
HOUSE RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A REVIEW REGARDING THE
PERFORMANCE OF "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
30 must meet all requirements set forth in national and
31 international standards; and



1 WHEREAS, the structural engineer must ensure that
2 subcontractors and workers have sufficient knowledge and
3 experience to work on a construction project; and
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5 WHEREAS, the case *District Council 50, of the International*
6 *Union of Painters and Allied Trades, et al., v. Lopez*, 298 P.3d
7 1045 (2013), dealt with the issue of whether Allied Pacific, a
8 general contractor performing renovation work at Lanakila
9 Elementary School, could undertake glass work as "incidental and
10 supplemental" to its automatically held C-5 specialty
11 subcontractor license and without a C-22 specialty contractor
12 license; and
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14 WHEREAS, the Hawaii Supreme Court held that the Contractors
15 License Board erred in its interpretation of what is deemed
16 "incidental and supplemental" in the case; and
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18 WHEREAS, the Contractor License Board makes determinations
19 on a case-by-case basis; and
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21 WHEREAS, On October 18, 2013, a Contractors License Board
22 Final Order was issued pursuant to the Hawaii Supreme Court's
23 ruling in *District Council 50 v. Lopez*, 129 Hawai'i 281, 298 P.3d
24 1045 (2013), which interpreted the term "incidental and
25 supplemental" in Chapter 444, HRS, to be less than a majority;
26 and
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28 WHEREAS, the Contractors License Board determined that:
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- 30 (1) To qualify as "incidental and supplemental" work, the
31 work must be subordinate to, directly related to, and
32 necessary for the completion of the work of greater
33 importance that is within the scope of the licensee's
34 license, i.e., the primary work the specialty
35 contractor is licensed to perform; and
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- 37 (2) That work must represent less than 50 percent of the
38 project as measured in relation to the project's total
39 cost or extent; and
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41 WHEREAS, the Contractors License Board has attempted to
42 pass an administrative rule to this effect; and



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

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

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

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17 (1) Examine how other state jurisdictions define and
18 handle "incidental and supplemental" contracting work;
19 and
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21 (2) Include factors, other than cost, that other state
22 contractor licensing boards or similar entities apply
23 when making their determination of "incidental and
24 supplemental" with respect to contracting work; and
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26 BE IT FURTHER RESOLVED that in conducting the study, the
27 Legislative Reference Bureau is requested to meet with
28 stakeholders regarding this issue, including construction
29 unions, construction companies, structural engineers, steel
30 fabricators and erectors, and trades councils; and

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

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38 BE IT FURTHER RESOLVED that certified copies of this
39 Concurrent Resolution be transmitted to the Governor, Director
40 of Commerce and Consumer Affairs, Director of the Legislative
41 Reference Bureau, and Chairperson of the Contractors License
42 Board.

