators to know how the Supreme Court decision and the delineation of the "A", "B" and "C" licenses impact our employers and trade members.

As reported by our lobbyists in attendance during the afternoon session, our union and stabilization fund and other unions provided the board with much relevant information that would otherwise have not been made part of the lengthy and thorough discussion on both the Supreme Court case and the review of the three licenses. We trust that our input and that of the other unions have provided the board a better understanding of the concerns that we in the trades would want the legislature to be made aware of.

As we understand, we can receive a hard copy notice of any regularly scheduled meeting and any other meeting held before the board. Henceforth, we request that such a hard copy be transmitted to Arnold Wong of our staff to notify us.

Thank you.

Sincerely,


T. George Paris
Managing Director



INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS

Affiliated with A.F.L.-C.I.O.

LOCAL UNION NUMBER 625

94-497 UKEE STREET • WAIPAHU, HAWAII 96797

T.G. Paris
President Emeritus

September 6, 2013

Mr. Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
335 Merchant Street
Honolulu, Hawaii 96813

RECEIVED
PROF & VOCATIONAL
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2013 SEP 11 A 10 12
DEPT OF COMMERCE
& CONSUMER AFFAIRS
HONOLULU, HI 96813

Re: Compliance Inquiry for Examination and Experience Requirements for "A" General Engineering and "B" General Building and "C" Specialty Licenses Under HAR §16-77-41 and HAR §16-77-18

Dear Chair Lau:

Based on HAR §§16-77-41 and 18, we believe that the "A" general engineering, "B" general building, and "C" specialty contractor examinations and experience requirements do not comply with the rules. First, thirty-four "C" specialty licensees, including sub-classifications, are not examined even though contractors are required to "pass [a] written examination designed to test the applicant's specialized knowledge"; HAR §16-77-41.

Second, the "A" general engineering and "B" general building examinations do not cover themes nor questions from the "C" specialty examinations given the corresponding licenses automatically afforded to the general contractor under HAR §16-77-32. The general contractor examinations *should* cover the "specialized knowledge in the particular classification in which the applicant desires to be licensed"; HAR §16-77-41. The "A" general engineering contractor's "specialized knowledge" *includes* the seventeen automatic "C" specialty license areas while the "B" general building contractor's "specialized knowledge" *includes* ten automatic "C" specialty license areas. Neither the "A" general engineering nor the "B" general building examinations cover the "specialized knowledge" specifically found in their corresponding automatic "C" specialty license areas. Given HAR §16-77-32 (a), we note that "A" general engineering applicants need not take each *individual* "C" specialty examination to the corresponding automatic "C" specialty license afforded to them. Given HAR §16-77-32 (b), we also note that "B" general building applicants need not take each *individual* "C" specialty examination to the corresponding automatic "C" specialty license afforded to them. However, the general contractor examinations should include themes and questions from each of the individual "C" specialty license areas in those corresponding "C" specialty licenses automatically afforded the "A" general engineering or the "B" general building contractor.

Third, only a fraction of the required years of supervisory experience as a "foreman, supervising employee, or contractor" pursuant to HAR §16-77-18 is required of the "A" general engineering applicant or "B" general engineering applicant for all their automatic "C" specialty licenses, including sub-classifications, and could be challenged under the Dist. Council 50, of Int'l Union of Painters & Allied Trades v. Lopez court ruling. We now look at the examinations and the supervisory experience requirements in more detail.

Absence of Examinations¹

The following "C" specialty licensees, including sub-classifications, are not tested by the state contracted professional testing service pursuant to HRS §444-4.7:

1. C-3b Play court surfacing contractor;
2. C-5a Garage door and window shutters contractor;
3. C-10 Scaffolding contractor;
4. C-19 Asbestos contractor;
5. C-22a Glass tinting contractor;
6. C-24 Building moving and wrecking contractor;
7. C-25 Institutional and commercial equipment contractor;
8. C-27a Hydro mulching contractor;
9. C-31c Refractory contractor;
10. C-31d Tuckpointing and caulking contractor;
11. C-31e Concrete cutting, drilling, sawing, coring, and pressure grouting □ contractor;
12. C-32a Wood and vinyl fencing contractor;
13. C-36a Lathing contractor;
14. C-37a Sewer and drain line contractor;
15. C-37c Vacuum and air systems contractor;
16. C-37d Water chlorination and sanitation contractor;
17. C-37e Treatment and pumping facilities contractor;
18. C-37f Fuel dispensing contractor;
19. C-38 Post tensioning contractor;
20. C-40a Prefabricated refrigerator panels contractor;
21. C-42a Aluminum and other metal shingles contractor;
22. C-42c Concrete and clay tile contractor;
23. C-42g Roof coatings contractor;
24. C-44a Gutters contractor;
25. C-44b Awnings and patio cover contractor;
26. C-51a Cultured marble contractor;
27. C-51b Terrazzo contractor;
28. C-53 Miscellaneous retail products contractor;
29. C-54 Interior design contractor;

¹ Information on contractor examinations were obtained from Prometric. "Candidate Information Bulletin State of Hawaii: Contractor Examination." Accessed, August 30, 2013 https://www.prometric.com/en-us/clients/hawaii/Documents/HIContractorCIB_20130501.pdf and Prometric. "Hawaii: Hawaii Construction Licenses Exam Content Outlines." Accessed, August 30, 2013. <https://www.prometric.com/en-us/clients/hawaii/pages/HIBOL.aspx>

30. C-57a Pumps installation contractor;
31. C-57b Injection well contractor;
32. C-61a Solar hot water systems contractor;
33. C-61b Solar heating and cooling systems contractor;
34. C-62a Pole contractor;

This raises a prima facie contradiction with the legislative intent of HRS chapter 444 that contractors are held to an equitable standard requiring a "minimum level of expertise, experience, and training." Dist. Council 50, of Int'l Union of Painters & Allied Trades v. Lopez, 129 Haw. 281, *291, *298 P.3d 1045, *1055.

The lack of a written examination for the C-38 Post tensioning contractor is particularly disturbing. Occupational Safety and Health Administration of the United States Department of Labor data shows that more than 100 workers have died while performing work on or near post-tensioning operations or reinforcing steel from 2000-2010.² Further, preliminary OSHA research indicates that several hundred workers are injured annually.³ Post tensioning industry standards exists as affirmed by Federal Departments, including the Federal Highway Administration, that site the Post-Tensioning Institute as one of the standard setters. Therefore, the lack of an examination for the C-38 license when industry standards exist is puzzling.

Incomplete "A" and "B" General Contractor Examinations

362 Questions Representing 58 Exam Themes Not In "A" Examination

The specialized knowledge of the "A" general engineering contractor's license includes 17 automatic "C" specialty licenses, 12 classifications⁴ and 5 sub-classifications.⁵ Of the 17 automatic "C" specialty licenses, 12 of those licenses have trade examinations. The "A" general engineering exam has 100 questions. The examinations for the automatic "C" specialty licenses total 393 questions. Only three exam themes occur in both the "A" examination and the automatic C's examinations; Heavy Equipment, Earthwork, and Asphalt. The overlap themes take up 30 questions in the examination for "A" and 31 questions in examinations for automatic C's. Thus, 362 questions from approximately 58 different exam themes are found on the examinations for the automatic C's that do not show up on the "A" examination.

51 References Not Used in "A" Examination

The "A" general engineering license examination draws upon 9 references for its questions. The automatic C's examinations draw upon approximately 60 different references for

² United States Department of Labor. "Reinforcing and Post-Tensioned Steel Construction." Accessed August 30, 2013. <http://www.dol.gov/osha/regs/unifiedagenda/fall2010/1218-AC51.htm>

³ Id.

⁴ C-3 asphalt paving and surfacing; C-9 cesspool; C-10 scaffolding; C-17 excavating, grading, and trenching; C-24 building moving and wrecking; C-32 ornamental guardrail, and fencing; C-35 pile driving, pile and caisson drilling, and foundation; C-38 post tensioning; C-43 sewer, sewage disposal, drain, and pipe laying; C-49 swimming pool; C-56 welding; C-61 solar energy systems.

⁵ C-31a cement concrete; C-37a sewer and drain line; C-37b irrigation and lawn sprinkler systems; C-57a pumps installation; C-57b injection well.

questions. Thus, the "A" general engineering examination does not refer to approximately 51 (= 60 - 9) different references that the automatic C's examinations do.

98 Questions Representing 16 Exam Themes Not In "B" Examination

The "B" general building contractor's license includes 10 automatic "C" specialty licenses, 9 classifications and 1 sub-classification. Of the 10 automatic "C" specialty licenses 4 of those licenses have trade examinations.

The "B" general building exam has 80 questions. The examinations for the automatic "C" specialty licenses contain a total of 200 questions. Only five exam themes occur in both the "A" examination and the automatic C's examinations; Plan Reading and Estimating, Metals, Carpentry, Doors and Windows, and Safety. The overlap themes take up 37 questions in the examinations for "B" and 102 questions in examinations for automatic C's. Thus, 98 (= 200 - 102) questions from approximately 16 different exam themes are found on the examinations for the automatic C's that do not show up on the "B" examination.

8 References Not Used in "B" Examination

The "B" general building license examination draws upon 9 references for its questions. The automatic C's examinations draw upon approximately 17 different references for questions. The "A" general engineering examination does not refer to approximately 8 (= 17 - 9) different references that the automatic C's examinations do.

Supervisory Experience

40 Years of Experience Required for All Automatic C's In "B" License

The "B" general building contractor's license includes 10 automatic "C" specialty licenses. The 10 automatic "C" specialty licenses, if applied for separately, would total 40 "years of supervisory experience as a foreman, supervising employee, or contractor in the particular classification in which the applicant intends to engage as a contractor." HAR §16-77-18.

68 Years of Experience Required for All Automatic C's In "A" License

The 17 automatic "C" specialty licenses, if applied for separately, would total 68 "years of supervisory experience as a foreman, supervising employee, or contractor in the particular classification in which the applicant intends to engage as a contractor." HAR §16-77-18.

Recommendations

(1) To Address Absence of and Incomplete Examinations.

Instruct Prometric, the professional testing service used to fulfill HRS 444-4.7, to create and administer examinations for the thirty-four "C" specialty licensees, including sub-classifications, that currently have no examinations. Further, instruct Prometric, to update the

"A" general engineering applicant and "B" general building applicant examinations to include exam questions from the relevant automatic "C" specialty contractor examinations in order to be in compliance with HAR §16-77-40.

