

FEB 26 2010

SENATE 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



1
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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 2 WHEREAS, in these cases, the Contractors License Board has
 3 ruled that the specialty contracting work required in these
 4 projects was merely "incidental and supplemental" to the
 5 licenses held by the bidding contractors; and

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

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

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

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

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

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

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 41 OFFERED BY: Michelle D. Sidani
Arvid Y. Ige *Shianne Chunoa* *Clarence K. Nishihara*
Carol F. ... *James ...* *Will Eyo*

S.R. NO. 49

Noman Satomp
Muller
Teha Galt
James Kohr

