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## HOUSE RESOLUTION

REQUESTING A STUDY OF THE CONTRACTING LICENSING LAWS OF OTHER STATES TO CLARIFY WHAT CONSTITUTES "INCIDENTAL AND SUPPLEMENTAL" WORK IN THE CONTEXT OF CONTRACTOR LICENSING.

1 WHEREAS, the Contractors License Board is vested with broad  
2 authority pursuant to section 444-4, Hawaii Revised Statutes, to  
3 issue licenses to contractors and to ensure that contractors are  
4 qualified to undertake the work for which they are licensed; and  
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6 WHEREAS, pursuant to section 444-7, Hawaii Revised  
7 Statutes, the Contractors License Board classifies the types of  
8 licenses it issues as:

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- 10 (1) General engineering contractor;
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  - 12 (2) General building contractor; and
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  - 14 (3) Specialty contractor; and
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16 WHEREAS, the Hawaii Supreme Court in *Okada Trucking Co.,*  
17 *Ltd. v. Board of Water Supply, City and County of Honolulu and*  
18 *Inter Island Environmental Services, Inc.*, 97 Hawai'i 450 (2002),  
19 made several significant holdings that clarified the treatment  
20 of bid proposals submitted by contractors on state and county  
21 projects; and  
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23 WHEREAS, in *Okada*, the Hawaii Supreme Court held that a  
24 general contractor's bid for a Board of Water Supply booster  
25 station project was nonresponsive because it required work by a  
26 licensed plumbing (specialty) contractor, which was work that  
27 the general contractor was not authorized to perform under the  
28 general contracting licenses that it held; and  
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30 WHEREAS, in *Okada*, the Hawaii Supreme Court also held that  
31 a general engineering or building contractor is prohibited from  
32 undertaking any work, solely or as part of a larger project,  
33 that would require it to act as a specialty contractor in an  
34 area in which the general contractor was not licensed to  
35 operate; and



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2 WHEREAS, in *Okada*, the Hawaii Supreme Court noted that a  
3 specialty contractor, as opposed to a general contractor, is  
4 permitted to undertake work involving the use of crafts or  
5 trades for which the specialty contractor is not licensed, so  
6 long as the performance of the work in those crafts or trades is  
7 "incidental and supplemental" to the performance of work in the  
8 craft for which the specialty contractor is licensed; and  
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10 WHEREAS, pursuant to section 444-8, Hawaii Revised  
11 Statutes, a specialty contractor is not prohibited from taking  
12 and executing a contract involving the use of two or more crafts  
13 or trades, if the performance of such work is in a craft or  
14 trade in which the specialty contractor is not licensed,  
15 provided that the work is "incidental and supplemental" to the  
16 performance of the work in the craft or trade in which the  
17 specialty contractor is licensed; and  
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19 WHEREAS, section 444-8, Hawaii Revised Statutes, which  
20 allows specialty contractors to undertake "incidental and  
21 supplemental work" applies only to specialty contractors and not  
22 to general contractors; and  
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24 WHEREAS, the Contractors License Board has applied the term  
25 "incidental and supplemental" (defined under section 16-77-34,  
26 Hawaii Administrative Rules, as work in other trades directly  
27 related to and necessary for the completion of the project  
28 undertaken by a licensee pursuant to the scope of the licensee's  
29 license) to general engineering contractors and to general  
30 building contractors who can perform incidental and supplemental  
31 work under the rule; and  
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33 WHEREAS, current Hawaii statutory law in chapter 444,  
34 Hawaii Revised Statutes, is silent on whether a general  
35 contractor can perform incidental and supplemental work under  
36 its general contractor license; and  
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38 WHEREAS, in the years since the *Okada* opinion, the  
39 Contractors License Board has permitted contractors, on several  
40 occasions, to submit bid proposals that failed to identify  
41 specialty subcontractors that would be engaged, even in  
42 situations where the invitation for bids clearly indicated that  
43 the construction projects involved would require substantial  
44 amounts of specialty contracting work; and



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WHEREAS, in these cases, the Contractors License Board has ruled that the specialty contracting work required in these projects was merely "incidental and supplemental" to the licenses held by the bidding contractors; and

WHEREAS, the Contractors License Board's application of the phrase "incidental and supplemental" appears to contradict the Hawaii Supreme Court's holdings in *Okada*; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, that the Legislative Reference Bureau is requested to conduct a study on how other states' contractor licensing laws define and address "incidental and supplemental" work; and


BE IT FURTHER RESOLVED that the study be conducted for the purpose of providing information from the other states that will help the Legislature determine the extent to which the "incidental and supplemental" language in chapter 444, Hawaii Revised Statutes, should allow specialty contracting work to be performed by a contractor who is not licensed to perform that work; and

BE IT FURTHER RESOLVED that as part of the foregoing task, the Legislative Reference Bureau consider the interests and protection of consumers; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to report its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2011; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of the Legislative Reference Bureau and Chairperson of the Contractors License Board.

OFFERED BY:

  
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FEB 16 2010