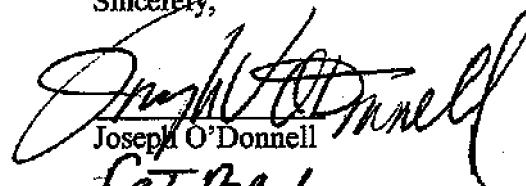
(2) To Address Unjust Differences in Experience Requirements for General and Specialty Contractors."

Consider requiring 6-years of supervisory experience for both the "A" general engineering applicant and the "B" general building applicant if the supervisory experience is gained through a corresponding duly Hawai'i licensed "A" general engineering contractor or Hawai'i licensed "B" general building contractor OR requiring 3-years of supervisory experience in each automatic "C" specialty granted to the "A" general engineering contractor or "B" general building contractor. Account for the remaining difference in experience by having an education requirement. Require the "A" general engineering applicant to have a bachelors, masters, or doctoral degree in engineering or an allied field from an accredited college or university and require the "B" general building licensee to have a at least an associates degree in construction management or degree from an allied field from an accredited college or university.

Concluding Remarks

Thirty-four "C" specialty licensees are not examined even though required under HAR §16-77-41. The "A" general engineering and "B" general building examinations do not cover themes nor questions reflective of their "specialized knowledge" the "C" specialty examinations given the corresponding licenses automatically afforded to the general contractor under HAR §16-77-32. Lastly, the required supervisory experience pursuant to HAR §16-77-18 of the "A" general engineering applicant or "B" general engineering applicant for all their automatic "C" specialty licenses are not sufficiently for to ensure public safety. We look forward to you addressing our concerns and proposed recommendations. Thank you for your time and consideration.

Sincerely,


Joseph O'Donnell
FET BM



Century Square 1188 Bishop Street, Ste. 1003
Honolulu, Hawaii 96813-3304
Phone (808) 537-1224 Fax (808) 533-2739
timlyons@hawaiiantel.net

October 9, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
~~Department of Commerce & Consumer Affairs~~
P.O. Box 3469
Honolulu, HI 96801

Dear Chairperson Lau:

This letter is to supplement our June 21, 2013 letter to you and to share with your our opinion of a proposal that has recently come to light.

At the time that we submitted our comments, we did not have the benefit of the Board's most recent proposal which is to establish a C21a Engineered, Wood and Laminate Flooring contractor's classification.

As you know, this proposal would allow every "B" licensee, both the new proposed residential "B" (BR) and the new "B" commercial (BC) to do this type of work. The residential would be able to do this work by virtue of the fact that the proposal allows them to do all of the work on a project with certain very limited exceptions and the commercial contractor would be allowed to do it inasmuch as it would be added as an automatic "free and clear" classification category.

We highly object to this move.

As far as we can tell, this would be the only finished category that would be provided to general contractors and it would be provided without further fees and/or testing. That is to say, as far as we know, there is not now any validation of a general contractor's expertise on engineered wood and laminate flooring via the testing provided by Prometric for current general "B" contractors nor does it appear that it is envisioned for the new C21a under the BC license.

Laminate and Pre-Engineered Flooring is very much a finished trade. Finished trades typically take a certain amount of expertise and detail work in order to make them work correctly.

We would like to be educated as to the Board's rationale for including this category however, we would also like you to consider several other factors.

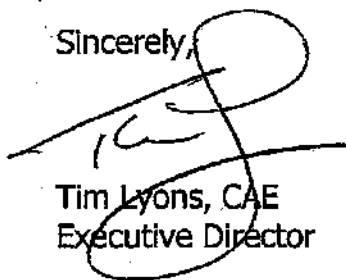
First of all, there are many small businesses throughout the State that have geared their entire marketing plan and business plan on the sale of engineered wood and laminate flooring. There are literally thousands, if not millions of dollars spent on advertising by these enterprises for wood and laminate flooring. To have general contractors then come along and steal this work, we think, is highly ill-advised. At the Association office, we have received a variety of complaints from homeowners wanting to know what to do with their ~~engineered wood or laminate flooring that was installed by a general contractor that is~~ now "buckling". Apparently, some general contractors do not know how to install such items. Between new residential General Contractors undertaking this work and established Commercial B Contractors undertaking this work, we think that it will cause the decimation of an industry and for what reason; to give the carpenters more work?

As we understand the Contractors License Law, it was created for the protection of the consuming public and we fail to see how allowing Residential B Contractors or Commercial B Contractors the latitude to put in such floors without an established track record, without proper testing and without consideration of the many businesses that are already engaged in that industry will benefit the public. The Board should not be concerned whether this industry is profitable but if it creates an environment where contractors go out of business and are not there to honor warranties or do "call-backs" for remedial work, how has it served the consumer?. It is not something that we think should deserve much consideration by the Board.

Based on the above, we respectfully request that the Board reject this proposal. We are not opposed to the establishment of a C21a Engineering Wood and Laminate Flooring subcategory to the C21 license however the applicants should still possess the required supervisory experience in order to obtain this license.

We are happy to discuss our opposition of this proposal with you further.

Sincerely,



Tim Lyons, CAE
Executive Director

cc: All Licensed Flooring Contractors

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2013



**International Union of Painters and Allied Trades
District Council 50**

2240 Young Street
Honolulu, HI 96826

Phone

808.941.0991

Fax

808.955.9091

Email

info@dc50.org

Website

www.dc50.org

PAINTERS

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GLAZIERS

ARCHITECTURAL

AND GLASS METAL

WORKERS

808.945.3329

CARPET LINOLEUM

AND SOFT TILE

808.942.3986

DRYWALL TAPERS

FINISHERS

808.848.7766

October 10, 2013

Mr. Randall B.C. Lau
Chairperson

and Members of the Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
P.O. Box 541
Honolulu, HI 96809

RE: District Council 50's Concerns and Comments to the Summary of
Recommendations from the Contractors License Board's
Investigative Committee on Senate Concurrent Resolution No. 84,
SD1, 2013 – DRAFT, October 3, 2013

Dear Mr. Lau and Members of the Contractors License Board:

My name is Ryden Valmoja and I am the Business Manager/Secretary-Treasurer for District Council 50 (DC50). DC50 is an organization that is comprised of five (5) local unions, the Painters, Local Union 1791; the Glaziers Architectural and Glass Metal Workers, Local Union 1889; the Carpet Linoleum and Soft Tile, Local Union 1926; the Drywall, Tapers Finishers, Local Union 1944 and the Pearl Harbor Metal Trades, Local Union 1941.

This letter is in response to the "Summary of Recommendations from the Contractors License Board's Investigative Committee on Senate Concurrent Resolution No. 84, SD1, 2013 – DRAFT, October 3, 2013," and we would like to offer the following concerns and comments to the aforementioned draft:

1. "B" Residential ("BR")

- A BR license will limit the contractor to construct one to two family homes, up to three (3) stories and it does not include tract homes or subdivisions. However, there are no set parameters that address a BR licensed contractor from doing large homes which are comparable (in square footage) to a small apartment

building or condominium. Albeit, this may only affect a small minority of the state's population, but consumer protection is still of vital importance.

- Also, from our understanding, the separation of the B license was primarily to preserve the smaller general contractors. Our concern is that by separating the B license, this may eliminate fair competition among the sub-crafts and may also drive up costs for consumers.

2. "B" Commercial ("BC")

- Under the creation of the BC license, the newly formed C-21a - Engineered Wood and Laminate Flooring specialty license was also added. Historically, hardwood floors were considered an integral part of the structure of a house. Prior to the 1970s, many homes were constructed with single wall suspension; T&G redwood style. Hardwood floors were constructed in the same manner and were considered an essential component to the construction of the structure. However, over the years plywood sub-flooring took its place. This method has proven to enhance the esthetics of a room by installing carpet, tile, laminates, engineered wood, etc. We believe that by creating a C-21a license and including it under the BC this could prove problematic. Currently, applicants applying for a C-21 or C-7 licenses are required to provide experience and pass a written examination. Under the proposed draft, if a BC contractor is allowed to install Engineered Wood and Laminate flooring without the proper credentials and experience this could prove detrimental to the consumer.

3. C-5 Residential ("C-5R")

- By establishing a C-5R license, a contractor is now able to perform ALL work on the project with the exception of the work done by licensed crafts. The initial intent of the C-5 was to perform work that was directly in line with Cabinet, millwork and CARPENTRY REMODELING and REPAIR. This new classification now expands the definition of a C-5R contractor. This license now allows the C-5R contractor to perform ALL work beyond Carpentry Remodeling and Repair in which is contrary to the intent of the C-5. With the creation of the C-5R license, the contractor may perform work that he/she may not have the proper training, skills or ability to perform the work;

thus leaving the consumer vulnerable and exposed to potential safety dangers.

4. C-21a Engineered Wood and Laminate Flooring [was C-68FE Laminate Flooring]

- The Carpet, Linoleum & Soft Tile, Local Union 1926, has an established apprenticeship training program that is registered with the State of Hawaii. The Carpet, Linoleum & Soft Tile is four (4) year apprenticeship program that requires an apprentice to complete 8000 hours of on-the-job training and 480 hours of industry related study. Members upon graduation are well-trained, certified and skilled tradespersons. They are introduced to cutting-edge technology, new products, and are constantly updated on safety requirements. For these reasons, if a C-21a is established it should be categorized as a specialty license and should not be included with a BC license.

On behalf of District Council 50, I would like to commend all of you for your hard work, commitment and diligence to public service. Your dedication to the people of State of Hawaii is truly appreciated. Thank you once again for the opportunity to share our concerns and I humbly request that you take into consideration our comments before finalizing the CLB Summary of Recommendations report.

Sincerely,



RYDEN VALMOJA
Business Manager/Secretary-Treasurer
International Union Painters and Allied Trades
District Council 50



Tim Lyons
<timilyons@cs.com>
10/08/2013 04:44 PM

To contractor@dcca.hawaii.gov,
cc lori@homeownersdesign.com
bcc
Subject Comments on IC Committee draft

(Forwarding to you at the request of the author.)

Acknowledging receipt of the attached Summary of Recommendations from the Contractors License Board's Investigation Committee on Senate Concurrent Resolution No. 84, S.D. 1 (2013).

We understand that the intent of this proposal is to protect the smaller B licensed contractors from having their work overrun by larger firms, but please understand the indirect negative impact these changes will have on the specialty contractors.

