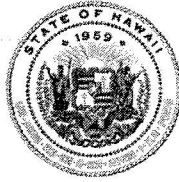


# LATE TESTIMONY



LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

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LAWRENCE M. REIFURTH  
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DEPUTY DIRECTOR

## PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

TO THE HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION of 2009

Thursday, April 2, 2009  
9:00 a.m.

### WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 124, REQUESTING THE CONVENING OF A TASK FORCE TO DETERMINE THE PROPER INTERPRETATION AND APPLICATION OF THE TERM "INCIDENTAL AND SUPPLEMENTAL" WITH REGARD TO THE CONTRACTING BUSINESS.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, and I am the Director of the Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to testify **in opposition** to House Concurrent Resolution No. 124 ("H.C.R. No. 124"), which requests that the Department convene a task force to determine how the term "incidental and supplemental" should be interpreted and applied in the bidding process.

The task force would consist of seven members; three members appointed by the Governor, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives. The Department must then report the findings of the task force to the Legislature.

The purpose of the task force appears to duplicate the function of the Contractors License Board ("Board"), and the resolution implies that a task force is needed because the Board's interpretations have run counter to the Hawaii Supreme Court's opinion in the *Okada Trucking Co., Ltd. v. Board of Water Supply* (2002) case. The Department believes these concerns are unfounded, as the Board's deputy attorney general has confirmed that the Board's interpretations do not contradict the Hawaii Supreme Court's opinion in the *Okada* case, and that the creation of a task force to look into this matter is not necessary. Furthermore, the focus of the resolution has to do with how these interpretations affect the bidding process, which is not within the jurisdiction of this Department.

Thank you for the opportunity to testify on H.C.R. No. 124.

# LATE TESTIMONY

## PRESENTATION OF THE CONTRACTORS LICENSE BOARD

TO THE HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Thursday, April 2, 2009  
9:00 a.m.

### TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 124, REQUESTING THE CONVENING OF A TASK FORCE TO DETERMINE THE PROPER INTERPRETATION AND APPLICATION OF THE TERM "INCIDENTAL AND SUPPLEMENTAL" WITH REGARD TO THE CONTRACTING BUSINESS.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Contractors License Board ("Board") appreciates the opportunity to testify in **opposition to** House Concurrent Resolution No. 124 ("HCR No. 124"), which requests that a task force be convened to determine the appropriate application of the term "incidental and supplemental" with regard to contractors.

The Board questions the need for a task force, as it believes that the decision on whether work is "incidental and supplemental" is best determined on a case-by-case basis, rather than a specific percentage of work or dollar amount. There are so many different scenarios that may occur, that specifying a rigid application of the term may be too constricting, and may not take all aspects of the project into consideration.

Furthermore, the Board, as well as its advising deputy attorney general, disagrees with the assertion, on page 2, lines 31 through 33, that the Board's application of the term "incidental and supplemental" contradicts the Hawaii Supreme

Court's holdings in *Okada Trucking Co., Ltd. v. Board of Water Supply, City and County of Honolulu and Inter Island Environmental Services, Inc.*, 97 Hawai'i 450 (2002).

The issue raised in HCR No. 124 apparently arose because the Board did not determine that it was a violation of its statute for a contractor holding the C-5 (Cabinet, millwork, and carpentry remodeling and repairs) classification to perform work incidental and supplemental to its remodeling work. This does not contradict the Hawaii Supreme Court's holding that a specialty contractor, as opposed to a general contractor, is permitted to undertake work involving the use of crafts or trades for which the specialty contractor is not licensed, provided that such work is "incidental and supplemental" to the work for which the specialty contractor is licensed. Therefore, the issue is not whether a contractor submitted bid proposals that did not identify the appropriate specialty contractors, but whether as a specialty contractor, it may perform the work as "incidental and supplemental" to its license.

The purpose of this resolution appears to be to force the C-5 contractor to subcontract portions of its work to contractors holding other specialty classifications, although it is the only specialty classification that specifically mentions its authority to perform incidental and supplemental work in its description. Where does one draw the line on a remodeling project? Since electrical and plumbing work requires a permit and trade licenses, such work must be subcontracted out. However, must the flooring be subcontracted out because the C-5 contractor does not hold the C-21 (Flooring) classification? Must the painting work be subcontracted out because the C-5 contractor does not hold the C-33 (Painting) classification? Must drywall repair be subcontracted

to the C-12 (Drywall) contractor? Furthermore, to obtain these additional classifications, four years of experience in each classification is required; therefore, it will be onerous to require the C-5 contractor to do so.

