SCR 118/

SR 49

PRESENTATION OF THE
CONTRACTORS LICENSE BOARD

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Wednesday, March 24, 2010
10:00 a.m.

TESTIMONY ON SENATE CONCURRENT RESOLUTION NO. 118 AND SENATE RESOLUTION NO. 49, 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 ROSALYN H. BAKER, 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 Senate Concurrent Resolution No. 118 and Senate Resolution No. 49, 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 resolution implies 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 Senate Concurrent Resolution No. 118 and Senate Resolution No. 49

SAH - Subcontractors Association of Hawaii

*1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304*

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 24, 2010

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons
President

Subject: SCR 118/SR 49 – 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 Baker 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.

IRON WORKERS STABILIZATION FUND

Fax No. – 586-6071

March 23, 2010

Hon. Rosalyn H. Baker, Chair
Senate Commerce and Consumer Protection Committee
Room 231 – State Capitol
Honolulu, HI 96813

Ironworkers Stabilization Fund

Hearing Date – March 24, 2010 – 10:00 a.m. – Conf. Room 229

Support of SCR 118 – 2010 Regular Session

As SCR 118 sets forth, the term "incidental and supplemental" has caused much confusion in the construction industry as it relates to state and county jobs.

As way of background, HRS sections 444-7, 8 and 9, authorize the Contractors License Board ("CLB") to define "incidental and supplemental". Pursuant to these 3 sections, the board has established the definition of "incidental and supplemental" that is found in section 16-77-34 of the Hawaii Administrative Rules ("HAR") which states:

> ***"Incidental and supplemental" is defined as work in other trades directly related to and necessary for the completion of the project undertaken by a licensee pursuant to the scope of the licensee's license.***

HRS section 444-8, entitled **Powers to classify and limit operations** states in subsection (c) as follows:

> **"(c) This section shall not prohibit a specialty contractor from taking and executing a contract involving two or more crafts or trades, if the performance of the work in the other crafts or trades, other than in which the specialty contractor is licensed, is *incidental and supplemental* to the performance of work in the craft for which the specialty contractor is licensed."**

HAR section 16-77-33, entitled **Limitations of classifications** in section (a) states:

> **"(a) A licensee classified as and "A" general engineering contractor or as a "B" general building contractor shall not act. . .as a specialty contractor except in the specialty classification which the licensee holds."**

In addition, and most importantly, the case of Okada Trucking Co., Ltd. v. Board of Water Supply, City and County of Honolulu and Inter Island Environmental Services, Inc., 97 Hawaii 450 (2002), states on page 462:

> ***". . .pursuant to HRS section 444-9, a general engineering or building contractor is prohibited from undertaking any work, solely or as part of a larger project, that would require it to act as a specialty contractor in an area in which the general contractor was not licensed to operate. . ."***

Despite the above law, the rules and regulations implementing the law and the Hawaii Supreme Court interpreting the law as established in Okada above, there have been cases decided by hearings officers and the CLB that are contrary to the law, the rules and regulations, and Okada. General contractors have been permitted to use "incidental and supplemental" to perform specialty work, and, specialty contractors have been permitted to perform specialty work in other trades that clearly go beyond the logical application of the term "incidental and supplemental."

Based on the above, we believe that input from other states concerning how they define and implement the term "incidental and supplemental" would shine needed light for the legislature to consider setting forth a definition that would bring more clarity to benefit contractors, tradesmen and the industry.