By allowing the general builders to perform all types of roofing and flooring work without proper licensing/experience is not only unethical to those who have worked tirelessly to obtain these qualifications, but it would also be dishonest to the homeowners/customers who are expecting professional, quality craftsmanship. The end user may as well just buy the material at a big-box store and do the work themselves since the work would be done with a similar amount of inadequacies.

Seems to be counter intuitive to have a subcontractor (C5) have any other specialty licenses other than those earned. Therefore not a good idea to "GIVE" licenses without proper testing. If no testing is required then there should be no license requirement. It would really NOT be beneficial to the public/consumers. The licensing is in place to protect consumers from being ripped off.

It would create chaos in the industry and many legitimate subcontractors would be bidding against unqualified people. It would ruin any price considerations that have been built up through the years. It would lower the wage and make it difficult if not impossible to earn a living wage in the industry. It would also affect the distribution systems, as there are no requirements for licensed installers. In the long term it would be a major detriment to the entire industry. It would throw the industry into a flux for years to come.

Why wouldn't we get together as an industry and stay strong together to make commitments to a better work environment and industry?

Lori Matsushige
Homeowners Design Center



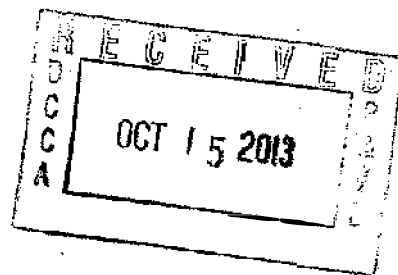
ROOFING CONTRACTORS ASSOCIATION OF HAWAII

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

Phone (808) 537-1224*Fax: (808) 533-2739

October 9, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801



Dear Chairperson Lau:

This updated communication is being sent to you primarily based on the "draft" recommendations from the Investigative Committee of the Contractors License Board.

Our recommendations are listed below:

IN OPPOSITION

- * The creation of a Residential "B" Contractor who can do all of the work on a project.
- * The creation of a "C5R" who could do all of the work on a residential remodeling or repair project.
- * "B" contractors to receive both the "BR" and "BC" licenses.
- * Current C5 contractors to receive both the C-5R and the C-5C licenses.
- * The C42a, C42b and C42c current license holders to receive the full C42 license.

IN SUPPORT

- * The creation of a "BR" license (with no automatics).
- * The deletion of the C42a, C42b and C42c sub-specialty licenses.
- * Amending the C5 Commercial License to clarify that it is limited to perform carpentry, remodeling and repair work.
- * Amending the definition of C42 Roofing to the proposed wording contained in your proposal.

DISCUSSION

Establishing a B Residential Contractor category. *(Note: The following comments apply to all of the first four (4) proposals to which we are in opposition).* We agree with this proposal inasmuch as we have always found it rather odd that a general "B" licensee could build a carport as well as a forty (40) story condominium. Therefore, we can agree with the idea of having two (2) separate licenses however, we totally disagree with the "BR" contractor being able to perform all types of specialty work with the exception of electrical, plumbing, boiler, elevator and asbestos abatement work.

We find it puzzling that given the purpose of contractor licensing as protecting the public and for health and safety reasons that suddenly we are going to allow "B" contractors who have little or no specialty experience the freedom to perform all types of specialty work when in fact, it is exactly their customers (homeowners) that need licensing protection. It is further strange that while larger contractors are not allowed to do specialty work that is where you find architects, specifications and attorneys which may control who does what work and enable penalties for faulty work. We would submit that developers don't need protection but homeowners do. If anything, the proposal should be to be sure that all residential work is protected via specialty licensing.

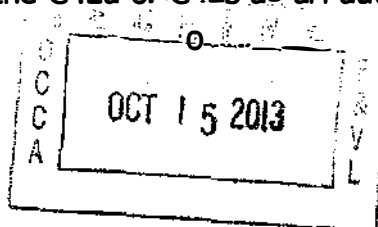
To allow the general contractors and the C5R contractors as well as all the "B's" who automatically get a BC and BR license, the ability to perform this work is quite disturbing. In the late 70's and early 80's the roofing industry had a horrible reputation. We were asked to take a look at why that was so and what could be done. We were provided access to the consumer complaint records and after many hours of research, we were able to determine that of all the complaints filed on roofing, over two-thirds of them were for general contractors doing roofing. We feel that if the Board enacts these proposals, you are going to take us light years back.

We also think that the licensing scheme envisioned in this proposal will become a nightmare for RICO. It is going to be terribly difficult to tell who can do what, who is included and who is grandfathered. The result will be multiple complaints with a great deal of research.

We agree that a BR license could be created however they should not have any automatic specialty licenses and their scope should be confined to only "B" activity.

C42a, C42b and C42c Deletion

We agree with this deletion as is noted however we do not agree that the fifteen (15) license holders with these categories should be awarded a full C42 license. How can we safely say that an individual that has demonstrated adequate experience in installing cement and clay tile roofs is now suddenly qualified to do C42e Urethane Foam Roofs and C42g Roof Coatings. All new applicants should have to qualify for the full C42 Roofing license. Those individuals that currently have these sub-specialty licenses would be eliminated through attrition. We further agree that the "B" General Contractor should not receive the C42a or C42b as an automatic license.



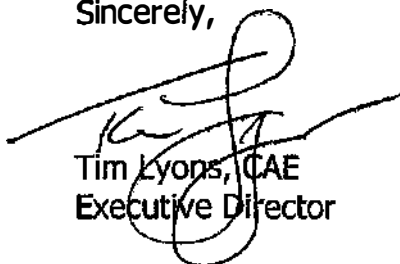
CREATION OF A C5R LICENSE

Again, we object to a C-5R being able to do all the work on a residential remodeling and repair project.

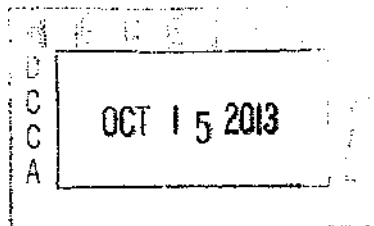
Overall, it would appear to us that these proposals, when taken in total consideration would highly benefit the general contractors and the C5 contractors all to the detriment of specialty contractors.

It is based on the above then that we must object to this draft except to those areas which we have pointed out.

Sincerely,



Tim Lyons, CAE
Executive Director





Moriyama Construction
 <mcroof@aol.com>
 10/11/2013 03:25 PM

To contractor@dcca.hawaii.gov,
 cc
 bcc
 Subject Regarding the draft recommendations for Roofing License

1 attachment


 E41A0102.jpg

Oct. 11, 2013

Contractors License Board
 Professional & Vocational Licensing Division
 Dept. of Commerce & Consumer Affairs
 PO Box 3469
 Honolulu, HI 96801

Dear Chairperson and Contractors License Board

Hi My name is Colin with Moriyama Construction. I've been a licensed roofing contractor since 1998 but have been working as a roofer since the 80's. I strongly agree with the opposition being brought up by the Roofing Contractors Association who represent us. We specialize in roofing. We are properly trained to do this kind of work. You are not going to give us a license for plumbing when we're roofers, the same should apply here. You shouldn't automatically include specialty license to B license either. If they want the specialty license they can do the required training and take the test just as we roofing contractors had to do. I remember you turned me down twice when I wanted to take the B license test. I know a lot of B license contractors who can't even run a project smoothly! You didn't even give me a chance but yet you want to give it our license away???????????????? This isn't fair!

Another thing, I don't agree with the PV companies getting granted a roofing license. Just because they are working on the roof that doesn't mean they should be a roofer! Here's one reason! Please see attached photo I just took this yesterday. The Solar Contractor cut the new lead flashing so he could solder the elbow on the copper pipe. After he finishes he leaves 3 holes around the pipes open for water intrusion. Also he's has completely destroyed the new lead flashing and some of our new roof. The owner wouldn't even have know anything until it rains. Its a good thing I went back to make sure they did it properly. And this is not our first encounter with PV/Solar companies doing poor workmanship. We've had dozen of incidents with these PV companies. We've had a few leaks because of their work - improper flashing; improper sealing. Of course the consumer would automatically think it was the roofer who caused the leak. They

have inexperience people working who have no care about voiding the roof warranty.

I hope you know that you are going to put a lot of roofing contractors out of business if you pass this.

Thank you,
Colin Moriyama

MORIYAMA CONSTRUCTION, INC.

Lic. # C - 22664

843-1954 FAX 843-1697

Mailing:

PO Box 893037

Mililani, HI 96789

-----Original Message-----

From: MCI <mciroof@aol.com>

To: MCI <mciroof@aol.com>

Sent: Fri, Oct 11, 2013 2:23 pm

Sent from my iPhone





99-1016 IWAENA ST., AIEA, HI 96701

PH: (808) 487-5535 FAX: (808) 486-8840

LICENSE NO. C-5215

October 10, 2013

Mr. Randall B. C. Lau
Chairperson
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

RECEIVED
PROFESSIONAL
LICENSING DIVISION
2013 OCT 16 1 A 7 4
DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

Re: Proposal to establish a C21a Engineered, Wood & Laminate Flooring classification

Dear Chairperson Lau:

As you know, this subject proposal would allow every "B" licensee, both the new proposed residential "B" (BR) and the new "B" commercial (BC), to do this type of work. The residential contractor would be able to do this work by virtue of the fact that the proposal allows them to do all of the work on a project with certain very limited exceptions and the commercial contractor would be allowed to do it inasmuch as it would be added as an automatic "free and clear" classification category.

We highly object to this move.

Laminate and Pre-Engineered Flooring is very much a finished trade. Finished trades typically take a certain amount of expertise and detail work in order to make them work correctly.


As far as we can tell, this would be the only finished category that would be provided to general contractors and it would be provided without further fees and/or testing. That is to say, as far as we know, there is not now any validation of a general contractor's expertise on engineered wood and laminate flooring via the testing provided by Prometric for current general "B" contractors nor does it appear that it is envisioned for the new C21a under the BC license.

As we understand the Contractors License Law, it was created for the protection of the consuming public and we fail to see how allowing Residential B Contractors or Commercial B Contractors the latitude to put in such floors, without an established track record, without proper testing and without consideration of the many businesses that are already engaged in that industry, will benefit the public. The Board should not be concerned whether this industry is profitable, but if it creates an environment where contractors go out of business and are not there to honor warranties or do "call-backs" for remedial work. How has this served the consumer?. It is not something that we think should deserve much consideration by the Board.

