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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY  
OF BEST PRACTICES REGARDING "INCIDENTAL AND SUPPLEMENTAL"  
CONTRACTING WORK.

1           WHEREAS, it is of paramount importance to protect the  
2 public safety and welfare in any sort of construction work; and  
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4           WHEREAS, Chapter 444, Hawaii Revised Statutes (HRS),  
5 Contractors Law, is a consumer protection statute that is  
6 intended to protect the public when dealing with persons engaged  
7 in the construction industry; protect the public from  
8 incompetence, negligence, and dishonesty in those who provide  
9 construction work; and safeguard the public against unskilled  
10 workmanship; and  
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12           WHEREAS, the Contractors License Board is the state agency  
13 that is responsible for administering Chapter 444, HRS, and the  
14 regulating body for contractors who are licensed in the State  
15 and, among other things, grants licenses to contractors; adopts  
16 rules to implement Chapter 444, HRS; suspends or revokes  
17 licenses; issues informal nonbinding interpretation or  
18 declaratory rulings; and conducts contested case proceedings  
19 pursuant to Chapter 91, HRS, Administrative Procedure Law; and  
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21           WHEREAS, in construction work, a structural engineer  
22 reviews all plans (known as S plans) that deal with the  
23 structural integrity of the building, and the structural  
24 engineer must approve the plans by stamping and validating these  
25 plans; and  
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27           WHEREAS, the C-6, C-31, C-32, C-35, C-38, C-41, C-48, and  
28 C-56 specialty subcontractor's license and other similar  
29 licenses fall under the purview of a structural engineer and



1 must meet all requirements set forth in national and  
2 international standards; and

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4 WHEREAS, the structural engineer must ensure that  
5 subcontractors and workers have sufficient knowledge and  
6 experience to work on a construction project; and

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8 WHEREAS, the case *District Council 50, of the International*  
9 *Union of Painters and Allied Trades, et al., v. Lopez*, 298 P.3d  
10 1045 (2013), dealt with the issue of whether Allied Pacific, a  
11 general contractor performing renovation work at Lanakila  
12 Elementary School, could undertake glass work as "incidental and  
13 supplemental" to its automatically held C-5 specialty  
14 subcontractor license and without a C-22 specialty contractor  
15 license; and

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17 WHEREAS, the Hawaii Supreme Court held that the Contractors  
18 License Board erred in its interpretation of what is deemed  
19 "incidental and supplemental" in the case; and

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21 WHEREAS, the Contractor License Board makes determinations  
22 on a case-by-case basis; and

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24 WHEREAS, On October 18, 2013, a Contractors License Board  
25 Final Order was issued pursuant to the Hawaii Supreme Court's  
26 ruling in *District Council 50 v. Lopez*, 129 Hawai'i 281, 298 P.3d  
27 1045 (2013), which interpreted the term "incidental and  
28 supplemental" in Chapter 444, HRS, to be less than a majority;  
29 and

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31 WHEREAS, the Contractors License Board determined that:

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33 (1) To qualify as "incidental and supplemental" work, the  
34 work must be subordinate to, directly related to, and  
35 necessary for the completion of the work of greater  
36 importance that is within the scope of the licensee's  
37 license, i.e., the primary work the specialty  
38 contractor is licensed to perform; and

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40 (2) That work must represent less than 50 percent of the  
41 project as measured in relation to the project's total  
42 cost or extent; and



1 WHEREAS, the Contractors License Board has attempted to  
2 pass an administrative rule to this effect; and

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4 WHEREAS, although under Chapter 444, HRS, the Contractors  
5 License Board has the authority to administer, review, and grant  
6 contractors and subcontractors licenses, it may be more useful  
7 to have an independent agency to evaluate and review best  
8 practices regarding "supplemental and incidental" contracting  
9 work; now, therefore,

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11 BE IT RESOLVED by the House of Representatives of the  
12 Twenty-ninth Legislature of the State of Hawaii, Regular Session  
13 of 2018, the Senate concurring, that the Legislative Reference  
14 Bureau is requested to conduct a study of best practices  
15 regarding "incidental and supplemental" contracting work; and

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17 BE IT FURTHER RESOLVED that in conducting the study, the  
18 Legislative Reference Bureau is requested to:

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20 (1) Examine how other state jurisdictions define and  
21 handle "incidental and supplemental" contracting work;  
22 and

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24 (2) Include factors, other than cost, that other state  
25 contractor licensing boards or similar entities apply  
26 when making their determination of "incidental and  
27 supplemental" with respect to contracting work; and

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29 BE IT FURTHER RESOLVED that in conducting the study, the  
30 Legislative Reference Bureau is requested to meet with  
31 stakeholders regarding this issue, including construction  
32 unions, construction companies, structural engineers, steel  
33 fabricators and erectors, and trades councils; and

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35 BE IT FURTHER RESOLVED that the Legislative Reference  
36 Bureau is requested to submit a report of its findings and  
37 recommendations, including any proposed legislation, to the  
38 Legislature no later than twenty days before the convening of  
39 the Regular Session of 2019; and

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41 BE IT FURTHER RESOLVED that certified copies of this  
42 Concurrent Resolution be transmitted to the Governor, Director  
43 of Commerce and Consumer Affairs, Director of the Legislative



- 1 Reference Bureau, and Chairperson of the Contractors License
- 2 Board.

