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.

WHEREAS, the Contractors License Board is vested with broad authority pursuant to section 444-4, Hawaii Revised Statutes, to issue licenses to contractors and to ensure that contractors are qualified to undertake the work for which they are licensed; and

WHEREAS, pursuant to section 444-7, Hawaii Revised Statutes, the Contractors License Board classifies the types of licenses it issues as:

(1) General engineering contractor;

(2) General building contractor; and

(3) Specialty contractor; and

WHEREAS, the Hawaii Supreme Court in Okada Trucking Co., Ltd. v. Board of Water Supply, City and County of Honolulu and Inter Island Environmental Services, Inc., 97 Hawai'i 450 (2002), made several significant holdings that clarified the treatment of bid proposals submitted by contractors on state and county projects; and

WHEREAS, in Okada, the Hawaii Supreme Court held that a general contractor's bid for a Board of Water Supply booster station project was nonresponsive because it required work by a licensed plumbing (specialty) contractor, which was work that the general contractor was not authorized to perform under the general contracting licenses that it held; and

WHEREAS, in Okada, the Hawaii Supreme Court also held that 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; and
WHEREAS, in Okada, the Hawaii Supreme Court noted that a specialty contractor, as opposed to a general contractor, is permitted to undertake work involving the use of crafts or trades for which the specialty contractor is not licensed, so long as the performance of the work in those crafts or trades is "incidental and supplemental" to the performance of work in the craft for which the specialty contractor is licensed; and

WHEREAS, pursuant to section 444-8, Hawaii Revised Statutes, a specialty contractor is not prohibited from taking and executing a contract involving the use of two or more crafts or trades, if the performance of such work is in a craft or trade in which the specialty contractor is not licensed, provided that the work is "incidental and supplemental" to the performance of the work in the craft or trade in which the specialty contractor is licensed; and

WHEREAS, section 444-8, Hawaii Revised Statutes, which allows specialty contractors to undertake "incidental and supplemental work" applies only to specialty contractors and not to general contractors; and

WHEREAS, the Contractors License Board has applied the term "incidental and supplemental" (defined under section 16-77-34, Hawaii Administrative Rules, 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) to general engineering contractors and to general building contractors who can perform incidental and supplemental work under the rule; and

WHEREAS, current Hawaii statutory law in chapter 444, Hawaii Revised Statutes, is silent on whether a general contractor can perform incidental and supplemental work under its general contractor license; and

WHEREAS, in the years since the Okada opinion, the Contractors License Board has permitted contractors, on several occasions, to submit bid proposals that failed to identify specialty subcontractors that would be engaged, even in situations where the invitation for bids clearly indicated that the construction projects involved would require substantial amounts of specialty contracting work; and
WHEREAS, in these cases, the Contractors License Board has ruled that the specialty contracting work required in these projects was merely "incidental and supplemental" to the licenses held by the bidding contractors; and

WHEREAS, the Contractors License Board's application of the phrase "incidental and supplemental" appears to contradict the Hawaii Supreme Court's holdings in Okada; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session of 2010, that the Legislative Reference Bureau is requested to conduct a study on how other states' contractor licensing laws define and address "incidental and supplemental" work; and

BE IT FURTHER RESOLVED that the study be conducted for the purpose of providing information from the other states that will help the Legislature determine the extent to which the "incidental and supplemental" language in chapter 444, Hawaii Revised Statutes, should allow specialty contracting work to be performed by a contractor who is not licensed to perform that work; and

BE IT FURTHER RESOLVED that as part of the foregoing task, the Legislative Reference Bureau consider the interests and protection of consumers; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to report 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 2011; and

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

OFFERED BY:

[FEB 16 2010]