Based on the above, we respectfully request that the Board reject this proposal. We are not opposed to the establishment of a C21a Engineering Wood and Laminate Flooring subcategory to the C21 license however the applicants should still possess the required supervisory experience in order to obtain this license.

We are happy to discuss our opposition of this proposal with you further.

Sincerely,



Harris H. Nakamura
President

cc: Hawaii Flooring Association

IRON WORKERS STABILIZATION FUND

October 10, 2013

Randall B. C. Lau, Chair, and Members of the
Contractors License Board
Department of Commerce and Consumer Affairs
State of Hawaii
335 Merchant Street
Honolulu, HI 96813

Re: Response to draft of summary of recommendations from CLB's
investigative committee on SCR 84, SD 1 (2013)

Dear Chair Lau and Members:

This is our response to the summary of the draft on the recommendations the CLB is making to the legislature pursuant to SCR 84, SD 1 of the 2013 session.

"A" General Engineering Licenses - we do not have any comments.

"B" General Building Licenses and "C-5" Specialty License

Under the Okada case, general engineering and building contractors are *prohibited* from performing any specialty work ("C" licenses) for which they are not licensed. Under the District 50 case, our High Court reached the following conclusion:

"We hold that because the Board did not consider the cost and extent of the work when determining if that work qualified as 'incidental and supplemental' to the project, the Board's interpretation of the 'incidental and supplemental' exception is contrary to the primary purpose of the legislation regarding contractor licensing."
(emphasis added.)

We have several concerns about the recommendation to permit "B" contractors construct one to two family homes up to three stories. First, permitting "B" contractors perform all "C" specialty work (not including the exceptions listed) would be in direct contravention to the Okada ruling which prohibits "A" and "B" generals from performing any "C" work. And, second, this recommendation would also be in contravention of the holding in the District 50 case we have set forth above. In interpreting the holding in the District 50 case, a "C" specialty contractor *cannot* perform other "C" licensed work unless it is "incidental and supplemental" to the project. And, cost and extent of the work in conjunction with the project must be taken into account. Applying logic and reasoning, almost every "C" specialty contractor's work on the project could not fall into the category of "incidental and supplemental" because of the "cost and extent" of the work in conjunction with the project. "Cost and extent" must be taken into account.

"C" Specialty Licenses

C-5 Residential ("C-5R") and C-5 Commercial ("C-5C"). – We apply our arguments set forth above to these recommendations. For emphasis, the recommendations should not be permitted if they are in contravention to the Okada and District 50 cases.

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LICENSING DIVISION
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Randall B. C. Lau, Chair
and Members
Contractors License Board
October 10, 2013
Page 2

C-6 Carpentry Framing – We object to this recommendation if the language would permit the “C-6” contractor to infringe into the work performed by “C-48” Structural Steel Contractors. To remove any doubt, we object to “wood truss” being deleted and “trusses” being inserted. We want the language to remain as it is. “C-6” contractors should not be permitted to perform “structural” work because of public safety reasons.

C-31a Cement Concrete Contractor – Historically, the “C-48” Structural Steel Contractor has always installed pre-cast concrete. If the recommendation is to permit the “C-31” Cement Concrete Contractors to perform this work, we argue that the same language should also be added to the “C-48” Structural Steel Contractor designation.

C-32 Ornamental, Guardrail, and Fencing Contractor – We object to the insertion of the word “structural” which would infringe on the work performed by “C-48” Structural Steel Contractors. There is a distinct difference between the words “fencing” and “guardrail”. The installation of guardrails must take into account the requirements of the International Building Codes which state that any guardrail above 30 inches must resist a minimum structural load. There is no such stringent requirement for the installation of fences. For public safety reasons, structural units must remain in the purview of “C-48” Structural Steel Contractors only.

C-42 Roofing – For obvious public safety reasons, we insist that the word “wood” be inserted in front of the word “purlins” in the last sentence of the recommendation. A “C-42” Roofing contractor must not be permitted to install steel purlins which fall into the “structural” category. If a “C-42” contractor, unfamiliar with steel purlins, errs in installing a wrong sized purlin, the roof could collapse.

C-48b Prefabricated Metal Buildings – We are against the recommendation to add a new category, “C-48b” Prefabricated Metal Buildings. We also take the position that the present “C-68MI” licensees should be grandfathered in and be permitted to hold on to their present licenses. At the same time, we state that no new C-68MI licenses should be issued, and, require any applicants for “C-68MI” licenses to become licensees under the “C-48” Structural Steel Contractor category after board testing. Here, again, “structural” expertise is necessary, and, the only licensed category that is qualified to perform this work would be the “C-48” Structural Steel Contractor.

Please call Ron Amemiya at 671-4344 should you have any questions.

Sincerely,


T. George Paris
Managing Director

RECEIVED
PROF & VOCATION
LICENSING DIVISION
11/13/13
11:45

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Via Hand Delivery & E-Mail: verna.s.oda@dcca.hawaii.gov

October 15, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

**SUBJECT: Opposition to Approval of Draft Report and Response to
Investigative Committee's Proposed Amendments to Chapter 77,
Hawaii Administrative Rules (HAR) pursuant to Senate Concurrent
Resolution 84, SD1.**

Dear Chair Lau and Members,

Thank you for the opportunity to comment in response to the Contractors License Board's (CLB) Investigative Committee's (IC) Draft Report. The General Contractors Association of Hawaii (GCA) believes that the proposed Draft Report by the Investigative Committee for SCR 84, SD1 is incomplete and does not adequately respond to the issues and concerns raised and therefore, should not be approved at the upcoming October 18, 2013 meeting. In particular, the Draft Report has not provided a comprehensive review of the five following requirements:

- 1) the criteria, requirements and procedures for obtaining a contractor license, including automatic granting of specialty licenses;
- 2) an assessment of whether the state licensing requirements are in line with licensing requirements in other jurisdictions and meet general construction industry standards and practices;
- 3) a specific evaluation of the C-5 (cabinet, millwork, and carpentry remodeling and repairs) classification;
- 4) a determination on whether the Board's rules appropriately reflect the intent of the legislature; and
- 5) suggested amendments to the practice of issuing licenses for each classification.

We request the CLB review two joint letters submitted by GCA and other stakeholders dated June 28, 2013 and August 22, 2013 which offer a number of resources that could be included in CLB's report, including historical references that unfolds the legislative intent behind why the Contractors License Board was created, past CLB interpretations as to certain licensing classifications, and proposed amendments to ensure the rules adequately reflect the statute, among other things.

GCA also respectfully requests that the CLB provide rationale as to why the proposed changes in the Draft Report are being considered, the Draft Report provides no insight as to why such changes are necessary. Moreover, we request that the CLB provide some explanation as to why the other suggested amendments by stakeholders were rejected and not considered.

As one example, the GCA jointly suggested that the CLB amend the Hawaii Administrative Rules (HAR) Section 16-77-28 to make rules consistent with Hawaii's law, which was specific to SCR 84, SD1, item number 4. GCA's joint proposed amendments to Section 16-77-28, HAR are necessary to ensure that the rules are consistent with the law and will clarify what the "A" general engineering and "B" general building contractor are permitted to do. The current classifications set forth in the HAR do not properly reflect what the true intent of the type of work the "A" general engineering and "B" general building contractors can do. The proposed amendments suggested a way to further clarify the type of work such contractors can perform by referencing the statute in the rules. GCA's joint proposed amendment is similar to California's Contractor's Rules and Regulations.¹ California's Code of Regulations (similar to Hawaii's Administrative Rule), 16 CCR Section 830 describes the "A" general engineering contractor and the "B" general building contractor by referencing California's State Law, Section 7056 and Section 7057 respectively.

GCA reserves comment on all proposed suggestions after reasons and rationales are provided and a more comprehensive Draft Report becomes available for review, preferably prior to being presented to the Legislative Reference Bureau and the Legislature.

We respectfully request that the CLB review all submitted comments and adequately respond as to why some proposals were not considered. At this time, we respectfully request that the CLB not approve the Draft Report presented by the Investigative Committee as a final report to the Legislature as it would create more uncertainty, unanswered questions and confusion for legislators who may rely on the information being presented. Thank you for the opportunity to submit comments.

¹ California Contractors License Law & Reference Book.
http://www.lexisnexis.com/clients/caagencylaw/CA_Contractors_2013.pdf

October 17, 2013

Members of the Contractors Licensing Board:

My name is Vaughn W. Chong and I am the Business Manager of Local 221 of the United Union of Roofers, Waterproofers and Allied Workers. I am currently on the continent and am not able to personally appear but I would like to provide an opinion on our Local's behalf.

In response to the October 3, 2013 Summary of Recommendations from the Contractor License Board's Investigative Committee on Senate Concurrent Resolution No. 84 S.D. 1 (2013), these are the thoughts of Roofers Union Local 221.

We are not in support of separate BR and BC licenses. More specifically, we do not support the creation of the BR general building license classification, which allows the general contractor to perform all subcontractor work with a few exceptions. It is our opinion that the licensing board was created to protect consumers by licensing and regulating the construction industry. The board is also responsible for ensuring that all construction is completed in a safe and professional manner. By allowing a "BR" general contractor to perform all work without proper licensing and oversight will expose the general public to situations that may not only be unsafe, but could also expose the homeowner to sub-standard application practices. Without the regulation provided by properly licensing contractors to perform specific work, the consumer will be exposed to a myriad of issues that could severely hurt the public's trust regarding the importance and validity of the licensing board in general. In our opinion, the single family residential market should be even more protected than the commercial market as the commercial side is groomed to deal with a variety of issues that will certainly arise because of the expertise and oversight provided by the various layers of the construction process. Generally, the individual homeowner does not have those layers of protection to ensure quality and safety as it is normally a contract between homeowner and builder.

We support the removal of the automatic C-42a and C-42b license from the B general, but do not support the BC automatically receiving the BR license. Again, it comes down to having a valid license for whatever work is being performed in the name of safety and following proper industry application standards.

We support the changes to the language for the C-42 Roofing license.

With respect to eliminating the C-42a, C-42b, and C-42c licenses, we would not object to that recommendation in and of itself. However, automatically granting the five (5) current licensees the full C-42 classification is something that we do not support. This is akin to the same issues with respect to a BR license. We suggest that if the three licenses are eliminated, those holding those licenses should have an opportunity to test for the full C-42 instead of automatically receiving it by default.

We are also in support of the proposed language changes for the C-55 Waterproofing license.

We thank you for your time and attention, and would be happy to respond to any questions you may have for us. You may contact me at 808-847-5757.