The Board believes that it is within its jurisdiction to render these decisions, that it is able to do so objectively, and that it has done so without contradicting the Hawaii Supreme Court's holdings in *Okada*. The purpose of the Board and its statutes and rules is for the protection of the public. We do not want to see a task force put together merely for the sake of resolving bidding disputes and turf battles, without consumer protection as its priority and purpose.

Thank you for the opportunity to testify on HCR No. 124.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

APRIL 1, 2009

## LATE TESTIMONY

TO: THE HONORABLE REPRESENTATIVE ANGUS L. K. MCKELVEY, CHAIR AND MEMBERS OF COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

SUBJECT: HCR 124 - REQUESTING THE CONVENING OF A TASK FORCE TO DETERMINE THE PROPER INTERPRETATION AND APPLICATION OF THE TERM "INCIDENTAL AND SUPPLEMENTAL" WITH REGARD TO THE CONTRACTING BUSINESS.

### NOTICE OF HEARING

DATE: Thursday, April 02, 2009  
TIME: 9:00 A.M.  
PLACE: Conference Room 312

Dear Chair McElvey and Committee Members:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms.

The GCA **strongly opposes** HCR 124 which would convene a task force for the purpose of determining how the term "incidental and supplemental" should be interpreted and applied in the bidding process. The resolution does not specifically include, as members of the task force, representatives from contractor associations, both general contractors and specialty contractors, government procurement officers, the chief procurement officer, contractor license board and the public. All of these will be affected by this resolution.

The GCA's position is that incidental and supplemental is a licensing issue that should continue to be determined on a case by case basis and, at present, the Contractors License Board is the most qualified to do this. Some have stated that our Procurement Code is synonymous with the term "red tape" and that the Procurement Code is full of hurdles which actually make the expenditure of public funds inefficient. HRS Chapter 444 Contractors is also full of hurdles. For example there are 110 specialty contractor classifications and subclassifications. So, by this task force attempting to apply "incidental and supplemental" with its 110 classifications and subclassifications to our Procurement Code, the Procurement Code would become a road block.

GCA have met with subcontractors and unions to resolve this issue and will continue to do so.

The GCA could support a task force comprised of all affected stakeholders that would look at streamlining both Chapter 103D Hawaii Public Procurement Code and Chapter 444 Contractors. However, we **strongly oppose** HCR 124 as it is currently written because it will take us in the opposite direction and add to our bureaucracy.

Thank you for giving us this opportunity to testify.

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**BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

April 2, 2009

Honorable Angus McKelvey, Chair  
Committee on Economic Revitalization, Business,  
and Military Affairs  
State Capitol, Room 312  
Honolulu, Hawaii 96813

RE: HCR 124 "REQUESTING THE CONVENING OF A TASK FORCE TO DETERMINE THE PROPER INTERPRETATION AND APPLICATION OF THE TERM "INCIDENTAL AND SUPPLEMENTAL" WITH REGARD TO THE CONTRACTING BUSINESS.

Chair McKelvey and Members of the Committee on Economic Revitalization, Business, and Military Affairs:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly opposes HCR 124, "Requesting the Convening of a Task Force to Determine the Proper Interpretation and Application of the Term "Incidental and Supplemental" with Regard to the Contracting Business".

"Incidental and Supplemental" are terms related to licensing and the determination and application of this phrase must be conducted on a case by case basis. At present, the Contractors License Board is the body most qualified to make the determination. For the proposed Task Force to apply the "incidental and supplemental" test to 110 specialty contractor classifications and subclassifications to the State Procurement Code, there would be greater delays in the procurement process.

BIA-Hawaii believes that there is a need for all stakeholders in the procurement process to discuss streamlining both Chapter 103D Hawaii Procurement Code and Chapter 444 Contractors. We continue to voice our strong opposition to HCR 124 as currently drafted. If it is the will of the Legislature to convene such a task force, we believe representation from members of the construction industry—both general and subcontractors—must be provided.

Thank you for the opportunity to share our views with you.