

Testimony of the Contractors License Board

Before the
Senate Committee on Commerce & Consumer Protection
Thursday, March 25, 2021
9:30 a.m.
Via Videoconference

S.C.R. 194, REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF “INCIDENTAL AND SUPPLEMENTAL” CONTRACTING WORK.

Chair Baker and Members of the Committee:

My name is Candace Ito, and I am the Executive Officer of the Contractors License Board (Board). The Board opposes this resolution.

The purposes of this resolution are to request that the Legislative Reference Bureau (LRB) conduct a study of: (1) best practices regarding "incidental and supplemental" contracting work; (2) how other state jurisdictions define and handle "incidental and supplemental" contracting work; and (3) factors, other than cost, that other state contractor licensing boards or similar entities apply when determining "incidental and supplemental" with respect to contracting work.

Pursuant to the Hawaii Supreme Court decision in the District Council 50 v. Lopez, 129 Haw. 281, 287, 298 P.3d 1045, 1051 (2013), the Board has determined that to qualify as "incidental and supplemental" work, the work must be subordinate to, directly related to, and necessary for the completion of the work of greater importance that is within the scope of the licensee's license (i.e., the primary work the specialty contractor is licensed to perform)¹.

The Board's determination takes into account the cost and extent of the other specialty contracting work and whether the work constitutes less than a majority of the project; the Board also requires that the other specialty contracting work be subordinate and constitute less than a majority of the project.

¹ See, the October 18, 2013, Board's Final Order Upon Remand (Final Order) in In the Matter of the Petition for Declaratory Relief of District Council 50 of the International Union of Painters and Allied Trades and Aloha Glass Sales & Service, Inc., CLB-DR-2006-2.

Since October 2013, the Board has consistently applied this standard to numerous scopes of work inquiries. The Board carefully considers each inquiry pertaining to incidental and supplemental work and studies each project's plans and specifications. The Board considers many factors, including: life safety; cost; extent of work; number of man hours; amount of materials involved; proximity of other specialty contracting work to the primary work; and whether the work is less than a majority of the project. The Board's current implementation of its Final Order is comprehensive, fair, and protects the public's health and safety.

In addition, page 1, line 27 to page 2, line 3 and page 3, lines 16 through 20 indicate that these resolutions pertain to "incidental and supplemental" work of certain specialty classifications. If a study is to be conducted, it should include all the contractor specialty classifications and afford representatives from the various specialty contractor classifications an opportunity to provide input. In addition, if the LRB will be required to solicit input from entities that are not contractors, such as construction unions, it should likewise solicit input from contractor associations.

Thank you for the opportunity to testify on this resolution.

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Written Comments

SCR194

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Commerce and Consumer Protection

Thursday, March 25, 2021, 9:30 a.m.
Conference Room 229 & Videoconference

Chair Baker and Members of the Committee:

Good afternoon Chair Baker and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on S.C.R. No. 194, Requesting the Legislative Reference Bureau to Conduct a Review Regarding the Performance of "Incidental and Supplemental" Contracting Work.

The purpose of this measure is to request the Legislative Reference Bureau to:

- (1) Act as an independent agency to conduct a study of best practices regarding "incidental and supplemental" contracting work that includes:
 - (A) An examination of how other state jurisdictions define and handle "incidental and supplemental" contracting work; and
 - (B) Information on factors, other than cost, that other state contractor licensing boards or similar entities apply when making their determination of "incidental and supplemental" with respect to contracting work;

- (2) Obtain input from stakeholders on best practices regarding "incidental and supplemental" contracting work, including input from construction unions, construction companies, structural engineers, steel fabricators and erectors, and trades councils; and
- (3) Submit a report of 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 2022.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

We have some concerns with how the measure is currently drafted. The focus of the resolution is to request the Bureau to conduct a study of best practices regarding "incidental and supplemental" contracting work based upon other state's methods of addressing the issue. However, the measure requests the Bureau to obtain input from "stakeholders," who are presumably in Hawaii. If the intent is to conduct a study on how *other states* address this issue, it may not be an efficient use of Bureau resources to expend considerable effort in obtaining and analyzing input from stakeholders in this State.

Furthermore, given the vast number of stakeholders that would need to be consulted, the compilation of their input, verification that the perspectives and opinions of stakeholders are consistent with contracting practices and standards, and comparison of that information with best practices of other states, the approximate six-month timeframe provided to the Bureau to deliver the report is too short.

Additionally, gathering this input would likely duplicate previous work conducted in response to S.C.R. No. 84, S.D. 1 (2013), which requested the Contractors License Board to conduct an assessment and prepare a report that evaluates each licensing classification under Chapter 444, Hawaii Revised Statutes.¹ In preparing that report, the Contractors License Board received more than one hundred fifty pages of comments from stakeholders, many of which addressed the nature of "incidental and supplemental" contracting work. As summarized on pages 2 and 3 of the Report of the Contractors License Board, the comments "offered different and often opposing perspectives," for example, including recommendations to "change the definition of 'incidental and supplemental' work," and "do not amend the definition of 'incidental and supplemental' work." It is to be expected that these diametrically opposed perspectives remain much the same today. Consequently, it is uncertain what new information is to be gained from soliciting stakeholders' opinions, and it is equally uncertain how that information will assist in determining the best practices in other states.

¹ The full report is available at https://lrb.hawaii.gov/wp-content/uploads/2013_ReportOfTheContractorsLicenseBoard.pdf.

Accordingly, we ask that the resolution be amended to request that the Bureau seek input from relevant national trade organizations on this issue, instead of the wide breadth of stakeholders mentioned on page 3, lines 16-20.

If the measure is amended to address the concerns noted above, the Bureau believes that the services requested under the measure could be manageable and that the Bureau will be able to provide the services in the time allotted; *provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities*, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for the opportunity to submit written comments.