Sincerely yours,

Vaughn W. Chong

Financial Secretary/Treasurer/Business Manger

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"The Voice of the Construction Industry"

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October 17, 2013

Randall B.C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
335 Merchant Street
Honolulu, Hawaii 96813

Via email: Verna.S.Yamamoto@dcca.hawaii.gov

Dear Chair Lau and Board Members,

BIA-Hawaii has serious concerns on the Board's Investigative Committee's Summary of Recommendations ("Summary") on Senate Concurrent Resolution 84 ("SCR 84"). We believe the Summary is incomplete as it does not respond to the specific requirements in SCR 84:

- (1) A comprehensive assessment and review of all contractor licenses issued pursuant to chapter 444, Hawaii Revised Statutes;
- (2) An assessment of whether the state licensing requirements are in line with similar licensing requirements in other jurisdictions and meet general construction industry standards and practices;
- (3) A specific evaluation of the definition of a C-5 contractor;
- (4) A determination of whether chapter 77, Hawaii Administrative Rules, appropriately reflects the intent of the Legislature;
- (5) Suggested amendments or modifications to the practice of issuing licenses for each license classification, as appropriate; and
- (6) A brief description of the process the Board used in making its findings and recommendations in the report.

We understand that a more comprehensive report is being finalized, therefore, our comments only respond to the Summary and we reserve further comment until the final report is made public.

BIA-Hawaii is particularly troubled by, and **opposed to**, the proposal to split B licenses and C-5 licenses into two classes—Residential and Commercial. We oppose this action for the following reasons:

1. There is no need for doing this. As we understand, part of the logic offered for this separation is that unqualified residential contractors can get into building projects they are not qualified to do, which could result in compromises to the life/safety construction standards of building. This concern is unfounded and unrealistic as the marketplace has built-in provisions protect against this problem. For example, there are bonding requirements on larger, more complex projects that unqualified contractors would be unable to meet. Secondly, design

Mailing address: P.O. Box 970967, Waipahu, HI 96797 Street address: 94-487 Akoki St., Waipahu, HI 96797-0967;
Telephone: (808) 847-4666 Fax: (808) 440-1198 E-mail: info@biahawaii.org; www.biahawaii.org

Randall B.C. Lau, Chair
Contractors License Board
October 17, 2013
S.C.R. 84

professionals that stamp their plans are responsible for overseeing the construction to ensure compromises to life/safety do not occur

1. Existing license laws are already highly complex and convoluted. Jurisdictional disputes exist primarily at the subcontractor level. This is because of the fact that there are too many specialty licenses with intertwining scopes of work. Introducing the multiple license structure will create the same type of disputes at the B and C-5 license level. The simplicity of the license structure at this level is strength, not a weakness.
2. Splitting these licenses is anti-small business. Many contractors get their start in the residential sector and move on to work in the government or private sector arenas. Separating the license classification adds an additional barrier to small businesses that are seeking to grow to the next level.

While we acknowledge the effort put forth by your Board, the Summary includes proposals that will result in more confusion within the construction industry, does not adequately answer the questions posed in SCR 84, and lacks any analysis or justification. Therefore, we urge this Board to not approve the Summary of Recommendations nor submit it to the Legislature.

We thank you for this opportunity to share with you our views.



A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

735 Bishop Street, Suite 412 * Honolulu, Hawaii 96813
 (808) 524-2249 - FAX (808) 524-6893

KIKI G. BUKOSKI
 Executive Director

October 17, 2013

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 Workers United Union of Roofers
 Local 221

Mr. Randall B.C. Lau, Chair
 Contractors License Board
 Professional and Vocational Licensing Division
 Department of Consumer Affairs
 335 Merchant Street
 Honolulu, Hawaii 96813

Re: Summary of Recommendations from the Contractors Licensing Board's Investigative Committee on Senate Concurrent Resolution 84, SD1 (2013), Requesting the Contractors License Board to conduct an assessment and prepare a report that evaluates each Licensing Classification under Chapter 444, Hawaii Revised Statutes.

Aloha Chair Lau and Members:

The Hawaii Building and Construction Trades Council, AFL-CIO (HBCTC) is one of 386 state, local and provincial councils organized throughout the United States and Canada and is locally comprised of various construction trade unions in Hawaii with a combined membership of nearly 15,000 statewide. First organized in 1953, HBCTC is authorized and chartered through the Building and Construction Trades Department located in Washington DC which was first organized in 1907.

For over a century, the BCTD has secured the trade jurisdiction and autonomy of its affiliates as the respected arbiter of trade issues and through that work has contributed to the continuity of employment and economic security of organized construction workers in the United States and Canada.

In the recent 2013 Legislative Session, the State Legislature adopted SCR 84, SD1 (2013), which requested the CLB to conduct an assessment and prepare a report that evaluates each licensing classification under chapter 444, HRS; and to include in the report, the following:

- (1) A comprehensive assessment and review of all licenses issued pursuant to chapter 444, Hawaii Revised Statutes, including the criteria, requirements, and procedures needed for "A" general engineering contractor licenses, "B" general building contractor licenses, and "C" specialty licenses, including all "C" specialty licenses that are automatically granted;

- (2) An assessment of whether the state licensing requirements are in line with similar licensing requirements in other jurisdictions and meet general construction industry standards and practices;
- (3) A specific evaluation of the definition of a C-5 contractor, including whether this definition is too broad, whether this definition includes an appropriate balance between the work that is performed and the experience necessary for a license, and a determination of whether this definition should be modified;
- (4) A determination of whether chapter 77, Hawaii Administrative Rules, appropriately reflects the intent of the Legislature, with a specific focus on the scope of work that corresponds to each contractor classification;
- (5) Suggested *amendments* or modifications to the practice of issuing licenses for each license classification, as appropriate; and
- (6) A brief description of the process the Board used in making its findings and recommendations in the report.

Background:

HB423, SD1 (1957) was passed by the Legislature of the Territory of Hawaii in 1957. The first administrative rules were debated and adopted shortly thereafter. Now known as ACT 305 (1957), the language contained in this soon to be law, was generally crafted from language taken from existing California laws and regulations at the time.

It is arguable, after reviewing the minutes of meetings that ensued following the formation of the first Contractors License Board (CLB), that there was much debate and differing of opinions over some of the same issues we are now discussing; i.e.; classifications and limitations (see CLB Minutes February 21, 1958), and the definition of incidental and supplemental (see CLB Minutes June 20, 1958) and how and when it is applied.

It is our position, after reviewing ACT 305 (1957) as well as the minutes of the CLB at the time the initial administrative rules were being discussed and drafted, that the intent of the legislation was to create three distinct contractor licenses and associated classifications as well as a comprehensive application process designed to protect the public by pre-qualifying applicants knowledge and experience in the classification being sought prior to granting the applicant a license to operate in that classification.

On January 28, 2002, the Hawaii Supreme Court issued a ruling (*Okada v. Board of Water Supply*) that supports this position. Further and more recently, the Hawaii Supreme Court also issued a ruling in *District Council 50 v. Keali'i Lopez/ Department of Commerce and Consumer Affairs* which clarified the statutory application of the 'incidental and supplemental' exception.

We were hopeful that as a result of SCR84, SD1, we could take full advantage of this valuable opportunity to assess, evaluate, clarify and improve our existing statutes and rules as it relates to contractor licensing and provide greater conformity and general clarity between HRS §444 and HAR §16-77.

The Contractors Licensing Board published a 'Draft' Summary of Recommendations dated October 3, 2013. The HBCTC would like to provide the following comments for consideration.

According to our reading of SCR84, CD1, the 'Draft' Summary of Recommendations being proposed by the CLB is incomplete and does not address the items specified in the resolution that was passed by the Legislature in early 2013.

We understand this 'Draft' Report will subsequently be put into a final report form and be submitted to the Legislature and any changes to statute or rules must go through the established process prior to any of the recommendations being formally adopted and/or implemented. Therefore, we defer our specific comment(s) until such time that those recommendations are formally being considered for adoption and are before the appropriate body for action.

With that said, we would like to express our disappointment in the direction the CLB has chosen to take on this matter. SCR 84, CD1 gave the industry a valuable opportunity to clarify misinterpretations of the law that have been ongoing for decades. The HBCTC took great care in evaluating the history of the CLB in Hawaii, its laws and rules, and submitted comprehensive recommendations for CLB's consideration and inclusion in their findings. It appears none were included in the 'Draft' Summary (October 3, 2013) published.

It is clear that the Legislature, at the time the CLB was created, had one primary intent and purpose in mind and that was to protect the general public's health and safety as it relates to construction and construction contracting. What is lacking throughout this 'Draft' Summary are answers to several "key" questions that ensure that the general public's health and safety is indeed the primary objective and being protected. These questions include the following:

- 1) What is the objective sought by the proposed amendment?
- 2) What justification exists for the proposed amendment?
- 3) Does the proposed amendment improve or decrease protection to the general public?
- 4) How does the proposed amendment improve protection to the general public?
- 5) Is the proposed amendment consistent with Hawaii Revised Statute?
- 6) Does the proposed amendment circumvent statutory law?

It is our position that the recommendations as proposed by the CLB do not comply with SCR84, CD1, are not consistent with and attempts to circumvent state law. Further, the recommendations as proposed, continues to disregard court rulings that clarify ongoing misinterpretations of the law and rules governing the construction industry.

Please note, the summary as published provides no justification or rationale for the proposed changes that are being recommended, but rather appears to be random and arbitrary and may actually adversely impact the level of protection to the general public, making them extremely vulnerable to sub-standard, shoddy work, and possible deceptive practices.

For these reasons, and until we are provided with, able to review, and have an opportunity to discuss the objectives and justifications for the proposed amendments as well as the how the proposed changes improve the general public's health and safety and any potential adverse effects these proposed amendments might have on the general public, we strongly oppose the Summary of Recommendations dated October 13, 2013 as proposed by the Contractor's License Board.

Further, we request that this written record of opposition as well as our previous written comments dated August 14, 2013, be made part of the final report that is submitted to the Legislature.

