

MAR 12 2021

SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU 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, is a
5 consumer protection statute that is intended to protect the
6 public when dealing with persons engaged in the construction
7 industry; protect the public from incompetence, negligence, and
8 dishonesty in those who provide construction work; and safeguard
9 the public against unskilled workmanship; and
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11 WHEREAS, the Contractors License Board is the state agency
12 that is responsible for administering chapter 444, Hawaii
13 Revised Statutes, and the regulating body for contractors who
14 are licensed in the State and, among other things, grants
15 licenses to contractors; adopts rules to implement chapter 444,
16 Hawaii Revised Statutes; suspends or revokes licenses; issues
17 informal nonbinding interpretation or declaratory rulings; and
18 conducts contested case proceedings pursuant to chapter 91,
19 Hawaii Revised Statutes; and
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21 WHEREAS, in construction work, a structural engineer
22 reviews all plans (known as S plans) that pertain to 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 licenses 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
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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. The Hawaii Supreme Court held that the Contractors
13 License Board erred in its interpretation of what is deemed
14 "incidental and supplemental" in the case; and
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16 WHEREAS, as a result of the court's decision, a Contractors
17 License Board final order was issued with the Contractors'
18 License Board determining that:
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20 (1) To qualify as "incidental and supplemental" work, the
21 work must be subordinate to, directly related to, and
22 necessary for the completion of the work of greater
23 importance that is within the scope of the licensee's
24 license, i.e., the primary work the specialty
25 contractor is licensed to perform; and
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27 (2) The work must represent less than fifty percent of the
28 project as measured in relation to the project's total
29 cost or extent; and
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31 WHEREAS, although under chapter 444, Hawaii Revised
32 Statutes, the Contractors License Board has the authority to
33 administer, review, and grant contractors and subcontractors
34 licenses, it may be more useful to have an independent agency to
35 evaluate and review best practices regarding "supplemental and
36 incidental" contracting work; now, therefore,
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38 BE IT RESOLVED by the Senate of the Thirty-first
39 Legislature of the State of Hawaii, Regular Session of 2021, the
40 House of Representatives concurring, that the Legislative
41 Reference Bureau is requested to conduct a study of best



practices regarding "incidental and supplemental" contracting work; and

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

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

(2) Include 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; and

BE IT FURTHER RESOLVED that in conducting the study, the Legislative Reference Bureau is requested to obtain input from stakeholders regarding this issue, including construction unions, construction companies, structural engineers, steel fabricators and erectors, and trades councils; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to 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; and

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

OFFERED BY:

Karl Rhoads

