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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
415 S. Beretania Street, Room 446
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Written Testimony

HCR94

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

Testimony by the Legislative Reference Bureau
Ken H. Takayama, Director

Presented to the House Committee on Consumer Protection & Commerce

Wednesday, March 24, 2010, 2:05 p.m.
Conference Room 325

Chair Herkes, Vice Chair Wakai and Members of the Committee:

Thank you very much for this opportunity to testify on House Concurrent No. 94, concerning "incidental and supplemental" work in the context of contractor licensing.

The Bureau takes **no position** either for or against the measure, but submits the following comments and concerns:

1. As always, if the Legislature wants us to do this study, we will do it to the best of our ability with the resources we have.
2. The types and extent of work that can be performed as "incidental and supplemental" pursuant to a contractor's license has evidently been a subject of considerable debate since 2002 when the Hawaii Supreme Court issued its decision in *Okada Trucking Co., Ltd. V. Board of Water Supply*.
3. This resolution directs the Bureau to study "how other states' contractors' licensing laws define and address 'incidental and supplemental' work".
4. While the concept of the study directed is straightforward, we believe it may be more difficult than it appears, as we suspect that:
 - a. Other states (as is the case with Hawaii) have much of their relevant, applicable law in the form of administrative rules or court decisions, rather than statutory provisions; and

b. May use different terminology from Hawaii;

thus making the search for applicable laws more difficult.

5. Nevertheless, the scope of the study appears to be manageable. For this reason, we ask that if this measure is to pass, that it pass in its present form.

Thank you very much for this opportunity to testify.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Wednesday, March 24, 2010
2:05 p.m.**

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 94 AND HOUSE
RESOLUTION NO. 45, 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.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Denny Sadowski, Legislative Committee Chair of the Contractors License Board (“Board”). The Board appreciates the opportunity to comment on House Concurrent Resolution No. 94 and House Resolution No. 45, which request that the Legislative Reference Bureau conduct a study on how other states’ contractor licensing laws define and address “incidental and supplemental” work.

While the Board believes that such a study may be informative, we would like to clarify some misconceptions contained in the resolution, specifically the contention that the Board’s application of the term “incidental and supplemental” contradicts the Hawaii Supreme Court’s holdings in the *Okada Trucking Co., Ltd. v. Board of Water Supply* (“*Okada Trucking*”) case.

Prior to the *Okada Trucking* opinion, general contractors were allowed to perform all of the work on their project, except for a few trades that were specifically excluded by rule or by state or county permit requirements. However, on January 28, 2002, the

Hawaii Supreme Court issued its opinion in the *Okada Trucking* case and determined that the general contractor may only perform work in the trades in which they hold the appropriate specialty classification. (The general engineering contractor license includes 17 specialty classifications, and the general building contractor license includes 10 specialty classifications.) Therefore, the general contractor is now restricted to performing work only in those specialty classifications.

The resolutions imply that general contractors may not perform "incidental and supplemental" work because the term only applies to specialty contractors. However, since the general contractor may only perform work in the specialty classifications it holds, it is only reasonable and logical that they be allowed to perform work "incidental and supplemental" to those specialty classifications. The Board, and its advising deputy attorney general, concluded that the general contractor may perform work "incidental and supplemental" to its specialty classifications because the holder of a specialty classification may perform "incidental and supplemental" work regardless of whether or not the contractor also holds a general contractor license, and that this interpretation does not contradict the *Okada Trucking* opinion.

Thank you for the opportunity to comment on House Concurrent Resolution No. 94 and House Resolution No. 45.

IRONWORKERS STABILIZATION FUND

March 24, 2010

Robert Herkes, Chair
Committee on Consumer Protection & Commerce
House of Representative
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Chair Herkes and Members of the Committee on Consumer Protection & Commerce

RE: STRONG SUPPORT FOR HCR 94 & HR45 – 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

We wish to offer our strong support for HCR 94 & HR45, requesting a study of the contracting licensing laws of other states to clarify what constitute "Incident and Supplemental" work in the context of contract licensing.

We believe that there has been so many incidents of incidental and supplemental work on construction projects that subcontractors have not been allowed to perform work that is rightfully there under the state law. We believe that we should have a standard to deem what is incidental and supplemental work and we should look at how other states have taken up this issue. Subsequently, we hope this is only the first step in allowing the hard working men and women their fair share.

We strongly support this study. Thank you for your assistance.

SAH - Subcontractors Association of Hawaii

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March 24, 2010

Testimony To: House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons
President

Subject: HCR 94/HR 45 – 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.

Chair Herkes and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. SAH represents the following nine separate and distinct subcontracting organizations including:

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

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

The term "incidental and supplemental" has been confusing and abused so we have no problem in reading the results of a study that might clarify this area.

We do however, note that it is likely to be one of the shorter studies from LRB because only half the states have contractor's licensing laws and of those, many preclude certain aspects of licensing. As a result, there may be only be a handful of states that will be relevant however, because this area is such an important area and has been the subject of a great deal of discussion both for and against various interpretations, we have no problem with a study that might help us shine new light on this subject matter.

Thank you.