SAH - Subcontractors Association of Hawaii
1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304
Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

October 17, 2013

Mr. Randall B. C. Lau
Chairman
Contractors License Board
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

Dear Chairman Lau:

The Subcontractors Association of Hawaii thanks you for the opportunity to express our opinions on the most recent Contractors License Board Investigative Committee proposal. The SAH is composed of:

HAWAII FLOORING ASSOCIATION
ROOFING CONTRACTORS ASSOCIATION OF HAWAII
HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION
TILE CONTRACTORS PROMOTIONAL PROGRAM
PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII
SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII
PAINTING AND DECORATING CONTRACTORS ASSOCIATION
PACIFIC INSULATION CONTRACTORS ASSOCIATION
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

We are:

IN SUPPORT

- * Of the creation of a BR license (with no automatics).
- * Of the deletion of the C42a, C42b and C42c sub-specialty licenses. We concur that these three (3) categories should be wiped out and further that the B Commercial (BC Contractor) should not get the C42a or C42b as an automatic license.
- * Of amending the C5 Commercial License to clarify that it is limited to performing carpentry remodeling and repair work.

DISCUSSION

Establishing a B Residential Contractor Category. *(Note: The following comments apply to all of the proposals above.)* We agree with this proposal inasmuch as we have always found it rather odd that a general "B" contractor licensee could build a carport as well as a forty (40) story condominium. Therefore, we can agree with the idea of having two (2) separate licenses however we totally disagree with the BR Contractor being able to perform all types of specialty work with the exception of electrical, plumbing, boiler, elevator and asbestos abatement work.

We find it particularly puzzling that given the purpose of contractors licensing as protecting the public and for health and safety reasons that suddenly we are going to allow B Contractors who have little or no specialty experience the freedom to perform all types of specialty work when in fact, it is their customers (homeowners) that need licensing protection. We would submit that developers need protection and even homeowners who buy from developers need protection. Licensing is meant to protect everyone.

To allow the general contractors and the C5R Contractors, as well as, all the B's who automatically get a BC and BR license, the ability to perform this work is quite disturbing. In the late 70's and early 80's the roofing industry had a horrible reputation. We were asked to take a look at why that was so and what could be done. We were provided access to the consumer complaint records and after many hours of research we were able to determine that of all the complaints filed on roofing, over two-thirds of them were for general contractors doing roofing. We feel that if the Board enacts these proposals, you are going to take us light years back.

We also think that the licensing scheme envisioned in this proposal will become a nightmare for RICO. It is going to be terribly difficult to tell who can do what, who is included and who is grandfathered. The result will be multiple complaints with a great deal of research.

CREATION OF A C5R LICENSE

Again, we object to a C-5R being able to do all the work on a residential remodeling and repair project.

Overall, it would appear to us that these proposals, when taken in total consideration, would highly benefit the general contractors and C5 contractors, all to the detriment of specialty contractors.

Based on the above then, we must object to this draft except to those areas which we have pointed out.

Sincerely,



Tim Lyons, CAE
President



T. IIDA CONTRACTING, LTD.

P O Box 1 • Kaneohe HI 96744 • Ph: (808) 247-4341 • Fax: (808) 235-1378

Via E-Mail: verna.s.oda@dcca.hawaii.gov

Reference T-1239

October 17, 2013

Honorable Randall B.C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

Subject: Opposition to Approval of Draft Report and Response to Investigative Committee's
Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR) pursuant to
Senate Concurrent Resolution 84, SD1.

Dear Chair Lau and Members,

T. Iida Contracting, Ltd. is a family run general contracting business that was founded in 1937. We primarily do commercial work for various Federal, State, and City agencies as well as work from the private sector.

T. Iida Contracting, Ltd., requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, T. Iida Contracting, Ltd. has grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

Very truly yours,

T. IIDA CONTRACTING, LTD.

Henry T. Iida
President

TOMCO CORP.

General Contractors

October 16, 2013

Honorable Randell B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

**SUBJECT: Opposition to Approval of Draft Report and
Response to Investigative Committee's Proposed Amendments to
Chapter 77, Hawaii Administrative Rules (HAR) pursuant to Senate
Concurrent Resolution 84, SD1.**

Dear Chair Lau and Members,

TOMCO CORP. requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, TOMCO CORP. has grave concerns about passage of such an incomplete draft report and opposes any approval of the Draft Report. Thank you for the opportunity to comment.

500 Ala Kawa St., Suite #100A Honolulu, Hawaii 96817
Telephone #: (808) 845-0755 Fax #: (808) 845-1021
Lic# ABC 16941

*building solutions*dck pacific construction, LLC
a dck worldwide company

October 16, 2013

Via E-Mail: verna.s.oda@dcca.hawaii.gov

Fax: (808) 586-2689

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

SUBJECT: Opposition to Approval of Draft Report and Response to Investigative Committee's Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR) pursuant to Senate Concurrent Resolution 84, SD1.

Dear Chair Lau and Members:

dck pacific construction, LLC requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, dck pacific construction, LLC has grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

Sincerely,

dck pacific construction, LLC

Eric G. Tessem
Sr. Vice President and General Manager

EGT/ehc

WARRIOR

CONTRACTING, LLC

Via E-Mail: verna.s.oda@dcca.hawaii.gov
Fax: (808) 586-2689

October 17, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

SUBJECT: Opposition to Approval of Draft Report and Response to Investigative Committee's Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR) pursuant to Senate Concurrent Resolution 84, SD1.

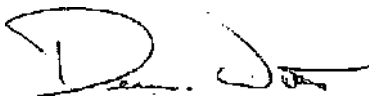
Dear Chair Lau and Members,

Warrior Contracting, LLC requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, Warrior Contracting, LLC has grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

Sincerely,



Denny Watts
Executive Vice President

Las Vegas
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HI ABC #33154



JAYAR CONSTRUCTION, INC.

1176 Sand Island Parkway ▼ Honolulu, Hawaii 96819-4346
Tel (808) 843-0500 ▼ Fax (808) 843-0067
Contractor's License ABC-14156

Via E-Mail: verna.s.oda@dcca.hawaii.gov
Fax: (808) 586-2689

October 16, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

**SUBJECT: Opposition to Approval of Draft Report and
Response to Investigative Committee's Proposed Amendments to
Chapter 77, Hawaii Administrative Rules (HAR) pursuant to Senate
Concurrent Resolution 84, SD1.**

Dear Chair Lau and Members,

Jayar Construction, Inc. requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, Jayar Construction has grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

Sincerely,

Rodney H. Nohara
President

"An Equal Opportunity Employer"



Alan Shintani Inc.
GENERAL CONTRACTOR BC 13088

Via E-Mail: verna.s.oda@dcca.hawaii.gov
Fax: (808) 586-2689

October 15, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

SUBJECT: Opposition to Approval of Draft Report and Response to Investigative Committee's Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR) pursuant to Senate Concurrent Resolution 84, SD1.

Dear Chair Lau and Members,

Alan Shintani, Inc. is a general construction company that has been in business for almost 30 years. Since its establishment in 1984, the company had been providing a range of quality general contractor services and construction management for homes, commercial buildings and government projects.

Alan Shintani, Inc. requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion and increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, Alan Shintani, Inc. has grave concerns about the passage of such an incomplete draft report and opposes any approval of the Draft Report.

Thank you for the opportunity to comment.

President
Alan Shintani, Inc.

October 11, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813



**SUBJECT: Opposition to Approval of Draft Report and
Response to Investigative Committee's Proposed
Amendments to Chapter 77, Hawaii
Administrative Rules (HAR) pursuant to Senate
Concurrent Resolution 84, SD1.**

Dear Chair Lau and Members,

Royal Contracting Co., Ltd. requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, Royal Contracting Co., Ltd has grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

Sincerely,

David C. Hulihee
President



1099 ALAKEA STREET, SUITE 1560
HONOLULU, HI 96813
TELEPHONE: (808) 541-9101
FAX: (808) 541-9108

October 16, 2013

Via E-Mail: verna.s.oda@dcca.hawaii.gov
Fax: (808) 586-2689

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

SUBJECT: Opposition to Approval of Draft Report and Response to Investigative Committee's Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR.) pursuant to Senate Concurrent Resolution 84, SD1.

Dear Chair Lau and Members,


Nordic PCL Construction, Inc. requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, Nordic PCL Construction, Inc. has grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

Yours Truly,

NORDIC PCL CONSTRUCTION, INC.


Glen Kaneshige
President



Via E-Mail: verna.s.oda@dcca.hawaii.gov
Fax: (808) 586-2689

October 14, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

**SUBJECT: Opposition to Approval of Draft Report and
Response to Investigative Committee's Proposed
Amendments to Chapter 77, Hawaii Administrative Rules
(HAR) pursuant to Senate Concurrent Resolution 84,
SD1.**

Dear Chair Lau and Members,

LYZ, Inc. is a general contractor operating under license number ABC 21576 and send this testimony in opposition to Draft Report which supports the General Contractor Association of Hawaii position on the Draft Report.

LYZ, Inc. requests that the Contractors' License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, LYZ, Inc. has grave concerns

about passage of such an incomplete draft report and opposes any approval of the Draft Report. Thank you for the opportunity to comment.

Respectfully submitted,



JAMES N. KURITA
Vice President/COO



October 17, 2013

Via Email & Facsimile
verna.s.oda@dcca.hawaii.gov
(808) 586-2689

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

RE: Opposition to Approval of Draft Report and Response to Investigative Committee's Proposed Amendments to Chapter 77, Hawaii Administrative Rules (HAR) pursuant to Senate Concurrent Resolution 84, SD1.

Dear Chair Lau and Members,

Hawaiian Dredging Construction Company, Inc. ("Hawaiian Dredging") is opposed to the Contractors License Board's ("CLB" or "Board") approval of the CLB Investigative Committee's proposed draft report and response ("Draft Report") pursuant to Senate Concurrent Resolution No. 84, S.D.1 (2013) ("Resolution").

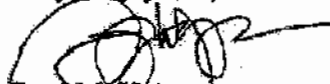
Hawaiian Dredging urges the Board not to adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised under the Resolution. Accordingly, the Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry are provided with a reasonable opportunity to review and comment on the final draft.

All of the changes to existing law suggested by the Investigative Committee are being proposed without any explanation or rationale as to why these changes are necessary and appropriate. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses: B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. The splintering of the "B" license classification will only serve to create further confusion, in addition to increase opportunity for bid protest (which will ultimately delay the delivery of public works projects).

Honorable Randy Lau, Chair
Contractors License Board
October 17, 2013
Page 2

Thank you for the opportunity to voice our concern regarding this matter.

