
SENATE CONCURRENT RESOLUTION

REQUESTING A REPORT 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 bids submitted by contractors on state and county projects;
21 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,



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



1 the invitation for bids clearly indicated that the construction
2 projects involved would require substantial amounts of specialty
3 contracting work; and
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5 WHEREAS, in these cases, the Contractors License Board has
6 ruled that the specialty contracting work required in these
7 projects was merely "incidental and supplemental" to the
8 licenses held by the bidding contractors; and
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10 BE IT RESOLVED by the Senate of the Twenty-fifth
11 Legislature of the State of Hawaii, Regular Session of 2010, the
12 House of Representatives concurring, that the Legislative
13 Reference Bureau is requested to submit a report on how other
14 states' contractor licensing laws define and address "incidental
15 and supplemental" work; and
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17 BE IT FURTHER RESOLVED that the report provide information
18 that will help the Legislature determine the extent to which the
19 "incidental and supplemental" language in chapter 444, Hawaii
20 Revised Statutes, should allow specialty contracting work to be
21 performed by a contractor who is not licensed to perform that
22 work; and
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24 BE IT FURTHER RESOLVED that as part of the foregoing task,
25 the Legislative Reference Bureau consider the interests and
26 protection of consumers; and
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28 BE IT FURTHER RESOLVED that the Legislative Reference
29 Bureau is requested to report its findings and recommendations,
30 including any proposed legislation, to the Legislature no later
31 than twenty days prior to the convening of the Regular Session
32 of 2011; and
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34 BE IT FURTHER RESOLVED that certified copies of this
35 Concurrent Resolution be transmitted to the Director of the
36 Legislative Reference Bureau and Chairperson of the Contractors
37 License Board.