Very truly yours,



Gary M. Yokoyama
Vice President & General Counsel



Via E-Mail: verna.s.oda@dlcca.hawaii.gov
Fax: (808) 586-2689

October 11, 2013

Honorable Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs, State of Hawaii
c/o Ms. Verna Oda, Executive Secretary
335 Merchant Street
Honolulu, Hawaii 96813

**SUBJECT: Opposition to Approval of Draft Report and
Response to Investigative Committee's Proposed
Amendments to Chapter 77, Hawaii Administrative Rules
(HAR) pursuant to Senate Concurrent Resolution 84,
SD1.**

Dear Chair Lau and Members,

Mega Construction Inc. requests that the Contractors License Board not adopt the Draft Report presented by the Investigative Committee because it is incomplete and does not adequately respond to the issues and concerns raised required under SCR 84, SD1. The Draft Report should not be approved at the upcoming October 18, 2013 meeting, until a more comprehensive report is prepared and members of the construction industry may be able to review and comment on the final draft.

All of the proposed changes in the Draft Report are being proposed absent any explanation or rationale as to why these changes are necessary. Furthermore, the Draft Report suggests splitting the "B" general building license into a residential and commercial license, which will essentially result in creating four new licenses, the B-Residential, B-Commercial, C-5 Residential and C-5 Commercial. These splits will create further confusion, increase opportunity for bid protest, which will then result in further delays in the delivery of projects, particularly public works projects.

We request that the CLB review all submitted comments and adequately respond as to why other proposals were not considered. At this time, Mega Construction Inc. has

Honorable Randy Lau, Chair
Contractors License Board
October 10, 2013
Page 2

grave concerns about passage of such an incomplete draft report and oppose any approval of the Draft Report. Thank you for the opportunity to comment.

MEGA CONSTRUCTION, INC.



Marnie K. Hurst
President

October 21, 2013

Mr. Randall B.C. Lau Chairperson

And Members of the Contractor's License Board

Professional and Vocational Licensing Division Department of Commerce and Consumer Affairs
P.O Box 541
Honolulu, HI. 96809

RE: District Council 50's Additional Concerns and Comments to the Summary of
Recommendations from the Contractor's License Board's Investigative Committee on Senate
Concurrent Resolution No. 84, SD1, 2013 – DRAFT October 3, 2013

Aloha Mr. Chairman Randy Lau and Board Members,

My name is Dwayne Arelliano, Business Representative, Glaziers, Architectural Metal and Glassworkers, Local Union 1889, District Council 50. At this time, I would like to thank you for this opportunity, to provide additional testimony to you. The Intermediate Court of Appeals (ICA) stated that under the C-5 License its scope of work is too broad, and it could pose a grave risk to public safety. In S.C.R. No.84 S D 1, it asked for an assessment of the C-5 License, particularly if its scope was too broad and if it was consistent in other jurisdictions and meets general construction industry standards. The CLB is proposing a C-5 Commercial and a C-5 Residential that can undertake any work under these licenses, would not only create confusion, be would be difficult to enforce, and may cause increase litigation due to the current definition of the "Incidental and Supplemental" in this classification. I believe that you can "kill two birds with one stone", if you change the current C-5 Classification - Cabinetry, Millwork, and Carpentry Remodeling and Repairs to mimic California's C-6 Classification -Cabinetry, Millwork, and Finishing Contractor, limiting the scope of work to Carpentry, which was the original intent of the Legislators.

You have a tough job ahead, and on behalf of District Council 50, I would like to commend all of you for your hard work, commitment and diligence to public service. Your dedication to the people of the State of Hawaii is truly appreciated. We would like to take this time again to thank you again for the opportunity to share our additional concerns with you and for allowing this testimony to be part of your recommendations to the Legislators.

Sincerely,



Dwayne Arelliano

Glazier's Business Representative/ District Council 50

OCT 21 2013



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PLUMBERS AND FITTERS LOCAL 675 UNITED ASSOCIATION



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Mr. Randall Lau, Chair
Contractor's License Board
Professional and Vocational Licensing Division
Department of Consumer Affairs
335 Merchant Street
Honolulu, Hi. 96813

Regular Meeting
King Kalakaua Conference Room, 1st floor
Friday, Oct. 18, 2013, 8:30 AM

Re: SCR 84, SD1 Requesting the Contractor's License Board to conduct an assessment and prepare a report that evaluates each Licensing Classification under Chapter 444, Hawaii Revised Statutes.

Aloha Chair Lau and members of the Contractors Licensing Board,

As Business Manager of the Plumbers and Fitters UA Local 675 and current President of the Hawaii Building and Construction Trades Council, which Local 675 is an affiliate, I believe that the research done by Mr. Kika Bukoski as Executive Director of the HBCTC was factual and thorough. I understand that he has articulated our concerns to you and the Board members and I believe that some of his recommendations are worthy of your consideration in your final report which you plan to submit to the Legislature.

Therefore the Plumbers and Fitters UA, Local 675, oppose the submission of the final report in its current form and urge the CLB to include the opposing comments from the Hawaii Building and Construction Trades Council and others as a minority report.

Thank you for the opportunity to offer comments on this issue.

Mahalo,

Reginald Castanares Jr.
Business Manager
Plumbers and Fitters UA Local 675

PLUMBING & MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII



PLUMBING AND MECHANICAL
CONTRACTORS ASSOCIATION
OF HAWAII

TELEPHONE: (808) 597-1216

FAX: (808) 597-1409

1214 S. King Street, Suite 951

Honolulu, Hawaii 96814

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email: verna.s.yamamoto@dcca.hawaii.gov

October 15, 2013

Mr. Randall Lau
Chairperson
State of Hawaii Contractors License Board
Department of Commerce and Consumer Affairs
P.O. Box 3469
Honolulu, HI 96801

DRAFT SUMMARY OF RECOMMENDATIONS FROM THE CONTRACTORS LICENSE BOARD'S INVESTIGATIVE COMMITTEE ON SENATE CONCURRENT RESOLUTION NO. 84, S.D."1 (2013)

Dear Chair Lau and Members of the Board:

Thank you for the opportunity to provide comments regarding the Draft Summary of Recommendations from the Contractors License Board's Investigative Committee on SCR84 SD1.

While we support the idea of separating the "B" General Building Contractor license classification into a BC-Commercial and BR-Residential, we do not agree with the expansive scope allowed to the BR contractor. The proposed BR classification should NOT be allowed to perform "ALL" work related to a residential construction project, and instead should only be allowed to perform work in the craft or trade of those specialty licenses for which the BR qualifies by way of testing and experience. This requirement is clearly stated in Hawaii Administrative Rules 16-77-33(a): A licensee classified as an "A" general engineering contractor or "B" general building contractor shall not act, assume to act, or advertise as a specialty contractor except in the specialty classifications which the licensee holds. By allowing the BR to perform all work related to a residential project without holding the requisite specialty licenses, the Licensing Board would contradict the intent and language of the licensing law. This is clearly erroneous.

Second, we agree with the proposed language in the newly created C-5C Commercial, as this language clarifies the craft or trade work that may be performed by a specialty contractor as required by HRS444-7(d) which states that: A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill such as, but not limited to electrical, drywall, painting and decorating, landscaping, flooring, carpet laying, plumbing, or roofing work, and others whose principal contracting business involves the use of specialized building trades or crafts. This new C-5C scope would bring the C-5 classification in compliance with the intent of the contractor licensing law, and also bring it in line with the scope of every other specialty "C" classification that describes the allowable craft or trade work the contractor is allowed to perform.

Third, we do not support the proposed C-5R Residential language that allows such contractors to perform "ALL" of the work on a residential remodel or repair. Again, allowing this expansive scope language is contrary to the intent of the licensing law. Instead, we feel that the proposed C-5C Commercial scope language should apply equally to the C-5R Residential classification, with the only difference being the type of projects involved.

We sincerely appreciate the hard work of the investigative committee and the Licensing Board for carefully reviewing the various license classes and the related scope language, and going through the arduous process of developing and discussing these suggested changes.

We are happy to answer any questions the Board may have and look forward to discussing our proposals at the next Board meeting.

Thank you for the opportunity to provide comments.

Respectfully submitted,



Gregg S. Serikaku
Executive Director



MAUI CONTRACTORS ASSOCIATION

October 17, 2013

Randall B. C. Lau, Chair
Contractors License Board
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
335 Merchant Street
Honolulu, HI 96813

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HAWAIIAN
COMMERCIAL
TRADING CO.

Dear Chair Lau and Board Members,

The Maui Contractors Association has read the Board's Investigate Committee's Summary of Recommendations on Senate Concurrent Resolution 84 "SCR84" and we strongly opposes the separation of B-General Building license into two classes, Residential and Commercial.

It is very anti-small business. Maui Contractors Association has many family owned small to mid size "B" members. Members who build more than one-to-two family homes up to three stories, per year including small renovations. All large projects have intricate requirements to meet including but not limited to bonding. This already eliminates the unqualified contractors from bidding these jobs.

Maui is a small community with a limited market and B Contractors need to be able to do both residential and commercial work. Our members are very fortunate if they do five or more new or remodel projects per year.

Since a large amount of our members are family owned, if the license holder retires and passes on the company to their son/daughter, the new owner would have to apply for a new license which would completely change the structure of their existing company.

Limiting the amount of builds a contractors does annually isn't very consumer friendly. It would raise the prices to build a new home and for existing homeowners to remodel their homes, especially those on a fixed income. They would have to go to larger contracting companies to build a new home or remodel, most of who do not do just build one home or do small or mid-size remodeling projects.

Thank you for the opportunity to submit testimony on SCR84.

Sincerely,

Jacqueline Haraguchi
Executive Director
Maui Contractors Association



A'ohe hana nui ka alu'ia
"No Task is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
735 Bishop Street, Suite 412 * Honolulu, Hawaii 96813
(808) 524-2249 - FAX (808) 524-6893

Proposed Amendments to Hawaii Administrative Rules §16-77 pursuant to SCR84, SD1
(2013)

August 14, 2013

- I. Amend and delete specific "C" classifications listed in HAR §16-77-32(a) and (c) that are not relative to the primary scope of each respective classification as defined in HRS §444-7. (see below) Clarify that contractors are prohibited to working outside of what they are licensed to perform unless they meet CLB prescribed requirements. We believe such actions are consistent with accepted industry standards and practices, and conforms with the original intent of the legislature and the CLB.**

SUBCHAPTER 5

CLASSIFICATION

§16-77-28 All contractors classified. (a) All persons licensed under chapter 444, HRS, shall be classified by the board into one or more classifications or sub-classifications, or-both, as follows:

General engineering contractor "A"

General building contractor "B"

Specialty contractor "C"

(b) The definitions of these classifications shall be as provided in section 444-7, HRS.

(c) Contractors licensed in one classification shall be prohibited from contracting in the field of any other classification unless they are licensed in that classification or are permitted to do so pursuant to HAR §16-77-34.

(e)d Exhibit A, entitled Specialty Contractor Classifications, dated May 23, 2003, located at the end of this chapter, is hereby incorporated into and made a part of this chapter.

(d)f Classifications under C-68 classified specialist may be established by the board until the work performed is defined and a hearing is held to establish the proper classification. A

C-68 classified specialist shall be subject to the same requirements as other contractor classifications.

([e]g) The board, after a hearing, may establish or modify or delete existing classifications, based on established usage in the construction industry. [Eff 8/14/80; am and ren §16-77-28, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; am and comp 4/15/04] (Auth: HRS §§444-4, 444-7, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-10, 444-14, 444-13)

SUBCHAPTER 6

SCOPE OF CLASSIFICATIONS

§16-77-32 General engineering, general building, and specialty contractors. (a) Licensees who hold the "A" general engineering contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:

- (1) C-3 asphalt paving and surfacing;
- (2) C-9 cesspool;
- (3) C-10 scaffolding;
- (4) C-17 excavating, grading, and trenching;
- (5) C-24 building moving and wrecking;
- (6) C-31a cement concrete;
- (7) C-32 ornamental guardrail, and fencing;
- (8) C-35 pile driving, pile and caisson drilling, and foundation;
- (9) C-37a sewer and drain line;
- (10) C-37b irrigation and lawn sprinkler systems;
- ~~[(11) C-38 post-tensioning;]~~ *(A general "A" contractor does not customarily and historically perform the scope of work in this classification)*
- ~~[(12) C-43 sewer, sewage disposal, drain, and pipe laying;~~
- ~~[(13) C-49 swimming pool;~~
- ~~[(14) C-56 welding;~~
- ~~[(15) C-57a pumps installation;~~
- ~~[(16) C-57b injection well;~~
- ~~[(17) C-61 solar energy systems;]~~ *(Note: Contrary to the expressed authority granted to the Contractor License Board pursuant to HRS §444-8(c) relative to limiting the field of scope of operations)*

~~[(b) The "A" general engineering contractor may also install poles in all new pole lines and replace poles, provided that the installation of the ground wires, insulators, and conductors is performed by a contractor holding the C-62 pole and line classification. The "A" general engineering contractor may also install duct lines, provided that the installation of conductors is performed by a contractor holding the C-13 electrical classification.]~~ *(Note: Contrary to the expressed authority granted to the Contractor License Board pursuant to HRS §444-8(c) relative to limiting the field of scope of operations)*

(e)b Licensees who hold the "B" general building contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:

- (1) C-5 cabinet, millwork, and carpentry remodeling and repairs;
- (2) C-6 carpentry framing;
- (3) C-10 scaffolding;
- ~~[(4) C-12 drywall;] (Note: Is not work required to provide for the support, shelter or enclosure a structure)~~
- (5) C-24 building moving and wrecking;
- ~~[(6) C-25 institutional and commercial equipment;] (Note: Is not work required to provide for the support, shelter or enclosure a structure)~~
- (7) C-31 placement concrete;
- ~~[(8) C-32a wood and vinyl fencing;] (Note: Is not work required to provide for the support, shelter or enclosure a structure)~~
- ~~[(9) C-42a aluminum and other metal shingles;] (Note: Is not work required to provide for the support, shelter or enclosure a structure; siding work using such material is covered in the amended C-5 classification)~~
- ~~[(10) C-42b wood shingles and wood shakes;] (Note: Is not work required to provide for the support, shelter or enclosure a structure; siding work using such material is covered in the amended C-5 classification)~~

II. To adopt the proposed amendments to HAR §16-77-34 that intends to clarify and further conform with HRS §444 as it pertains to incidental and supplemental work.

§16-77-34 Work incidental and supplemental defined. For purposes of limited exception provided in HRS §444-8(c), work in other classifications are "~~[(i)]~~ incidental and supplemental" to the work for which a specialty contractor as defined in HRS §444-7(d), is licensed if that work is minor and narrow in scope, and essential to accomplish the work in the craft for which the specialty contractor is licensed. A specialty contractor may use subcontractors to complete the incidental and supplemental work, or he may use his own employees to do so, ~~[is defined as work in other trades directly related to and necessary for the completion of the project undertaken by a licensee pursuant to the scope of the licensee's license.]~~ [Eff 8/14/80; am and ren §16-77-34, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04] (Auth: HRS §§444-4, 444-7) (Imp: HRS §§444-7, 444-8, 444-9)

III. To adopt the proposed amendments to the C-5, C-5a and C-6 classification as well as re-activate the C-30 classification as the new remodel/renovate classification and create a new C-30a classification as follows.

C-5 Cabinet, Millwork Finish carpentry ~~remodeling and repairs~~ contractor. To ~~[install]~~ cut, surface, join, and frame wood and other products into cabinets, cases, sashes, doors, trims, or nonbearing partitions ~~[that become a permanent part of structure, and to remodel or to make repairs to existing buildings or structures, or both; and to do any other work which would be incidental and supplemental to the remodeling or repairing.~~

~~The repairs, carpentry work, or remodeling shall include the installation of window shutters, garage doors, bifold, and shutter doors; and [the] install[ation of] aluminum, vinyl or other manufactured sidings; this contractor also places, erects, and finishes such cabinets and millwork in structures. [-and any other work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections;] (Note: Deleted language is included in the newly proposed C-30 classification listed below)~~

~~C-[5]30a~~ **Garage door and window shutters contractor.** To install overhead, mechanical and sliding garage doors, including installation of window shutters which involves similar installation methods; (Note: the scope classification is included in the newly proposed C-30 classification listed below as well.)

~~C-5[b]a~~ **Siding application contractor.** To prepare surfaces and install aluminum, vinyl or other manufactured siding, [with the exception of wood,] so that a watertight surface is obtained;

C-6 Carpentry framing contractor. To do wood and metal framing, siding, wood truss, roof sheathing, and other work as is by custom and usage accepted in the construction industry as carpentry framing essential to construct framed structures;

C-30 Remodeling, repairs and renovation contractor. to remodel or to make repairs to an existing single residential unit, which require the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, window shutters, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house and any other work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections; the installation of home improvement goods or the furnishing of home which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

Wayne's Carpet Maui C7, C21, C51, C-21045

Contract Compliance

401 Ho'okahi St. #22

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October 28, 2013

Mr. Randall B.C. Lau

Chairperson

Contractor's License Board

Professional and Vocational Licensing Division

Department of Commerce and Consumer Affairs

P.O. Box 3469

Honolulu, Hawaii 96801

Re: C21A Engineered Wood and Laminate Flooring Classification
Notice of Opposition
Request to Testify
Submission of Testimony
Jungle: Wayne's Carpet: Corr:Contractor's License Board.docx

Dear Chairperson Lau:

Wayne's Carpet Maui is a state wide flooring contractor. We are concerned that the board is considering a classification that would allow "B" licensed contractors to do engineered, wood and laminate flooring.

HRS §444-4 (2) specifically provides that the contractors license board shall:

Adopt, amend, or repeal such rules as the board may deem proper fully to effectuate this chapter and carry out the purpose thereof, which is the protection of the general public ...

This proposed rule, if adopted, appears to minimize protection of the general public from unqualified flooring installers.

I come to my position with Wayne's as both a former carpenter and lawyer. Whilst a carpenter I installed a lot of true hardwood floors and felt competent doing so. I measured, cut, nailed them and sanded them when completed. Between the time I pounded nails and came to work at Wayne's Carpet Maui I was a practicing lawyer for 30 years. During that period of time I discovered a lot about the different types of flooring that has been created since the days I swung a hammer. I learned about moisture and moisture mitigation issues, about adhesives, curing compounds, floor flatness and a host of other technical issues that impact how engineered wood and laminate floors are installed and how those issues, if not understood and dealt with, can lead to flooring failures.

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What I thought I knew as a carpenter and what I now know about installing flooring is appalling. The amount of work and knowledge associated with installing floors covers volumes of specifications, industry standards (ACI, ASTM) and manufacturers requirements.

Flooring contractors spend a great deal of time, day in and day out, dealing with the nature and quality of the substrate. As a carpenter I often was the worker who created it. However with all of the new, sophisticated flooring products that have come on line, the substrate is now an incredibly specialized and more complicated system. The interaction of the installer with the substrate is a lot more complicated than what a carpenter has the knowledge or skill to handle.

1. Flooring contractors deal with the issues of the substrate day in and day out whereas a general carpenter does not. In fact general contractors routinely differ to the flooring contractor on issues concerning whether the substrate complies with job specifications, with industry standards and with manufacturer's requirements.
2. Dealing with the substrate is NOT within a carpenter's scope of work, not in their job description nor is it something that carpenters are trained to work with. In reviewing the scope of work in project specifications the issues with regard to substrate and flooring installation are almost exclusively contained in the Division 3 (concrete contractors) and Division 9 (flooring contractors) specifications. Rarely are there specifications for substrate or flooring in the Division 6 (rough or finish carpentry) specifications.
3. Flooring product manufacturers, on the whole, require specialized training to work with their products. They often require schooling and training. This is particularly true with regard to engineered wood and laminate flooring.
4. Division 9 project specifications often specify that the flooring installer, working on the project, have a minimum number of years of requisite training, experience and certification.

In my law practice I had a number of homeowners who sought representation for claims against general contractors for failed flooring installations. Upon investigation I realized (with the assistance of a professional flooring contractor) that there were numerous installation mistakes that the general made that a flooring contractor would not make.

I also reference HRS §444-25.5 regarding disclosures. Note that the purpose of that section is to distinguish between

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residential homeowners entering into contraction contracts and commercial owners entering into construction contracts. The difference is that the contractor is required to provide more detailed disclosures to homeowners than is necessary for commercial work. We are concerned that, indirectly, this proposed rule change, to a degree, lessens those protections afforded private homeowners since they, more than commercial owners, will be dealing with the contractors with this new classification.

We request that the board reject this proposal.

Please accept this letter as our testimony on this issue.

John Dick, the owner of our firm, would be delighted to have the opportunity to testify on this matter. Please let us know when and where.

Yours truly

Steven Booth Songstad

Steven Booth Songstad
Contract Compliance
Wayne's Carpet Maui

Approved:

John Dick

John Dick, Owner
Wayne's Carpet Maui

C: Tim Lyons